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August 29, 2017

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)
BC Hydro Application Requesting the Commission set a Rate for Boralex
LP's Electricity Service to BC Hydro**

BC Hydro writes further to our letter to the Commission of August 15, 2017 regarding Energy Supply Contract Filing Requirements. In that letter we noted that BC Hydro and Boralex LP (**Boralex**) were parties to an Energy Purchase Agreement (**EPA**), which expired on December 31, 2016. The parties have been discussing terms for a renewed EPA for almost two-years, and have reached an impasse on the pricing.

BC Hydro purchases electricity service from Boralex to serve our customers in the Bella Bella Non-Integrated Area. At this time, pursuant to Directive 1 of Order No. G-26-10 Boralex, a public utility, is exempt from the Utilities Commission Act (**UCA**) rate regulation provisions with respect to the electricity service it provides to BC Hydro. In this application, BC Hydro requests the Commission amend Order No. G-26-10 to make Boralex subject to the rate regulation provisions of the UCA with respect to its service to BC Hydro and set a just and reasonable rate for Boralex's electricity service to BC Hydro.

BC Hydro and Boralex entered into an agreement to extend the EPA's term by six-months to June 30, 2017 in the hope that the parties would reach agreement on an EPA renewal. Such efforts were not successful, and the six-month extension expired on June 30, 2017. We anticipate that it will take some time for the Commission to gather the evidence necessary to make decisions on BC Hydro's application requesting the Commission set a rate for Boralex LP's electricity service to BC Hydro. The parties have therefore entered into a second extension agreement (Extension Agreement # 2). BC Hydro is also seeking an Order from the Commission that Extension Agreement # 2 is in the public interest and is accepted for filing.

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Mr. Patrick Wruck
Commission Secretary and Manager
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British Columbia Utilities Commission
BC Hydro Application Requesting the Commission set a Rate for Boralex LP's
Electricity Service to BC Hydro

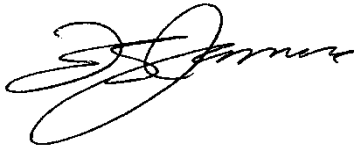
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Therefore, BC Hydro writes to request the following:

1. Approval to amend Commission Order No. G-26-10;
2. Determine and by order set a rate for Boralex's service to BC Hydro; and
3. Accept EPA Extension Agreement #2 as in the public interest.

For further information, please contact Anthea Jubb at 604-623-3545 or by email at bchydroregulatorygroup@bchydro.com

Yours sincerely,



Fred James
Chief Regulatory Officer

ac/rh

Enclosure

Copy to: Boralex Inc.
Attention: Alistair Howard
Alistair.howard@boralex.com

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

August 29, 2017

PUBLIC

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1 **1 Introduction, Purpose of Application and Orders**
2 **Sought**

3 **1.1 Introduction**

4 The communities of Bella Bella, Shearwater, and Waglisla are located on the central
5 coast of British Columbia within a BC Hydro Non-Integrated Area (**Bella Bella NIA**)
6 which is also referred to as BC Hydro's Rate Zone IB. For approximately 30 years,
7 BC Hydro has been purchasing electricity from a privately owned hydroelectric
8 project at Ocean Falls (**Ocean Falls Hydroelectric Project**), currently owned by
9 Boralex Ocean Falls LP (**Boralex**), to serve BC Hydro customers in the Bella Bella
10 NIA.

11 The Ocean Falls Hydroelectric Project is interconnected by a 45 km 25 kV
12 distribution-voltage transmission line to BC Hydro's diesel generation station
13 substation at Shearwater on Denny Island. Boralex owns and operates this
14 transmission line. BC Hydro relies on the Ocean Falls Hydroelectric Project to serve
15 the Bella Bella NIA and has been receiving reliable service from the project.

16 The original electricity purchase agreement became effective in 1986 (**1986 EPA**)
17 and its term expired on December 31, 2016. BC Hydro and Boralex have been
18 discussing terms for an EPA renewal with respect to the project for almost two years
19 but the negotiations are at an impasse. Specifically, the parties remain far apart with
20 respect to pricing for an EPA renewal.

21 BC Hydro has been attempting to negotiate a cost effective EPA renewal with
22 Boralex. As with other recent EPA renewals, to arrive at a negotiated price for a
23 renewal, BC Hydro focuses on an estimate of the supplier's cost of service (including
24 a reasonable rate of return). BC Hydro also considers its opportunity cost and the
25 supplier's opportunity cost.

1 Unlike independent power producers (**IPPs**) connected to BC Hydro's integrated
2 system, the Ocean Falls Hydroelectric Project is connected to a non-integrated area
3 and therefore Boralex is not subject to competitive forces with respect to its
4 opportunity cost. In addition, BC Hydro has very limited resource options to supply
5 its customers in this non-integrated area which means that BC Hydro has a high
6 opportunity cost. Further, as we understand, there is surplus capacity from the
7 project. All these factors make the situation quite different as compared to IPPs
8 connected to the integrated system.

9 Boralex is a public utility under the *Utilities Commission Act (UCA)* and is currently
10 exempt from rate regulation with respect to the electricity service it provides to
11 BC Hydro pursuant to Commission Order No. G-26-10. In this application, BC Hydro
12 is requesting that the Commission amend the exemption order to make Boralex
13 subject to the rate regulation provisions of the *UCA* with respect to the electricity
14 service it provides to BC Hydro, and by order set a just and reasonable rate for such
15 service.

16 **1.2 Purpose of Application and Orders Sought**

17 We are requesting the following from the Commission.

- 18 1. Determine and by order set a rate for Boralex's service to BC Hydro

19 The primary objective of this application is for the Commission to determine and set
20 a just and reasonable rate for Boralex's electricity service to BC Hydro, including
21 price, terms and conditions, pursuant to section 58 through to 60 of the *UCA*.

22 The existing price for the original EPA is as provided in [Table 2](#) below. In this
23 application, we are unable to provide an estimate of a just and reasonable renewal
24 price for Boralex's electricity service to BC Hydro because there is not sufficient
25 publicly-available information to provide a definitive opinion and because the
26 information that Boralex has provided to BC Hydro is subject to a confidentiality

1 agreement. We do, however, provide proposed terms and conditions for the service,
2 as provided in Appendix B-4 of this application, based on BC Hydro's specimen
3 renewal EPA for hydroelectric projects but modified to reflect the unique
4 circumstances, history and service of the Ocean Falls Hydroelectric Project.

5 **2. Amend Commission Order No. G-26-10**

6 At this time, pursuant to Order No. G-26-10, Boralex, though a public utility, is
7 exempt from application of the *UCA* except for sections 25, 38, 41, 99, and 117,¹
8 subject to the conditions specified in the exemption order. As there is no condition in
9 Order No. G-26-10 specific to the electricity service Boralex provides to BC Hydro,
10 pursuant to Directive 1 of Order No. G-26-10 Boralex is currently exempt from the
11 *UCA* rate regulation provisions with respect to the electricity service it provides to
12 BC Hydro.

13 Therefore, to set a rate for Boralex's service to BC Hydro, the Commission will first
14 need to amend Order No. G-26-10 to make Boralex subject to the rate regulation
15 provisions of the *UCA* with respect to such service. Directive 2 of Order No. G-26-10
16 provides that the exemption shall remain in effect until the Commission orders
17 otherwise, for reasons that may include the determination of any complaint that the
18 Commission receives from a person whose interests are affected. BC Hydro thus
19 seeks Commission's assistance with respect to Boralex's service to it. Section 99 of
20 the *UCA* is excluded from the scope of the exemption, also ensuring that the
21 Commission retains jurisdiction to amend Order No. G-26-10. Although we are not,
22 at this time, proposing specific wording with respect to amending Order No. G-26-10,
23 the objective of the amendment would be to make Boralex subject to the rate
24 regulation provisions of the *UCA* with respect to its service to BC Hydro.

¹ Section 25 enables the BCUC to order the utility to provide improved service; section 38 imposes on the utility an obligation to provide adequate, safe, just and reasonable service; section 41 prohibits the utility from discontinuing service without BCUC permission; section 99 enables the BCUC to reconsider, vary and rescind its orders and decisions; and section 117 enables the BCUC to recover its costs of proceedings from participants.

1 To be clear, BC Hydro is not requesting the Commission to amend the terms of the
2 exemption order that are applicable to the services Boralex provides to its other
3 customers in Ocean Falls.

4 3. Accept EPA Extension Agreement #2

5 The 1986 EPA expired on December 31, 2016. The parties entered into an
6 agreement to extend the 1986 EPA's term by six months to June 30, 2017
7 (**Extension Agreement #1**). This extension agreement was filed with the
8 Commission pursuant to section 71 of the *UCA*, and accepted by the Commission
9 pursuant to Order No. E-12-17. Extension Agreement #1 provided BC Hydro
10 continued access to electricity from the Ocean Falls Hydroelectric Project for six
11 months in the hope that the parties would reach agreement on an EPA renewal.
12 Such efforts were not successful, and the six month extension expired on
13 June 30, 2017.

