

**Fred James**

Chief Regulatory Officer

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September 21, 2020

Ms. Marija Tresoglavic  
Acting Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

**RE: British Columbia Utilities Commission (BCUC or Commission)  
British Columbia Hydro and Power Authority (BC Hydro)  
Electricity Purchase Agreement (EPA) Extension – Hluey Lake  
Hydroelectric Facility**

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BC Hydro writes, pursuant to section 71 of the *Utilities Commission Act (UCA)*, for acceptance by the BCUC of a further three-month extension agreement, dated July 31, 2020, for the EPA originally executed by the Tahltan Nation Development Corporation, and ultimately assigned to MPT Hydro Limited Partnership (**MPT Hydro**), dated November 1, 1993 (**Hluey Lake EPA**). In this filing (**Filing**), BC Hydro requests an order from the Commission under section 71 of the UCA that the three-month extension agreement is in the public interest and is accepted for filing. A draft of the requested Order is attached as Appendix A.

On April 30, 2020, BC Hydro requested an order from the Commission under section 71 of the UCA for a six-month extension agreement of the Hluey Lake EPA. By BCUC Order No G-119-20 dated May 20, 2020 (the Cover Letter of the April 30, 2020 request is attached as Appendix B for convenience) the Commission accepted the six-month extension agreement of the Hluey Lake EPA.

As indicated in the April 30, 2020 filing, BC Hydro and MPT Hydro are negotiating an EPA renewal. Discussions are progressing; however, the parties require additional time to complete negotiations. As such, the parties have entered into a further extension for additional three months. A copy of the three-month extension agreement is attached as Appendix C.

As with the previous six-month extension agreement, the attached three-month extension agreement does not amend or change the existing EPA in any other aspects, except for the term of the EPA. Also, as previously stated in the April 30, 2020 filing, if the Commission does not accept this extension agreement, BC Hydro's only other alternative in the Dease Lake NIA is to run its stand-by diesel generators, which would

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increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake Hydro Project.

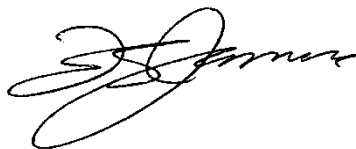
The extension agreement of the Hluey Lake EPA is an “energy supply contract” under Part 5 of the UCA. Section 71(2.21) of the UCA describes the factors that the BCUC must consider when deciding whether to accept an energy supply contract. This three-month extension agreement continues to meet the applicable numerated factors under section 71(2.21) of the UCA as discussed in the April 30, 2020 filing.

Under section 71 of the UCA, the BCUC may accept the extension agreement for the Hluey Lake EPA for filing and grant the requested Order without a hearing. BC Hydro believes that the requested Order can be granted without a hearing as this Filing continues the previously accepted six-month extension agreement to allow the parties to further discussions and negotiations of an EPA renewal.

Concurrent with this Filing, BC Hydro will provide notice to the registered interveners in BC Hydro’s most recent revenue requirements application in accordance with section 1.1.2 of the Rules for Energy Supply Contracts for Electricity. BC Hydro will also provide notice of this Filing to the Tahltan Central Government, Iskut Band, and Tahltan Band.

For further information, please contact Chris Sandve at 604-974-4641 or by email at [bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com).

Yours sincerely,



Fred James  
Chief Regulatory Officer

st/rh

Enclosure

Copy to: **BCUC Project No. 1598990 (BC Hydro Fiscal 2020 to Fiscal 2021 Revenue Requirements Application) Registered Intervener Distribution List**  
**Iskut Band**  
**Tahltan Central Government**  
**Tahltan Band**

## **Hluey Lake Hydro**

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# **Electricity Purchase Agreement Extension**

## **Appendix A**

## **Draft Order**

**ORDER NUMBER**

**E-xx-xx**

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority  
Section 71 Filing of Electricity Purchase Agreement  
Hluey Lake Hydro