14 We anticipate that it will take some time for the Commission to gather the evidence
15 necessary to make decisions on this application. In the meantime, BC Hydro
16 continues to require electricity service from Boralex (and Boralex requires the
17 revenue from BC Hydro), so BC Hydro and Boralex have entered into a second
18 agreement, effective July 1, 2017, to further extend the term of the 1986 EPA while
19 the Commission considers the matters in our application.

20 The extension agreement (**Extension Agreement #2**) provides that the term of the
21 1986 EPA continues until the earlier of (i) June 30, 2018, and (ii) the effective date
22 as agreed to by the parties or as may be ordered by the Commission for the new
23 terms and conditions, including pricing, to be applied for sales of electricity
24 generated at the Ocean Falls Hydroelectric Project from Boralex to BC Hydro.

25 Extension Agreement #2 is included as Appendix B-3 of this application for filing
26 pursuant to section 71 of the *UCA*. We are also seeking an Order from the
27 Commission that Extension Agreement #2 is in the public interest and is accepted

1 for filing, as further explained in section 5 of this application. A draft order for
2 Commission acceptance of Extension Agreement #2 is provided in Appendix A.

3 **1.3 Structure of the Application**

4 The rest of the application has the following structure;

- 5 • Section 1.4 provides our recommendations regarding the process to review the
6 application, and direction for communications regarding the application;
- 7 • Section 2 contains background to the application;
- 8 • Section 3 provides an overview of current situation and issues;
- 9 • Section 4 includes First Nations consultation;
- 10 • Section 5 describes the justification for Extension Agreement #2; and
- 11 • Section 6 provides the conclusion.

12 **1.4 Proposed Regulatory Review Process for Application and** 13 **Communications**

14 The primary objective of this application is for the Commission to set a just and
15 reasonable rate for Boralex's electricity service to BC Hydro. The focus is on the
16 nature and quality of Boralex's electricity service to BC Hydro and the reasonable
17 costs, including a reasonable rate of return, Boralex should have the opportunity to
18 recover for providing such service.

19 The terms and conditions attached as Appendix B-4 to this application are based on
20 BC Hydro's specimen EPA for hydroelectric renewals, modified to reflect the unique
21 nature and quality of the service that has been received by BC Hydro for
22 approximately the past thirty years (e.g., type of product, delivery obligations, term,
23 allocation of risks, rate structure). The proposed terms and conditions have several
24 provisions with blanks that are subject to the Commission's determinations on this
25 application. The blanks relate to the price for Boralex's service to BC Hydro, which

1 we are asking the Commission to determine in this application. BC Hydro requests
2 that the Commission approve these terms and conditions for Boralex's electricity
3 service to BC Hydro.

4 BC Hydro has been discussing a potential EPA renewal with Boralex for almost two
5 years. In November 2015, BC Hydro and Boralex entered into a confidentiality
6 agreement to facilitate the discussions. Pursuant to the confidentiality agreement,
7 BC Hydro is not at this time able to disclose to the Commission information that
8 Boralex provided to us in confidence pertaining to the discussion of a potential EPA
9 renewal. However, consistent with the standard exceptions generally included in
10 most confidentiality agreements executed with IPPs, BC Hydro may disclose such
11 information to the Commission if ordered to do so.

12 We intend that this application will demonstrate that the Commission needs to
13 amend Order No. G-26-10 and exercise its regulatory jurisdiction over Boralex with
14 respect to the service it provides to BC Hydro. We anticipate that the Commission
15 will have to obtain from Boralex the data and information it needs to determine the
16 appropriate rate for the service provided to BC Hydro.

17 BC Hydro suggests that a first step in the process could be for the Commission to
18 ask Boralex to respond to this application and provide the following information with
19 respect to Boralex's utility assets:

- 20 • Historical net book value data for the Ocean Falls utility assets, showing the
21 annual change in the net book value from 2009 to the present;²
- 22 • Monthly sales figures (in kWh) by customer class (i.e., residential, general,
23 industrial, BC Hydro) for the last five years net of internal losses;
- 24 • Annual capital expenditures for the utility assets for each year since 2009;

² By letters to the Commission dated January 10, 2009, January 21, 2009 and January 30, 2009, Boralex submitted to the Commission a detailed listing of the CCPC utility assets at their historical depreciated values at December 31, 2008, and confirmed to the Commission that it will record the CCPC utility assets at historical depreciated value.

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- 1 • A definition of Boralex's utility assets separate from assets used for any other
2 commercial activities (e.g., provision of non-electricity services);
 - 3 • Operating expenditures in relation to the operation of the utility assets for each
4 of the last five years;
 - 5 • Corporate financial statements for Boralex (i.e., balance sheet, income
6 statement, and cash flow statement), prepared by a Certified Accountant,
7 supporting the actual capital and operating cost information provided (audited
8 statements to be provided, if available);
 - 9 • Forecast capital and operating expenditures directly related to the utility assets
10 for at least the next 20 years, validated by an independent Professional
11 Engineer and supported by engineering studies;
 - 12 • A condition assessment of the utility assets prepared by an independent
13 Professional Engineer and a long-term operating plan for the utility assets; and
 - 14 • A detailed financial model that calculates a proposed rate for the service
15 provided to BC Hydro for a period of time using methodology consistent with a
16 rate-based utility cost of service application.

17 The proceeding could then provide for an information request process, followed by a
18 procedural conference to take submissions on further process.

1 All communications regarding this application should be addressed to:

2 Fred James

3 Chief Regulatory Officer

4 BC Hydro

5 16th Floor

6 333 Dunsmuir Street

7 Vancouver, BC V6B 5R3

8 Telephone: (604) 623-4317

9 Email: bchydroregulatorygroup@bchydro.com

10 **2 Background**

11 The current public utility regulatory regime for Boralex as established by Order
12 No. G-26-10 exists as a result of the unique history of the Ocean Falls Hydroelectric
13 Project. The key events in the long history of the Ocean Falls facilities are
14 summarised below. Additional details are provided in Appendix C to this application.

15 The Ocean Falls hydroelectric facilities were built about 100 years ago to power a
16 pulp mill and company town at Ocean Falls. In the 1970s, the pulp mill owner (then
17 Crown Zellerbach) announced the permanent closure of the mill. The Province of
18 British Columbia bought the town and industrial facilities from Crown Zellerbach,
19 including the hydroelectric facilities, and set up a Crown corporation called the
20 Ocean Falls Corporation to operate them. Ocean Falls Corporation operated the
21 pulp mill until 1980 when the mill was permanently closed.

22 Prior to 1986, the Bella Bella NIA was solely served by diesel generation. In 1986,
23 Ocean Falls Corporation auctioned off the pulp mill equipment, and requested
24 proposals to purchase and operate the electric system to provide service to the
25 Ocean Falls community. Central Coast Power Corporation (**CCPC**) purchased the

1 electric facilities and equipment. CCPC built a 45 km 25 kV distribution voltage
2 transmission line with two submarine sections to connect the Ocean Falls
3 hydroelectric facilities to BC Hydro's Bella Bella NIA electric system at Shearwater on
4 Denny Island. BC Hydro entered into the 1986 EPA with CCPC to purchase
5 hydroelectricity from the Ocean Falls facilities to serve BC Hydro customers in the
6 Bella Bella NIA.

7 CCPC was a public utility under the *UCA*. Pursuant to Commission Order
8 No. G-40-86, the Commission exempted CCPC from the *UCA* with certain
9 exceptions and subject to certain conditions, including conditions related to the rates
10 for service to CCPC's customers in Ocean Falls. Order No. G-40-86 also exempted
11 CCPC from rate regulation under the *UCA* in respect of electricity services provided
12 to BC Hydro on the condition that CCPC comply with the terms of the 1986 EPA. A
13 copy of Order No. G-40-86 is provided as Appendix D-1 to this application. The
14 Commission amended Order No. G-40-86 in 2002 pursuant to Order No. G-30-02, a
15 copy of which is also included in Appendix D-2.

16 In 2008, Boralex sought the Commission's approval to acquire the CCPC utility
17 assets. Following a hearing, the Commission granted approval pursuant to Order
18 No. G-180-08 dated December 5, 2008. A copy of Order No. G-180-08 and the
19 Commission's decision is provided as Appendix D-3 to this application.

20 The Commission granted Boralex approval to acquire the CCPC utility assets in part
21 because Boralex made the following commitments and representations:

- 22 • In response to Commission Information Requests, Boralex confirmed that no
23 acquisition premium, transaction fees, litigation expenses, retention bonuses,
24 termination costs or any other related cost of the sale will be recovered from the
25 utility customers of CCPC or Boralex;³

³ Order G-180-08 Decision, section 5.7.1, page 26. Referring to the applicants' responses to BCUC IRs 1.8.1 and 1.8.2 in that proceeding.

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- 1 • Boralex confirmed that it would continue to record the CCPC utility assets at
2 their historical, depreciated value (not fair market value) to protect customers
3 from the potential increased rate effects of having the value of utility assets
4 being increased by a new owner;⁴ and
 - 5 • Boralex confirmed that it had no concern with the Commission including the
6 following in a new exemption order for Boralex: “This exemption, granted
7 pursuant to this Order, shall remain in effect until the Commission orders
8 otherwise, for reasons that may include the determination of any complaint it
9 receives from a person whose interests are affected.”⁵

10 In addition, the Commission confirmed in its Order No. G-180-08 Decision that
11 “customer rates will only be set based on the historical, depreciated cost of Utility
12 Assets in the event that a customer complaint cannot be resolved by Boralex and if
13 the Commission decides to set cost-based rates.”⁶

14 In 2009 Boralex acquired the CCPC utility assets, became a public utility and
15 assumed CCPC's rights and obligations under the 1986 EPA.

16 Pursuant to Order No. G-26-10 dated February 18, 2010 the Commission granted an
17 exemption from the *UCA* for Boralex on similar terms and conditions as the previous
18 exemption for CCPC. Boralex is a public utility under the *UCA*, and pursuant to
19 Order No. G-26-10 is currently exempt from rate regulation in respect of electricity
20 sales to BC Hydro. A copy of Order No. G-26-10 is provided in Appendix D-4 to this
21 application.

⁴ Order G-180-08 Decision, section 5.7.2, pages 26-29. In a confidential letter to the Commission dated January 10, 2009, CCPC filed a detailed listing of the CCPC utility assets with their historical depreciated value. The Commission prepared a tabulation of the CCPC utility assets and a total net book value as at December 31, 2008. CCPC confirmed the Commission's tabulation, and by letter dated January 30, 2009, Boralex confirmed that it accepted the Commission's condition to record the CCPC utility assets at their historical, depreciated value. The correspondence between CCPC and the Commission related to the NBV of the CCPC utility assets as at December 31, 2008, and Boralex's acceptance of the Commission's conditions are memorialised in preamble paragraphs Q to V of Order G-26-10; however, BC Hydro does not have copies of this correspondence.

⁵ Order G-180-08 Decision, page 31.

⁶ Order G-180-08 Decision, page 30.

1 BC Hydro purchases electricity from Boralex and also provides an electricity service
2 to Boralex. BC Hydro's service to Boralex is subject to rate regulation under the
3 *UCA*. Pursuant to BC Hydro Tariff Supplement No. 7 as approved by the
4 Commission, BC Hydro provides interruptible electricity supply to Boralex. Tariff
5 Supplement No. 7 provides for emergency supply for up to 30 days for Boralex to
6 serve its customers in Ocean Falls. Additional details on Tariff Supplement No. 7 are
7 provided in section [3.3](#) of this application and a copy of the tariff supplement is
8 provided as Appendix E.

9 The 1986 EPA expired on December 31, 2016. The parties entered into Extension
10 Agreement #1 to extend the 1986 EPA's term by six months to June 30, 2017. This
11 extension agreement was filed with the Commission pursuant to section 71 of the
12 *UCA*, and accepted by the Commission pursuant to Order No. E-12-17. Extension
13 Agreement #1 provided BC Hydro continued access to electricity from the Ocean
14 Falls Hydroelectric Project for six months in the hope that the parties would reach
15 agreement on an EPA renewal. Such efforts were not successful, and the six month
16 extension expired on June 30, 2017.

17 The parties entered into Extension Agreement #2 to extend the 1986 EPA's term by
18 the lesser of (i) one year, or (ii) the effective date as agreed to by the parties or as
19 may be ordered by the Commission for the new terms and conditions, including
20 price, to be applied for sales of electricity generated at the Ocean Falls Hydroelectric
21 Project from Boralex to BC Hydro. Extension Agreement #2 provides BC Hydro
22 continued access to electricity from the Ocean Falls Hydroelectric Project while the
23 Commission considers this application.

3 Current Situation and Issues and Need for the Application

3.1 Technical / Factual Situation

The Ocean Falls Hydroelectric Project has a large reservoir (Link Lake) and a nameplate generating capacity of 14.5 MW. The project is capable of generating much more electricity than required to meet the total demand of Boralex's customers in Ocean Falls and BC Hydro's customers in the Bella Bella NIA. The Bella Bella NIA has peak loads of approximately 5 MW, and we understand the Ocean Falls Hydroelectric Project has significant excess capacity (up to 8 MW of surplus).

The Ocean Falls Hydroelectric Project is connected to Boralex's distribution system in the community of Ocean Falls. Boralex has approximately 100 of its own public utility customers in Ocean Falls connected to its system and served with Boralex's own generation. We understand that Boralex primarily serves residential customers in Ocean Falls, and also has a small number of commercial/general service customers and one small industrial customer (Marine Harvest Canada).

The project is also interconnected by a 45 km 25 kV distribution-voltage transmission line to BC Hydro's diesel generation station substation at Shearwater on Denny Island. Boralex owns and operates this transmission line.

BC Hydro owns and operates a diesel generation station at Shearwater. BC Hydro's generating facilities at Shearwater have an installed capacity of 4.9 MW (no N-1 redundancy). The BC Hydro diesel generation is used for backup and reliability purposes, including provision of interruptible backup service to Boralex pursuant to BC Hydro Tariff Supplement No. 7.

Boralex also owns a substation at Shearwater adjacent to BC Hydro's substation. Boralex's substation is situated on BC Hydro's land. The 1986 EPA with Boralex allows Boralex to lease this land from BC Hydro.

The Boralex and BC Hydro systems are not connected to BC Hydro's integrated system. A map showing the locations of these communities, the generation facilities and Boralex's transmission line is provided in Appendix F.

BC Hydro relies on the Ocean Falls Hydroelectric Project to serve BC Hydro customers within the Bella Bella NIA. The Ocean Falls Hydroelectric Project supplies approximately 13 GWh per year to BC Hydro, representing approximately 97 per cent of BC Hydro's electricity requirements for the Bella Bella NIA, with the BC Hydro diesel generation station acting as backup. The table below shows the annual diesel generation at Shearwater and BC Hydro's purchases from the Ocean Falls Hydroelectric Project for the period from F2010 to F2017 to provide service to the Bella Bella NIA.

Table 1 Generation Resources serving the Bella Bella NIA

(MWh)	F2010	F2011	F2012	F2013	F2014	F2015	F2016	F2017	Average (F2013-F2017)
Ocean Falls Hydro ⁷	12,617	11,945	13,226	13,877	13,193	12,547	12,706	13,495	13,164
BC Hydro Diesel ⁸	275	219	107	145	32	21	150	441	158
Total	12,892	12,164	13,333	14,022	13,225	12,568	12,856	13,936	13,321

The Bella Bella NIA has 549 customers (fiscal 2017). The load in the Bella Bella NIA has been very stable over the last 20 years ranging between 12.2 GWh to 14.0 GWh/year. The average load is 2.5 MW with peak load reaching 5 MW in the winter. We are aware that there are potential plans for a new subdivision, increased operation of the fish processing plant and the conversion of homes from oil heating to heat pumps. However, BC Hydro expects that its Bella Bella NIA load will remain stable with limited growth for the foreseeable future.

⁷ Electricity purchases by BC Hydro from the Ocean Falls Hydroelectric Project.

⁸ Electricity provided by the BC Hydro diesel generation station at Shearwater.

1 Currently, BC Hydro's only realistic resource options to serve its customers in the
2 Bella Bella NIA are either (i) operate the diesel generating station to generate all
3 electricity requirements, or (ii) continue to rely on the Ocean Falls Hydroelectric
4 Project to meet requirements with backup from the diesel generation. Building a new
5 hydroelectric or other clean or renewable resource facility in the area is not a
6 realistic or cost effective option to meet the load in the Bella Bella NIA.

7 Based on current diesel fuel costs, the cost of generating electricity at the BC Hydro
8 diesel generating station at Shearwater, considering the cost of diesel fuel only, is
9 approximately [REDACTED] MWh. In addition, there would also be costs to refurbish and
10 upgrade the generating station since it is not presently in suitable condition to act as
11 the primary electrical generation station for an extended or long-term basis.
12 Substantial upgrades would be required before the diesel generating station could
13 safely and reliably generate an additional 13 GWh/year.

14 Continuing to acquire electricity from Boralex has the following advantages over the
15 alternative of BC Hydro diesel generation:

- 16 • Allows for the continued use of existing generation and transmission facilities;
- 17 • The Ocean Falls generation is from a clean or renewable resource (hydro);
18 avoids noise and environmental impacts of diesel generation,
- 19 • Avoids costly upgrades to BC Hydro's diesel generation station;
- 20 • Expected to be significantly lower cost on a cost of service basis, given that the
21 Ocean Falls facilities have been in service and operating reliably for a long
22 period of time and the initial capital investment has likely been fully or largely
23 recovered through operations prior to and during the term of the 1986 EPA, and
- 24 • Operation of the Ocean Falls Hydroelectric Project likely would not be
25 financially viable without BC Hydro as a customer.