**BEFORE:**

Commissioner  
Commissioner  
Commissioner

on Date

**ORDER**

**WHEREAS:**

- A. On September 21, 2020, pursuant to Section 71 of the *Utilities Commission Act* (UCA), British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (BCUC) a three-month extension agreement, dated July 31, 2020, (Hluey Lake EPA Extension), further extending the expiry date for the electricity purchase agreements (EPA) between BC Hydro and MPT Hydro LP for the Hluey Lake Hydroelectric Facility to October 31, 2020 (Filing);
- B. By Ministerial Order M-22-9801, dated August 28, 1998, any EPA agreed upon by BC Hydro or any persons selling electricity to BC Hydro on or before March 31, 2000, are exempt from section 71 of the UCA. The threshold date for this exemption was subsequently updated to September 30, 2001, by Amending Ministerial Order M-22-9801-A1;
- C. By Order E-10-94, dated June 22, 1994, the BCUC approved an EPA between BC Hydro and Tahltan Nation Development Corporation for the Hluey Lake Hydroelectric Facility. Since that time, ownership of the Hluey Lake Hydroelectric Facility has transferred to MPT Hydro LP, a wholly owned subsidiary of Capstone Infrastructure Corporation;
- D. By Order G-61-12, dated May 17, 2012, the BCUC approved the Rules for Energy Supply Contracts for Electricity (Rules). Appendix A of Order G-61-12 contains the Rules, which are intended to facilitate the BCUC's review of energy supply contracts for electricity, pursuant to section 71 of the UCA;
- E. On March 27, 2020, BC Hydro requested an extension from the 60-day filing rule for the filing of EPAs, or amendments, as set out in the Rules, for the Hluey Lake EPA Extension;

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- F. By letter dated March 30, 2020, the BCUC granted BC Hydro's filing extension request;
- G. On April 30, 2020, BC Hydro requested an order from the Commission under section 71 of the UCA for a six-month extension agreement of the original EPA for the Hluey Lake Hydroelectric Facility;
- H. By Order No. G-119-20 dated May 20, 2020, the BCUC granted BC Hydro's request for the six-month extension agreement of the original EPA for the Hluey Lake Hydroelectric Facility;
- I. The Panel has reviewed the Filing and considers acceptance of the Hluey Lake EPA Extension is warranted.

**NOW THEREFORE** pursuant to section 71 of the UCA and the Rules, the BCUC orders the following:

- 1. The Hluey Lake EPA Extension is accepted for filing.

**DATED** at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)  
Commissioner

**Hluey Lake Hydro**

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**Electricity Purchase Agreement  
Extension**

**Appendix B**

**BC Hydro April 30, 2020  
Six Month Extension Request**

**Fred James**

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

[bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com)

April 30, 2020

Mr. Patrick Wruck  
Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: British Columbia Utilities Commission (BCUC or Commission)  
British Columbia Hydro and Power Authority (BC Hydro)  
Electricity Purchase Agreement (EPA) Extension – Hluey Lake  
Hydroelectric Facility**

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BC Hydro, pursuant to section 71 of the *Utilities Commission Act (Act or UCA)*, applies (**Application**) for acceptance by the British Columbia Utilities Commission (**BCUC or Commission**) of a six-month extension agreement, dated January 31, 2020, for the EPA originally executed by the Tahltan Nation Development Corporation, and ultimately assigned to MPT Hydro Limited Partnership (**MPT Hydro**), dated November 1, 1993 (**Hluey Lake EPA**).

On March 27, 2020, BC Hydro requested an extension from the 60-day filing rule for the six-month extension agreement, as set out in the Rules for Energy Supply Contracts for Electricity. BC Hydro's filing extension request was granted by letter dated March 30, 2020.

In this filing (**Filing**), BC Hydro requests an order from the Commission under section 71 of the UCA that the six-month extension agreement is in the public interest and is accepted for filing. A copy of the draft form of the order is attached as Appendix A.

**Project Background**

The Hluey Lakes Hydro Project (**Project**) is a storage hydro project serving the Dease Lake Non-Integrated Area (**NIA**) in northwestern B.C. The Project has a plant capacity of 3 MW with estimated annual generation capability of approximately 20 GWh/yr. A 21 km, 25 kV transmission line interconnects the facility to the point of interconnection at BC Hydro's Dease Lake diesel generating station.

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 Commission Secretary and Manager  
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The Dease Lake NIA has peak loads of approximately 1.6 MW. However, the average load of the community is much smaller, averaging 0.8 MW. The Project provides 99 per cent of the energy supply for the Dease Lake NIA, with BC Hydro's diesel generation station acting as backup. BC Hydro owns and operates (and will continue to do so for reliability purposes) the diesel station in Dease Lake for backup and reliability purposes.

Total annual energy supplied has averaged approximately 6.7 GWh/yr over the past 10 years.

### **Hluey Lake EPA Background**

The existing 20-year EPA for the Project was executed with the Tahltan Nation Development Corporation (**TNDC**) on November 1, 1993 and the project has changed owners a number of times during the contract term. The Project was ultimately completed by Manulife and its subsidiary on January 15, 2000 and is currently owned by MPT Hydro LP, a wholly owned subsidiary of Capstone Infrastructure Corporation.

The Hluey Lake EPA was filed for acceptance with the BCUC on June 6, 1994 and on June 22, 1994 was approved pursuant to Order No. E-10-94 (Appendix B). A copy of the EPA was filed with the BCUC in this proceeding on a confidential basis and the Commission accepted this request.<sup>1</sup> The Hluey Lake EPA was subsequently amended on July 20, 1999 in relation to consent required by BC Hydro for a change in the ownership to the project. This amending agreement was exempted from section 71 of the UCA in accordance with Ministerial Order M-22-9801 (also included within Appendix B). A confidential copy of the Hluey Lake EPA and its amending agreement are attached as Appendix C.

The EPA does not contain any provisions for an extension of the existing term. Under the EPA, the current energy price is approximately [REDACTED], and is comprised of [REDACTED].

### **Hluey Lake EPA Extension Agreement**

The Hluey Lake EPA was to expire on January 31, 2020 and a six-month extension was agreed upon in order to continue negotiations on an EPA renewal. The extension agreement is attached as Appendix D. The EPA renewal process for the Project is underway and negotiations are progressing as between BC Hydro and MPT Hydro. The extension of the existing EPA allows for the continuous supply of power from

<sup>1</sup> See item 2 in BCUC order E-10-94.



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MPT Hydro to BC Hydro to serve BC Hydro's customers in the Dease Lake NIA, as BC Hydro does not have other resource options in the Dease Lake area other than running our stand-by diesel generators.

The extension agreement does not amend or change the existing EPA in any other aspects, except for the term of the EPA. If the Commission does not accept this extension agreement, BC Hydro's only other alternative in the Dease Lake NIA is to run its stand-by diesel generators. This alternative would increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake IPP.

### Energy Supply Contract Considerations

The Hluey Lake extension agreement is an "energy supply contract" under Part 5 of the UCA. Section 71(2.21) of the UCA describes what the factors the BCUC must consider when assessing whether or not an energy supply contract filed by BC Hydro is in the public interest. The first enumerated factor is whether the energy supply contract is in "the interests of persons in British Columbia who receive or may receive service from the authority" (i.e., is the Hluey Lake extension agreement in the interest of BC Hydro's customers) and in addition the BCUC must consider British Columbia's energy objectives, BC Hydro's 2013 Integrated Resource Plan (**2013 IRP**),<sup>2</sup> Section 19 of the *Clean Energy Act*,<sup>3</sup> and the price, quantity and availability of the energy to be supplied under the energy supply contract, as well as alternatives to the energy that is being acquired.