3.2 Efforts to Negotiate an EPA Renewal with Boralex

BC Hydro has been attempting to reach agreement with Boralex on a cost effective EPA renewal. In its negotiations, BC Hydro has expressed a desire to negotiate an agreement in good faith to achieve a just and reasonable price. As with other EPA renewals, to arrive at a negotiated price for a renewal, BC Hydro focuses on an estimate of the supplier's cost of service (including a reasonable rate of return), as well as BC Hydro's opportunity cost, and the supplier's opportunity cost.

BC Hydro's position is that the price for an EPA renewal for the Ocean Falls facility should reflect Boralex's cost of service, applying a rate-based cost of service methodology consistent with that applied by the Commission in determining rates for other utilities of similar size and scope. While Boralex's opportunity cost and BC Hydro's opportunity cost are considerations, BC Hydro notes that the focus should be on a rate-based cost-of-service approach. BC Hydro's opportunity cost is not a clearing price for EPA renewals regardless of whether or not the facilities are located within the integrated system or in non-integrated areas. As discussed further below, neither the opportunity cost of BC Hydro nor the opportunity cost of Boralex is an appropriate basis for pricing in this situation.

Unlike electricity suppliers connected to BC Hydro's integrated system, the Ocean Falls Hydroelectric Project cannot sell its product to a broader electricity market. Similarly, BC Hydro customers in Bella Bella NIA cannot be served by electricity acquired from other projects connected to the BC Hydro system and therefore Boralex is not subject to competitive forces with respect to its sales of electricity to BC Hydro.

Boralex's Opportunity Cost

Generally, an IPP's opportunity cost will reflect market prices. In the case of the Ocean Falls Hydroelectric Project, the project is not interconnected to the integrated system and even with BC Hydro's load the project has significant excess capacity

(up to 8 MW of surplus). Since it does not have access to the market, Boralex's opportunity cost is approximately zero.

Without BC Hydro as a customer the Ocean Falls Hydroelectric Project likely would not be financially viable to serve Boralex's approximately 100 customers in Ocean Falls, including its industrial customer (Marine Harvest Canada).

BC Hydro's Opportunity Cost

BC Hydro's opportunity cost for non-integrated areas is generally its avoided costs over the term of the service provided by an IPP. For the Bella Bella NIA, today, this is approximately [REDACTED] MWh⁹ based on fuel cost alone (i.e., diesel delivered to Shearwater) and the efficiency of these diesel generators. As noted in section 3.1, the generating station is not in suitable condition presently to act as the primary electrical generation station for an extended or long-term basis. Substantial upgrades would be required before the diesel generating station could safely and reliably provide the full requirements of the Bella Bella NIA.

Based on BC Hydro's experience, the cost of any other clean energy solution to meet the load in Bella Bella NIA would be much higher, involve significant lead time to develop and construct (three to seven years) and have significant risks associated to them. BC Hydro has not identified any alternative renewable energy projects that could be considered viable in relation to the existing service from the Ocean Falls Hydroelectric Project. Given that the Ocean Falls Hydroelectric Project has surplus hydroelectric capability and is already connected to the Bella Bella NIA, BC Hydro has not undertaken efforts to initiate an open call for power or request for interest for alternative renewable energy resource(s) to serve load in the Bella Bella NIA.

⁹ This fuel cost represents the fuel cost today for the Bella Bella NIA, and is not a forecast of future fuel costs.

1 *Boralex's Cost of Service*

2 When renewing EPAs, BC Hydro will estimate the IPP's cost of service based on
3 forecasted operating and maintenance (**O&M**) costs, and sustaining capital costs for
4 continued facility operation, and compare those costs to industry standards to test
5 whether the IPP's information is within industry standards, including a reasonable
6 rate of return.

7 The situation in the Bella Bella NIA is different as compared to the integrated system
8 in that BC Hydro needs continued supply from the Ocean Falls Hydroelectric Project
9 to serve customers and Boralex's only 'competition' is costly and environmentally
10 undesirable incremental generation at BC Hydro's diesel station in Shearwater.

11 BC Hydro has been committed to the principle of rate-based cost of service pricing
12 throughout the negotiation with Boralex and has not been able to reach agreement.
13 We believe that the lack of competition for serving the Bella Bella NIA, is contributing
14 to Boralex's demands for an EPA renewal price that BC Hydro believes is
15 unreasonable.

16 The negotiations between the parties have reached an impasse. Specifically, the
17 parties remain far apart with respect to pricing for an EPA renewal.

18 BC Hydro believes that in these unique circumstances seeking the requested relief
19 from the Commission is necessary. BC Hydro expects the Commission will
20 determine the proper mechanism and price for Boralex to continue providing
21 electricity to BC Hydro, which may involve BC Hydro becoming a ratepayer to
22 Boralex under a rate-based cost of service model.

23 Generally, BC Hydro believes that the determination of an appropriate price for
24 Boralex's service to BC Hydro should be based on a rate-based cost of service
25 approach, similar to that applied by the Commission in determining rates for other

1 small utilities of similar size. Our understanding of this approach includes (but is not
2 limited to):

- 3 • The rate base is derived from the historical net book value of assets in-service,
4 depreciated over the useful life, and includes a reasonable working capital
5 component;
- 6 • The rate base excludes historical and future capital spending on projects not
7 used and useful for the provision of utility services (and excludes assets used
8 for provision of other non-electricity commercial services);
- 9 • The rate base and the cost of service exclude any acquisition premium,
10 transaction fees, litigation expenses, retention bonuses, termination costs or
11 any other related cost of the sale of the Ocean Falls Hydroelectric Project to
12 Boralex, as discussed in section 2;
- 13 • The capital spending plan is appropriate for this non-integrated area and
14 reflects the capacity needed to service the loads in Ocean Falls and the Bella
15 Bella NIA;
- 16 • The cost of capital to be recovered is based on a reasonable capital structure,
17 cost of debt and return on equity component;
- 18 • The return on equity reflects the business and financial risks incurred by the
19 utility as comparable to other regulated utilities of similar risk, and considers
20 that with certainty of terms for service to BC Hydro the Ocean Falls utility will
21 have a stable, captive customer base and that the facility has low fuel supply
22 risk;
- 23 • The cost of debt to be recovered is consistent with that expected from a
24 regulated utility of similar risk; and should exclude costs associated with debt
25 related to any acquisition premium;

-
- 1 • The inclusion of income taxes is based on accepted practices for regulated
2 utilities, such as reflecting only current tax expense in the annual cost of
3 service;
 - 4 • Other revenues or incomes recognized from the utility assets, are taken into
5 account as a reduction to the overall cost of service used to determine the rate
6 for Boralex's electricity service to BC Hydro; and
 - 7 • Annual financial reports should be submitted to the Commission and made
8 available to customers.

9 **3.3 Regulatory Regime Currently Applicable to Boralex**

10 **Commission Order G-26-10**

11 The following points summarise the key components of the public utility regulatory
12 regime currently applicable to Boralex pursuant to Commission Order No. G-26-10:

- 13 • Boralex is a public utility as defined in the *UCA*;
- 14 • But for an order exempting Boralex from provisions of the *UCA*, Boralex would
15 be subject to regulation as a public utility under the *UCA* with respect to all of its
16 activities, including power services provided to customers in Ocean Falls and to
17 BC Hydro at Bella Bella; and
- 18 • Pursuant to Commission Order No. G-26-10, Boralex is exempt from
19 application of the *UCA* except for sections 25, 38, 41, 99, and 117,¹⁰ subject to
20 the conditions of the exemption order including the following:

¹⁰ Section 25 enables the BCUC to order the utility to provide improved service; section 38 imposes on the utility an obligation to provide adequate, safe, just and reasonable service; section 41 prohibit the utility discontinuing service without BCUC permission; section 99 enables the BCUC to reconsider, vary and rescind its orders and decisions; and section 117 enables the BCUC to recover its costs of proceedings from participants.

-
- 1 ▶ Pursuant to Directive 3 of Order No. G-26-10, for its customers in Ocean
 - 2 Falls, Boralex is to follow BC Hydro's terms and conditions for service (i.e.,
 - 3 the Electric Tariff terms and conditions);
 - 4 ▶ Pursuant to Directive 4 of Order No. G-26-10, Boralex is to charge its retail
 - 5 customers at the same rates as BC Hydro Zone II rates¹¹, and new industrial
 - 6 customers (Marine Harvest Canada is the only one that we are aware of) at
 - 7 negotiated rates up to BC Hydro's Zone I rate for equivalent service;
 - 8 ▶ There is no condition in Order No. G-26-10 specific to Boralex selling
 - 9 electricity to BC Hydro; and
 - 10 ▶ The exemption will be effective until the Commission orders otherwise, for
 - 11 reasons that may include the determination of any complaint the
 - 12 Commission receives from a person whose interests are affected.