### Interests of BC Hydro Ratepayers/Price, Quantity and Availability

The extension agreement for the Hluey Lake EPA provides for the continued use of an existing, reliable clean or renewable resource at cost effective pricing. The only alternative to the extension agreement would be more costly and environmentally undesirable diesel generation at BC Hydro's diesel generating station at Dease Lake. There are no other alternatives. The price, quantity and availability of the Hluey Lake generation are discussed above in the section describing the terms of the existing EPA.

<sup>2</sup> The 2013 IRP applies to BC Hydro's integrated system IRP and does not generally address NIAs. The local generation from the Hluey Lake IPP serves customers located in the Dease Lake NIA.

<sup>3</sup> Section 19 imposes obligations on BC Hydro with regard to prescribed targets in relation to clean or renewable resources, and prescribed guidelines in planning for the construction of generation facilities or the purchase of energy. There are neither prescribed targets nor prescribed guidelines and so this factor is not applicable.

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## British Columbia's Energy Objectives

The Commission must also consider "British Columbia's energy objectives" as defined in section 2 of the *Clean Energy Act*. The extension agreement, which enables the continuation of supply from an existing clean or renewable resource to displace diesel generation in the Dease Lake NIA (where such diesel generation would increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake IPP) supports the following British Columbia energy objectives:<sup>4</sup>

- To generate at least 93 per cent of the electricity in B.C. from clean or renewable resources [objective 2(c)];
- To use and foster the development in B.C. of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources [objective 2(d)];
- To ensure the BC Hydro's rates remain among the most competitive of rates charged by public utilities in North America [objective 2(f)];
- Reduction of greenhouse gas emissions [objectives 2(g), (h) & (i)];
- To encourage economic development and the creation and retention of jobs [objective 2(k)];
- To foster the development of First Nation and rural communities through the use and development of clean or renewable resources [objective 2(l)];
- To maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia [objective 2(m)]; and
- No use of nuclear [objective 2(o)].

## First Nations

A review of the consultative boundary maps by BC Hydro identifies the Hluey Lake facility as being within the consultative boundaries of the following First Nations:

- Tahltan Central Government;
- Iskut Band; and
- Tahltan Band.

According to their website, Tahltan Central Government is the central administrative governing body for the Iskut Band and Tahltan Band.

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<sup>4</sup> For those objectives where the extension neither advances nor conflicts with that objective, BC Hydro is of the view it is in alignment with such objective and thus has not included it in the objectives identified in this Filing.

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BC Hydro is of the view that, since the extension of the Hluey Lake EPA will not result in any changes to the physical footprint, energy output or operation of the Hluey Lake facility, nor will any new or amended Crown authorizations be required, the extension of the EPA will not result in potential incremental impacts to Aboriginal rights and title so the duty to consult is not triggered.

### **Regulatory Review and Notice of Filing**

Under section 71 of the UCA, the BCUC may accept the extension agreement for the Hluey Lake EPA for filing and grant the requested Order without a hearing.

The Rules for Energy Supply Contracts for Electricity expressly state that the Commission intends to review energy supply contracts expeditiously and without a hearing. Further, the scheme of the relevant provisions of the UCA is that energy supply contracts are presumptively in the public interest unless the Commission declares otherwise, after a hearing.

In the case of this Filing and for the reasons set out below, if a process is required for the Commission to determine whether it requires a hearing to determine whether the extension agreement is in the public interest, then a single round of Information Requests from Commission staff is appropriate. For clarity, this proposed process would not be the "hearing" contemplated by the UCA, but a preliminary enquiry into the question of whether i) the extension agreement can be declared to be in the public interest and accepted for filing, or whether ii) a hearing is required.

If required, BC Hydro believes that a single round of Commission staff Information Requests is appropriate, and no additional process is warranted for the following reasons:

- The extension of the existing EPA allows for the continuous supply of power from MPT Hydro to BC Hydro to serve BC Hydro's customers in the Dease Lake NIA;
- As BC Hydro does not have other resource options in the Dease Lake area other than running our stand by diesel generators which would increase environmental impacts and be more costly as compared to continuing to receive supply from the Hluey Lake IPP; and
- The extension agreement does not amend or change the existing EPA in any other aspects, except for the term of the EPA and the extension agreement is only for a period of six months.

Concurrent with this Filing, BC Hydro will provide notice to the registered interveners in BC Hydro's most recent revenue requirements application in accordance with section 1.1.2 of the Rules for Energy Supply Contracts for Electricity. BC Hydro will also provide notice of this Filing to the Tahltan Central Government, Iskut Band, and Tahltan Band.

April 30, 2020  
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Commission Secretary and Manager  
Regulatory Support  
British Columbia Utilities Commission  
Electricity Purchase Agreement (EPA) Extension – Hluey Lake Hydroelectric  
Facility



## Requested Order

BC Hydro seeks a declaration that that the Hluey Lake extension agreement is in the public interest, and an order accepting it for filing under section 71 of the UCA. A draft order is attached as Appendix A.

## Confidentiality

BC Hydro is of the view that key or specific commercial terms and conditions relating to the Hluey Lake EPA is commercially sensitive and the public disclosure of such information will harm BC Hydro's negotiating position with respect to further electricity purchase agreements. Certain information in the Hluey Lake EPA is also considered commercially sensitive to the facility owner. BC Hydro has thus redacted certain information in this Filing and the Hluey Lake EPA including its 1999 amending agreement in its entirety (Appendix C) from the public version of the Filing.

As provided by the General Rules 1.10 of the Rules for Energy Supply Contracts for Electricity, Part IV of the Commission's Rules of Practice and Procedure, and section 42 of the *Administrative Tribunals Act*, BC Hydro requests that the Commission keep this information confidential.

For further information, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Fred James".

Fred James  
Chief Regulatory Officer

st/rh

Enclosure

Copy to: **BCUC Project No. 1598990 (BC Hydro Fiscal 2020 to Fiscal 2021 Revenue Requirements Application) Registered Intervener Distribution List.**

**Iskut Band**

**Tahltan Central Government**

**Tahltan Band**

## **Hluey Lake Hydro**

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### **Electricity Purchase Agreement Extension**

#### **Appendix C**

#### **Hluey Lake EPA Extension Agreement**

**EPA Extension Agreement  
Hluey Lake Hydro Project**

**THIS EXTENSION AGREEMENT ("Agreement")** is made as of the 31st day of July, 2020

**BETWEEN:**

**MPT HYDRO LP**, a limited partnership formed under the laws of Ontario, represented by its general partner, CPOT TITLE CORP., a corporation incorporated under the laws of Ontario and extra-provincially registered in British Columbia, with its head office at 155 Wellington Street West, Suite 2930, Toronto, ON, M5V 3H1

("MPT")

**AND:**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, with its head office at 333 Dunsmuir Street, Vancouver, BC, V6B 5R3

("BC Hydro")

**WHEREAS:**

- A. MPT and BC Hydro are parties to an electricity purchase agreement dated November 1, 1993 (as amended, restated, supplemented, modified, assigned and assumed, from time to time, the "EPA"), and which was originally executed by the Tahltan Nation Development Corporation and was subsequently assigned to MPT by way of an assignment and assumption agreement dated January 1, 2011;
- B. Pursuant to the EPA, MPT sells to BC Hydro electricity generated at MPT's hydroelectric generating facility near Dease Lake, British Columbia;
- C. MPT and BC Hydro have been and are in the process of negotiating a potentially new electricity purchase agreement;
- D. Due to such negotiations not having been completed, MPT and BC Hydro agreed to a six-month extension to the term of the EPA, by agreement dated January 31, 2020 ("January 2020 Extension"), and the January 2020 Extension was filed with the British Columbia Utilities Commission ("BCUC") for acceptance on April 20, 2020 and accepted on May 20, 2020 by Order G-119-20;
- E. The EPA, as extended, is due to expire on July 31, 2020 and MPT and BC Hydro require additional time to complete negotiations on the terms of a new electricity purchase agreement prior to that date; and
- F. To facilitate negotiations, BC Hydro wishes to extend the term of the EPA for up to a three month period and MPT has agreed to such additional extension.