13 Given that Order No. G-26-10 currently exempts Boralex from application of the
14 UCA without any condition specific to Boralex selling electricity to BC Hydro, under
15 the current regime the parties must negotiate a price in consideration of the
16 alternatives available to each of them (their respective opportunity costs) and the
17 proposed terms and conditions of supply. Although Boralex's position is currently the
18 same as that of an IPP in that respect, a critical difference between Boralex and
19 other electricity suppliers with expiring EPAs is that the Ocean Falls Hydroelectric
20 Project serves an area that is not connected to BC Hydro's integrated system.

21 For negotiated EPAs, BC Hydro has been able to reach agreement on reasonable
22 prices with IPPs on the integrated system because IPPs on the integrated system
23 are subject to competition. BC Hydro has alternative resource options on the
24 integrated system such that it does not have to accept an unreasonable offer from
25 an IPP on the integrated system.

¹¹ BC Hydro Zone II rates apply to BC Hydro customers in most non-integrated areas: Anahim Lake, Atlin, Bella Coola, Dease Lake, Elhateese, Fort Ware, Good Hope Lake, Haida Gwaii, Hartley Bay, Jade City, Telegraph Creek, Toad River and Tsay Key. Zone II rates are roughly 20 per cent higher than Zone I rates.

1 For the Bella Bella NIA, Boralex's only competition is BC Hydro's avoided costs and
2 as discussed above this is not effective competition such that Boralex is not under
3 any pressure to negotiate a just and reasonable price for an EPA renewal. These
4 are precisely the circumstances where rate regulation by the Commission is required
5 to prevent the charging of an excessive rate and to protect the public interest.

6 Clearly, it is in the public interest for the Ocean Falls Hydroelectric Project to
7 continue supplying electricity to BC Hydro, and for BC Hydro to pay for such
8 electricity at a price that is not unjust or unreasonable in accordance with the *UCA*.
9 In these circumstances a rate-based cost of service approach is appropriate for
10 setting a new price for Boralex's electricity service to BC Hydro.

11 The Commission has the power to rescind or change the terms of Order
12 No. G-26-10, as follows:

- 13 • Pursuant to section 99 of the *UCA* the Commission can reconsider, vary or
14 rescind its order; and
- 15 • Pursuant to Directive 2 of Order G-26-10, the Commission made clear that it
16 reserves the right to vary or rescind the exemption for reasons that may include
17 the determination of any complaint the Commission receives from a person
18 whose interests are affected.

19 **Commission Order G-180-08**

20 Pursuant to Order No. G-180-08 the Commission granted Boralex approval to
21 acquire the CCPC utility assets in part because Boralex made the following
22 commitments and representations:

- 23 • In response to Commission Information Requests, Boralex confirmed that no
24 acquisition premium, transaction fees, litigation expenses, retention bonuses,

1 termination costs or any other related cost of the sale will be recovered from the
2 utility customers of CCPC or Boralex;¹²

- 3 • Boralex confirmed that it would continue to record the CCPC utility assets at
4 their historical, depreciated value (not fair market value) to protect customers
5 from the potential increased rate effects of having the value of utility assets
6 being increased by a new owner;¹³
- 7 • Boralex confirmed that it had no concern with the Commission including the
8 following in a new exemption order for Boralex: "This exemption, granted
9 pursuant to this Order, shall remain in effect until the Commission orders
10 otherwise, for reasons that may include the determination of any complaint it
11 receives from a person whose interests are affected."¹⁴

12 In addition, the Commission confirmed in its Order No. G-180-08 Decision that
13 "customer rates will only be set based on the historical, depreciated cost of Utility
14 Assets in the event that a customer complaint cannot be resolved by Boralex and if
15 the Commission decides to set cost-based rates."¹⁵

¹² Order G-180-08 Decision, section 5.7.1, page 26. Referring to the applicants' responses to BCUC IRs 1.8.1 and 1.8.2 in that proceeding.

¹³ Order G-180-08 Decision, section 5.7.2, pages 26-29. In a confidential letter to the Commission dated January 10, 2009, CCPC filed a detailed listing of the CCPC utility assets with their historical depreciated value. The Commission prepared a tabulation of the CCPC utility assets and a total net book value as at December 31, 2008. CCPC confirmed the Commission's tabulation, and by letter dated January 30, 2009, Boralex confirmed that it accepted the Commission's condition to record the CCPC utility assets at their historical, depreciated value. The correspondence between CCPC and the Commission related to the NBV of the CCPC utility assets as at December 31, 2008, and Boralex's acceptance of the Commission's conditions are memorialised in preamble paragraphs Q to V of Order G-26-10; however, BC Hydro does not have copies of this correspondence.

¹⁴ Order G-180-08 Decision, page 31.

¹⁵ Order G-180-08 Decision, page 30.

**BC Hydro's interruptible service to Boralex pursuant to Commission-approved
Tariff Supplement No. 7***Nature of BC Hydro's Interruptible Service*

BC Hydro's interruptible supply service to Boralex first came into effect in April 1991. Under this service, BC Hydro supplies electricity to Boralex from BC Hydro's standby diesel generators at Shearwater. Boralex may request supply from BC Hydro for a specified time not exceeding 30 days. BC Hydro will make all reasonable efforts to supply electricity to the customer (i.e., Boralex) at the point of delivery. The supply of electricity may be interrupted at any time by BC Hydro in its sole discretion having due regard for: (i) its ability to make available any amount of electricity up to the maximum amount in the agreement and (ii) the electricity requirements of other BC Hydro customers supplied with electricity generated by BC Hydro's diesel generators. Boralex may use the electricity solely for emergency purposes.

Pricing of BC Hydro's Interruptible Service

The pricing of the energy rate for interruptible service is provided by section 10.1.2 of Tariff Supplement No. 7. It is the greater of (a) the unit price paid by BC Hydro to Boralex for the most recent purchase of electricity from Boralex; and (b) the average unit cost incurred by BC Hydro to generate Electricity at all diesel generating stations owned and operated by BC Hydro in Rate Zone IB and Rate Zone II, plus a 10 per cent profit margin, where the average unit cost will be calculated by summing all costs to BC Hydro in Rate Zone IB and Rate Zone II of fuel, oil, operation and maintenance for such diesel generating stations divided by the total kilowatt hours generated by all such diesel generating stations during BC Hydro's immediately prior fiscal year. Each average unit cost calculated for a particular complete BC Hydro fiscal year will apply as of July 1 of the next fiscal year and continue until July 1 of the subsequent year, at which time the average unit cost will be recalculated for the most recently completed BC Hydro fiscal year.

3.4 Existing EPA as Between Boralex and BC Hydro

The 1986 EPA was entered into by BC Hydro and CCPC in February 1986 with an original term of 20 years from the date of commencement. According to the records that we have available, the date of commencement was in September 1987.

The EPA specified pricing until December 31, 1996, and provided that pricing after this date was to be determined by negotiations between the parties. The parties were not initially able to reach agreement on pricing for the time period beginning 1997 and accordingly the issue was referred to arbitration as required by the contract. Before the arbitrator issued a final decision, the parties reached an agreement on pricing, and also agreed to extend the term of the agreement by ten years to December 31, 2016. The 1986 EPA, including the correspondence exchanged between the parties in 1998 which amended the agreement, is provided on a confidential basis in Appendix B-1.

Ministerial Order M-22-9801-A1 exempts from Commission review contracts (as between BC Hydro and persons selling power to BC Hydro) entered into on or before September 30, 2001. The 1986 EPA and the 1998 amendments were entered into before September 30, 2001 and are exempt from Commission review in accordance with Ministerial Order M-22-9801-A1.

Boralex acquired CCPC's interest in the Ocean Falls facility in 2009 with Commission approval pursuant to Order No. G-180-08, and assumed CCPC's rights and obligations under the 1986 EPA at that time.

Since 1998, the only provision of the 1986 EPA that has been amended is the addition to the term of the agreement as provided in Extension Agreements #1 and #2 as between BC Hydro and Boralex. No other terms or conditions have been amended.

1 **Table 2 Commercial Terms of the 1986 EPA**

Description	Ocean Falls EPA
Seller	Boralex Ocean Falls Limited Partnership
Agreement Date	February 19, 1986
Commencement Date	September 1, 1987
Term of EPA	Approximately 30 years – original term of 20 years, and term was extended to December 31, 2016 (by settlement agreement in 1997).
Land Lease	
Energy	BC Hydro takes and pays for electricity supplied to the Bella Bella NIA
Energy Price (2016)	
Price Escalation ¹⁶	

2 **4 First Nations Consultation**

3 The Ocean Falls Hydroelectric Project is within the consultative boundaries of the
4 Heiltsuk Nation and Nuxalk Nation.

5 The decisions requested in section [1.2](#) of this application do not require BC Hydro
6 or, to the best of BC Hydro's knowledge, Boralex, to construct any new facilities,
7 upgrade any existing facilities, change the energy output or other operations of
8 existing facilities, or require new or amended Crown permits/authorizations. The
9 service BC Hydro expects to receive from the Ocean Falls Hydroelectric Project
10 going forward is the same service that BC Hydro has been receiving from the facility
11 for approximately thirty years.

12 BC Hydro therefore respectfully submits that the decisions requested in section [1.2](#)
13 of this application do not have any incremental impact on Aboriginal rights and title
14 and, therefore, do not trigger the duty to consult First Nations.

16

1 **5 Justification for Extension Agreement #2**

2 As discussed above, the term of the 1986 EPA between BC Hydro and Boralex
3 expired on December 31, 2016.

4 The parties entered into Extension Agreement #1 to extend the 1986 EPA's term by
5 six months to June 30, 2017. This extension agreement was filed with the
6 Commission pursuant to section 71 of the *UCA*, and accepted by the Commission
7 pursuant to Order No. E-12-17. Extension Agreement #1 provided BC Hydro
8 continued access to electricity from the Ocean Falls Hydroelectric Project for six
9 months in the hope that the parties would reach agreement on an EPA renewal.
10 Such efforts were not successful, and the six month extension expired on
11 June 30, 2017.

12 The alternative to BC Hydro in this Non-Integrated Area, if supply from the Ocean
13 Falls Hydroelectric Project is not available, is more costly and environmentally
14 undesirable incremental diesel generated electricity.

15 We anticipate that it will take some time for the Commission to gather the evidence
16 necessary to make decisions on this application. In the meantime, BC Hydro
17 continues to require electricity service from Boralex (and Boralex requires the
18 revenue from BC Hydro), so BC Hydro and Boralex have entered into a second
19 agreement, effective July 1, 2017, to further extend the term of the 1986 EPA while
20 the Commission considers the matters in our application. The parties entered into a
21 second agreement to extend the 1986 EPA's term until the earlier of
22 (i) June 30, 2018, and (ii) the effective date as agreed to by the Parties or as may be
23 ordered by the BCUC for the new terms and conditions, including price, to be
24 applied for sales of electricity generated at the Ocean Falls Hydroelectric Project
25 from Boralex to BC Hydro. All other substantive terms of the 1986 EPA, as extended
26 by Extension Agreement #1, remain the same except as noted in Table 2. Extension

1 Agreement #2 provides BC Hydro continued access to electricity from the Ocean
2 Falls Hydroelectric Project while the Commission considers this application.

3 **6 Conclusion**

4 For approximately thirty years, BC Hydro has been receiving reliable electricity
5 service from the Ocean Falls Hydroelectric Project to serve BC Hydro customers in
6 the Bella Bella NIA. Continuing this service is the only cost-effective option for
7 BC Hydro to serve its customers, and without BC Hydro as a customer the Ocean
8 Falls Hydroelectric Project will likely not be financially viable to serve Boralex's other
9 utility customers in Ocean Falls.

10 BC Hydro and Boralex have been discussing terms for an EPA renewal with respect
11 to the project for almost two years but the negotiations are at an impasse.
12 Specifically, the parties remain far apart with respect to pricing for an EPA renewal.

13 BC Hydro has been committed to the principle of rate-based cost of service pricing
14 throughout the negotiation with Boralex and has not been able to reach agreement.
15 We believe that the lack of competition for serving the Bella Bella NIA, is contributing
16 to Boralex's demands for EPA renewal pricing that BC Hydro believes is
17 unreasonable. These are the circumstances where rate regulation by the
18 Commission is required to prevent the charging of an excessive rate and to protect
19 the public interest. BC Hydro is therefore requesting that the Commission determine
20 and set a just and reasonable rate, including price and terms and conditions, for
21 Boralex's electricity service to BC Hydro pursuant to sections 58 to 60 of the *UCA*.

22 BC Hydro is bound by a confidentiality agreement with respect to information
23 received from Boralex and does not have sufficient publicly available information to
24 propose a price for Boralex's service. However, we are able to propose terms and
25 conditions. The terms and conditions attached as Appendix B-4 to this application
26 are based on BC Hydro's specimen EPA for hydroelectric renewals, modified to

1 reflect the unique nature and quality of the service that has been received by
2 BC Hydro for approximately the past thirty years (e.g., type of product, delivery
3 obligations, term, allocation of risks, declining block rate structure). BC Hydro
4 requests that the Commission approve these terms and conditions for Boralex's
5 electricity service to BC Hydro.

6 BC Hydro and Boralex have entered into a second extension agreement, effective
7 July 1, 2017, to further extend the term of the 1986 EPA while the Commission
8 considers the matters in our application. We are seeking an Order from the
9 Commission that Extension Agreement #2 is in the public interest and is accepted
10 for filing.

**BC Hydro Application Requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

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
Filing for Approval of Electricity Purchase Agreement Amendment between
BC Hydro and Boralex Ocean Falls Limited Partnership

BEFORE:

Commissioner
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. Pursuant to Section 71 of the *Utilities Commission Act (UCA)*, on February 27, 2017, British Columbia Hydro and Power Authority (BC Hydro) filed with the British Columbia Utilities Commission (Commission) a quarterly energy supply contract filing for the period ending December 31, 2016. This included an amending agreement (Extension Agreement #1) to an electricity purchase agreement made as of February 19, 1986 between BC Hydro and and Boralex Ocean Falls Limited Partnership (1986 EPA), pursuant to which Boralex sells to BC Hydro electricity generated at the Ocean Falls hydroelectric generating facility;
- B. BC Hydro purchases electricity service from the Ocean Falls hydroelectric facility to serve BC Hydro customers in the Bella Bella Non-Integrated Area (NIA);
- C. Boralex and BC Hydro (the Parties) have been in the process of negotiating a potential new electricity purchase agreement in respect of electricity generated at the Ocean Falls hydroelectric facility. The 1986 EPA was to expire on December 31, 2016, and the Parties entered into Extension Agreement #1 to extend the 1986 EPA's term by six months to June 30, 2017 to the facilitate negotiations. Extension Agreement #1 was accepted by the Commission and found to be in the public interest pursuant to Order E-12-17;
- D. On August 29, 2017, pursuant to Section 71 of the *UCA* BC Hydro filed a second amending agreement (Extension Agreement #2) which extends the 1986 EPA's term by up to a further year to June 30, 2018 (Filing). BC Hydro filed Extension Agreement #2 with an application requesting the Commission to determine and by order set a rate for Boralex's service to BC Hydro. BC Hydro advised that Extension Agreement #2 ensures continuity of service for BC Hydro's customers in the Bella Bella NIA while the Commission considers and makes determinations on BC Hydro's application;

- E. The Commission reviewed the Filing and determines that Extension Agreement #2 is in the public interest and should be accepted for filing.

NOW THEREFORE pursuant to section 71 of the *Utilities Commission Act* the British Columbia Utilities Commission orders as follows:

1. The amending agreement between British Columbia Hydro and Power Authority and Boralex Ocean Falls Limited Partnership dated July 1, 2017 to the electricity purchase agreement made as of February 19, 1986 is accepted for filing and found to be in the public interest.

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

Attachment Options

**BC Hydro Application Requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix B

Electricity Purchase Agreements (EPAs)

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix B-1

1986 EPA

PUBLIC

CONFIDENTIAL ATTACHMENT

FILED WITH BCUC ONLY

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix B-2

Extension Agreement #1

THIS AGREEMENT ("Agreement") is made as of the 22nd day of December, 2016

BETWEEN:

BORALEX OCEAN FALLS LIMITED PARTNERSHIP, represented by its general partner, **BORALEX WESTERN ENERGY INC.**, a British Columbia corporation with an office at 1500 – 1040 West Georgia Street, Vancouver, British Columbia, V6B 5R3

("Boralex")

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. Boralex and BC Hydro are parties to an electricity purchase agreement made as of February 19, 1986 (the "EPA"), as amended and/or assigned and assumed from time to time and pursuant to which Boralex sells to BC Hydro electricity generated at the Ocean Falls hydroelectric generating facility;
- B. Boralex and BC Hydro are in the process of negotiating a potential new electricity purchase agreement in respect of electricity generated at the Ocean Falls hydroelectric generating facility; and
- C. In light of such negotiations, Boralex and BC Hydro wish to extend the term of the EPA as provided herein on the terms and conditions set out in this Agreement.

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

1. (a) BC Hydro will take all reasonable steps to secure BCUC Acceptance. Boralex will provide any assistance reasonably requested by BC Hydro to secure BCUC Acceptance. "BCUC Acceptance" means that the BCUC has issued an order accepting for filing, or approving, this Agreement under section 71 of the Utilities Commission Act (British Columbia) ("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.

(b) BC Hydro will file this Agreement with the BCUC under section 71 of the UCA 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.