**THIS AGREEMENT WITNESSES** that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MPT and BC Hydro (together, the "**Parties**" and each, a "**Party**") hereby agree as follows:

1. BCUC Acceptance

If required, as determined by BC Hydro in consultation with MPT, BC Hydro will file this Agreement with the BCUC under section 71 of the *Utilities Commission Act* (British Columbia) (“UCA”), for BCUC Acceptance, as an energy supply contract in accordance with BC Hydro’s usual filing practices within a reasonable period of time following the date of this Agreement. “BCUC Acceptance” means that the BCUC has issued an order accepting for filing, or approving, this Agreement under section 71 of the UCA as an energy supply contract either without conditions or subject to conditions that do not: (i) require as a condition of acceptance for filing or approval a material alteration to any material term or condition of this Agreement, or (ii) otherwise have an adverse effect on one or both of the Parties. If the Agreement is filed with the BCUC, BC Hydro will take all reasonable steps to secure BCUC Acceptance. MPT will provide any assistance reasonably requested by BC Hydro to secure BCUC Acceptance.

2. Termination

- (a) If the Agreement is filed with the BCUC and BCUC Acceptance has not been issued for this Agreement on or before the date that is 60 days after the date of this Agreement, or such later date as BC Hydro, in its sole discretion, may from time to time elect by notice to MPT, then at any time following such date either Party may terminate this Agreement by delivering notice of termination to the other Party, and such termination will be effective on the date that is 30 days after the date of delivery of such notice of termination, provided that a Party may not terminate this Agreement under this section if BCUC Acceptance is issued before the notice of termination is delivered to the other Party.
- (b) If this Agreement is terminated by either Party in accordance with section 2(a), the Parties will have no further liabilities or obligations under, or in relation to, this Agreement.

3. Term

Section 2.1 of the EPA is deleted in its entirety and replaced with the following provision:

“This Agreement shall come into force on the date of this Agreement and, except as otherwise provided in this Agreement, shall continue in full force and effect until the earlier of:

- (a) October 31, 2020; or
- (b) the effective date of a new electricity purchase agreement as may be agreed to by the Parties.”

4. Continuation of Terms and Conditions

MPT and BC Hydro acknowledge and agree that except as specifically amended by this Agreement, the EPA continues in full force and effect.

5. Duly Authorized

Each of MPT and BC Hydro represent and warrant to the other that: (a) this Agreement has been

duly authorized, executed and delivered, and (b) this Agreement constitutes a valid and binding obligation, enforceable against it in accordance with its terms.

6. Governing Law

This Agreement is governed by British Columbia law and the laws of Canada applicable therein.

7. Further Assurances

MPT and BC Hydro shall, upon the reasonable request of the other, do, sign or cause to be done or signed all further acts, deeds, documents and assurances required for the performance of this Agreement.

8. Enurement

This Agreement enures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assigns.


9. Counterparts

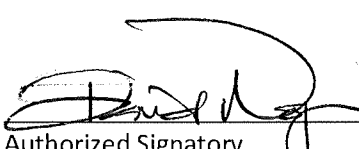
This Agreement may be executed in counterparts, each of which when executed and delivered (by facsimile, pdf or otherwise) will be deemed to be an original, and all of which together will constitute one and the same document.

IN WITNESS WHEREOF this Agreement has been executed by a duly authorized representative of each of the parties hereto as of the date first above written.

MPT HYDRO LP, by its general partner,  
CPOT Title Corp.

BRITISH COLUMBIA HYDRO AND POWER  
AUTHORITY

By:   
Authorized Signatory

By:   
Authorized Signatory

Name: Andrew Kennedy

Name: DAVID WONG

Title: Chief Financial Officer

Title: CFO

By:   
Authorized Signatory

Name: Aileen Gien

Title: General Counsel and Corporate Secretary