(c) Termination - If BCUC Acceptance has not been issued on or before the date that is 180 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 Boralex, 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 1(c) if BCUC Acceptance is issued before the notice of termination is delivered to the other Party. If this Agreement is terminated by either Party in accordance with this section 1(c), the Parties will have no further liabilities or obligations under, or in relation to, this Agreement.

2. Subject to the terms of section 1 of this Agreement the parties hereto agree that the EPA is hereby amended to extend the term of the EPA by six months, to June 30, 2017.
3. Boralex and BC Hydro acknowledge and agree that except as specifically amended by this Agreement, the EPA continues in full force and effect.
4. Each of Boralex 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.
5. This Agreement is governed by British Columbia law and the laws of Canada applicable therein.
6. Boralex and BC Hydro shall, upon the reasonable request of the other, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this Agreement.
7. This Agreement enures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assigns.
8. 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.

BORALEX OCEAN FALLS LIMITED PARTNERSHIP.
by its general partner,
BORALEX WESTERN ENERGY INC.

By: _____

Authorized Signatory

Name: Patrick Lemaire

Title: President

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**

By: _____

Authorized Signatory

Name: _____

Title: _____

Senior Vice President
Corporate Affairs

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix B-3

Extension Agreement #2

PUBLIC

OCEAN FALLS EPA SECOND EXTENSION AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the 1st day of July, 2017

BETWEEN:

BORALEX OCEAN FALLS LIMITED PARTNERSHIP, represented by its general partner, **BORALEX WESTERN ENERGY INC.**, a British Columbia corporation with an office at 1500 – 1040 West Georgia Street, Vancouver, British Columbia, V6B 5R3

("Boralex")

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. Boralex and BC Hydro are parties to an electricity purchase agreement made as of February 19, 1986 (the "EPA"), as amended and/or assigned and assumed from time to time and pursuant to which Boralex sells to BC Hydro electricity generated at the Ocean Falls hydroelectric generating facility;
- B. The EPA specifies pricing until December 31, 2016 and the EPA was to expire on such date; however, Boralex and BC Hydro have been and are in the process of negotiating a potentially new electricity purchase agreement in respect of electricity generated at the Ocean Falls hydroelectric generating facility;
- C. Due to such negotiations not having been completed, Boralex and BC Hydro agreed to a six-month extension to the term of the EPA, by agreement dated December 22, 2016 ("2016 Extension"), and the 2016 Extension was filed with the British Columbia Utilities Commission ("BCUC") for acceptance on February 27, 2017 and accepted on June 19, 2017 by Order E-12-17;
- D. The EPA is now due to expire on June 30, 2017, and it is unlikely that Boralex and BC Hydro will reach agreement on the terms of a new electricity purchase agreement prior to this date; and
- E. As BC Hydro does not have other resource options in the Bella Bella area (other than its diesel generation facilities), BC Hydro wishes to further extend the term of the EPA as provided herein on the terms and conditions set out in this Agreement, and Boralex has agreed to such additional extension.

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

- 1. BCUC Acceptance: 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

OCEAN FALLS EPA SECOND EXTENSION AGREEMENT

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. BC Hydro will take all reasonable steps to secure BCUC Acceptance of this Agreement. Boralex will provide any assistance reasonably requested by BC Hydro to secure BCUC Acceptance.

2. Termination: If BCUC Acceptance has not been issued for this Agreement on or before the date that is 180 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 Boralex, 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 2 if BCUC Acceptance is issued before the notice of termination is delivered to the other Party. If this Agreement is terminated by either Party in accordance with section 2, the Parties will have no further liabilities or obligations under, or in relation to, this Agreement.

[REDACTED]

4. Subject to the terms of section 2 of this Agreement, the Parties agree that the EPA is hereby amended to extend the term of the EPA to earlier of: (i) June 30, 2018, or (ii) the effective date as agreed to by the Parties or as may be ordered by the BCUC for the new terms and conditions, including price, to be applied for sales of electricity generated at the Ocean Falls hydroelectric generating facility from Boralex to BC Hydro.
5. Boralex and BC Hydro acknowledge and agree that except as specifically amended by this Agreement, the EPA continues in full force and effect.
6. Each of Boralex 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.
7. This Agreement is governed by British Columbia law and the laws of Canada applicable therein.
8. Boralex and BC Hydro shall, upon the reasonable request of the other, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this Agreement.
9. This Agreement enures to the benefit of, and is binding upon, the Parties and their respective successors and permitted assigns.
10. This Agreement may be executed in counterparts, each of which when executed and delivered

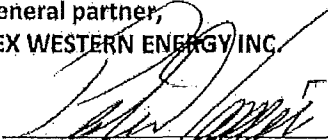
OCEAN FALLS EPA SECOND EXTENSION AGREEMENT

(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.

BORALEX OCEAN FALLS LIMITED PARTNERSHIP.
by its general partner,
BORALEX WESTERN ENERGY INC.

By:


Authorized Signatory

Name: Patrick Lemaire

Title: President

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**

By:


Authorized Signatory

Name: Janet Fraser

Title: Senior Vice President

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix B-4

BC Hydro's Proposed Terms and Conditions

This Hydro Electricity Purchase Agreement is a draft for discussion purposes only and subject to correction or revision for errors or omissions, and is subject to all necessary approvals required by BC Hydro. This draft agreement is not intended to create legally binding obligations and neither party shall be legally bound until each party has executed a mutually acceptable definitive document.

**BC HYDRO
AND
BORALEX OCEAN FALLS LIMITED PARTNERSHIP**

**HYDRO ELECTRICITY PURCHASE AGREEMENT
(OCEAN FALLS HYDROELECTRIC PROJECT)**

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DRAFT

BC HYDRO**ELECTRICITY PURCHASE AGREEMENT**

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of _____, 20__ (the “Effective Date”)

BETWEEN:

BORALEX OCEAN FALLS LIMITED PARTNERSHIP, a limited partnership formed under the laws of British Columbia, represented by its general partner, **BORALEX WESTERN ENERGY INC.**, with its head office at 1500 – 1040 West Georgia Street, Vancouver, BC V6E 4H8

(“Seller”)

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

(“Buyer”)

The Parties agree as follows:

1. INTERPRETATION

The definitions and certain principles of interpretation that apply to this EPA are set out in Appendix 1.

2. TERM

2.1 Term - The term (“Term”) of this EPA commences on the Effective Date and continues until the [] anniversary of the Effective Date, unless it is terminated earlier as authorized under this EPA.

2.2 Renewal - The Buyer may extend the Term of this EPA for an additional ____ year period commencing on the day following the [] anniversary of the Effective Date upon notice in writing provided from the Buyer to the Seller at least 180 days prior to the [] anniversary of the Effective Date, and if so extended this EPA shall continue in full force and effect on the same terms and conditions in effect at the time of such renewal notice. Any notice given by the Buyer pursuant to this section 2.2 is irrevocable:

3. REGULATORY¹**3.1 Regulatory Filing**

- (a) The Buyer will take all reasonable steps to secure BCUC Acceptance. The Seller will provide any assistance reasonably requested by the Buyer to secure BCUC Acceptance.
- (b) The Buyer will file this EPA with the BCUC under section 71 of the UCA as an energy supply contract in accordance with the Buyer's usual filing practices within a reasonable period of time following the Effective Date.

3.2 Termination If BCUC Acceptance has not been issued on or before the Regulatory Condition Expiry Date, either Party may terminate this EPA at any time after the Regulatory Condition Expiry Date 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 EPA under this section 3.2 if BCUC Acceptance is issued before the notice of termination is delivered to the other Party. If this EPA is terminated by either Party in accordance with this section 3.2, the Parties will have no further liabilities or obligations under, or in relation to, this EPA, except as set out in sections 10.4 and 10.6.

3.3 Exemptions Sections 3.1 and 3.2 are of no effect if an Exemption exists before termination of this EPA under section 3.2. Nothing in this EPA obliges either Party to seek an Exemption, and the Parties acknowledge that they have entered into this EPA with the expectation that there will not be an Exemption of any kind.

3.4 Utility Regulation The Seller will not take any action that would cause the Seller to cease to be exempt, or omit to take any action necessary for the Seller to continue to be exempt, from regulation as a "public utility" (as defined in the UCA) on the terms of Order G-26-10 of the BCUC dated February 18, 2010, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA, where the loss of, or any change in, the exemption from regulation as a "public utility" in accordance with the terms of Order G-26-10 could reasonably be expected to have an adverse effect on the Buyer or the Buyer's interests under this EPA.

4. SELLER'S PLANT

4.1 Ownership – The Seller will own the Seller's Plant at all times during the Term.

4.2 Operation Costs and Liabilities - The Seller will be solely responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.

¹ This provision would not be applicable, and would be deleted, if these terms and conditions were to be approved by the Commission as part of a regulated service

4.3 Standard of Operation - Except as required by the BCUC or otherwise consented to by the Buyer, the Seller will ensure that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant are and will be carried out at all times during the Term:

- (a) in accordance with the information in the Information Submittals in all material respects;
- (b) in compliance with the Project Standards provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller will make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Energy to continue to qualify as Clean Energy under the new requirements;
- (c) by qualified and experienced individuals; and
- (d) in a manner necessary and sufficient to at all times meet the electricity requirements of the Buyer for the purpose of supplying all of the Buyer Customer Load, subject to Force Majeure, a BC Hydro System Constraint, a Dispatch / Turn-Down, Outages of the Seller's Plant where there is no breach by the Seller of this EPA, Permit restrictions and availability of the Energy Source (provided that cost will not be a factor in determining the availability of the Energy Source).

4.4 Permits - The Seller will promptly obtain, comply with and maintain in full force and effect, all Permits. The Seller acknowledges that this EPA and the terms and conditions of this EPA are not intended to, and do not, fetter the discretion of any Governmental Authority with respect to any decision or action by that Governmental Authority with respect to the Project and the Buyer will be entitled to exercise any rights and remedies available to it under this EPA resulting from any such decision or action including, the right to terminate this EPA if any of the circumstances described in section 10.1 occur as a result of the decision or action and the right to receive any Termination Payment payable by the Seller under section 10.6 as a result of such termination.

4.5 Project Changes – Except as required by the BCUC or otherwise consented to by the Buyer in advance, the Seller will not make any change to:

- (a) the Seller's Plant as described in Appendix 2; or
- (b) any other aspects of the Seller's Plant or the information in any Interconnection Review prior to the Effective Date where such change would increase the Buyer's liability for any costs with respect to the Seller's Plant or any other project.

The Seller acknowledges that the Buyer may require, as a condition of its consent to any change described in this section 4.5, that the Seller agree in writing to reimburse the Buyer for any incremental liability for any losses, costs and damages incurred by the Buyer or any third party (including any incremental Network Upgrade Costs), with respect to the Seller's Plant or any other project, as a result of any change described in this section 4.5. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation. If the change requiring the Buyer's consent is the result of the Seller's agreement with a third party to interconnect a generating facility to the Seller's Plant and transmit electricity via the

Seller's Plant to the POI, the Buyer will require as a condition of consent that the Seller agree to be responsible for any incremental losses of Energy, costs, damages and risks associated with the interconnection.

- 4.6 Metering** - The Seller will, at its cost, install, operate and maintain a Meter at a location approved by the Buyer at the Seller's Plant that is tested and sealed according to any Measurement Canada standards. The Buyer may, at its cost, install a duplicate meter at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller will allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter. The Seller will make equipment and telecommunications access available to the Buyer as required for any duplicate meter. All information collected or recorded by the meter(s) will be transmitted directly to the Buyer or provided by the Seller to the Buyer, as reasonably required by the Buyer. If the Seller's Plant is rated 1.00 MVA or higher, the Seller will ensure that the Seller's Plant is equipped with SCADA capability. If there is any dispute regarding the accuracy of the Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada).
- 4.7 Insurance** - The Seller will, at its cost, obtain and maintain (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$3,000,000 applicable to the Project, and (ii) construction insurance (if construction is planned or undertaken by or on behalf of the Seller in connection with the Project) and, in respect of the Seller's Plant, property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender may require. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds, must contain a cross liability and severability of interest clause, and must have policy limits that include coverage for forest fire fighting expense liability at a sublimit of \$1,000,000. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller will give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller will be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.
- 4.8 No Liability For Delay** - The Buyer will have no liability under this EPA for delays in completion of (i) any Network Upgrades, or any other work undertaken by or on behalf of either Party under the Interconnection Agreement, or (ii) other work undertaken by the Buyer on the Seller's Plant side of the POI, in each case howsoever arising.
- 4.9 Outages**
- 4.9.1 Notice of Outage** - The Seller will notify the Buyer of any Outages, or changes in any Outages, by delivering to the Buyer an Outage Notice or revised Outage Notice:

- (a) promptly in the case of any Forced Outage;
- (b) not less than 90 days in advance of any Planned Outage, and
- (c) promptly in the case of any changes to the duration, start time or end time of any Outage.

4.9.2 Coordination and Scheduling of Planned Outages

- (a) The Seller will make commercially reasonable efforts to coordinate any Planned Outages with the Buyer's maintenance schedule or other requirements where such schedule or requirements are publicly available or otherwise notified to the Seller.
- (b) The Buyer may, by notice to the Seller, require the Seller to reschedule any Planned Outage. On such notice, the Seller will promptly provide the Buyer with a reasonable cost estimate, with supporting detail and reasonable contingency allowance, of the costs it expects to incur as a direct result of rescheduling the Planned Outage. Upon review of the Seller's cost estimate, the Buyer may withdraw its requirement that the Seller reschedule the Planned Outage. If the Buyer does not withdraw the requirement, the Seller will reschedule the Planned Outage as required by the Buyer provided that rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant. The Buyer will compensate the Seller for costs reasonably incurred by the Seller as a result of the rescheduling, provided those costs do not exceed the cost estimate provided by the Seller to the Buyer in advance of the Planned Outage.

4.10 Operating Plans - On or before September 30 in each year during the Term (or such other date or dates in any year during the Term as the Buyer may from time to time request) the Seller will provide to the Buyer its Operating Plan for the 14-month period commencing on November 1 of the same year (or for such other period and/or commencing on such other date during the Term, as the Buyer may from time to time request). The Seller will promptly provide the Buyer with a revised Operating Plan upon the Seller becoming aware of any expected material change in the then current Operating Plan for that period. The Parties agree that the Operating Plan is provided for planning purposes and does not guarantee or limit the quantity or timing of Seller's delivery of Energy to the POI. The Seller will ensure that all Operating Plans are consistent with Good Utility Practice.

5. PURCHASE AND SALE OBLIGATIONS

5.1 Sale and Purchase of Energy - During the Term, the Seller will, subject to section 5.9, sell and deliver Energy in an amount equal to the Buyer Customer Load to the Buyer at the POI and the Buyer will purchase and accept delivery of all Eligible Energy, provided that the Buyer will not at any time be required to purchase or accept delivery of any Eligible Energy which at that time is in excess of the Buyer Customer Load. The Buyer will pay for Eligible Energy in accordance with section 6.1. When the Seller is delivering Energy to the Buyer, the Seller will make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate up to the Buyer Customer Load within each hour during which Energy is delivered.

5.2 NOT USED.

5.3 Environmental Attributes - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes.

5.4 NOT USED.

5.5 Custody, Control, Risk of and Title To Energy - Custody, control, risk of, and title to, all Energy delivered to the Buyer and all Environmental Attributes associated with such Energy pass from the Seller to the Buyer at the POI. The Seller will ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances.

5.6 Line Losses - The Seller will be responsible for all Line Losses, costs and liabilities relating to the transmission of Energy and other electricity, if applicable, on the Seller's side of the POI.

5.7 BC Hydro System Constraint -

The Buyer will not be in breach or default of its obligations under section 5.1 or section 6.1 if the Buyer is not able to accept delivery of Energy at the POI as a result of a BC Hydro System Constraint. The Buyer will have no liability with respect to a BC Hydro System Constraint, except as set out in this section 5.7, if applicable.

If in any month the Seller is unable to deliver Energy to the Buyer at the POI solely as a result of a BC Hydro System Constraint that:

- (a) is not caused by an event beyond the reasonable control of the Buyer;
- (b) is not caused by the Seller, the Seller's Plant or anything on the Seller's side of the POI; and
- (c) occurs after any BC Hydro System Constraint has been in effect for more than 24 hours in the aggregate, whether or not continuous, in such month

then, notwithstanding that the Buyer is excused under section 5.7.1 from its obligations under section 5.1, but subject to sections 5.2 and 5.7.3, the Buyer will pay to the Seller in accordance with Article 6 an amount equal to the price payable for Eligible Energy under section 6.1 multiplied by that amount of Energy that could have been generated and delivered to the POI up to the Buyer Customer Load in each hour after the 24 hours has elapsed (and would have been actually available for delivery to the Buyer in accordance with section 5.9) but for the occurrence of the BC Hydro System Constraint ("**Constraint Energy**"), less any costs the Seller avoided or, acting reasonably, could have avoided during the BC Hydro System Constraint.

The Buyer will not be required to pay for any Constraint Energy under this section 5.7:

- (a) during any period where the Seller's Plant would not have been operating;
- (b) during any period specified as an Outage in any Outage Notice, revised Outage Notice or in an Operating Plan;

- (c) during any period when either Party is or would be excused, in accordance with section 8.8 or 8.9, from its obligation to deliver or to accept delivery of Energy as a result of Force Majeure;
- (d) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 4.10 for the period in which the BC Hydro System Constraint occurs; and
- (e) if the Seller has not provided the Buyer with:
 - i. a reasonably detailed statement of any Constraint Energy for which the Seller is claiming a right to be paid, and associated avoided or avoidable costs, and received the Buyer's approval of the amounts in such statement prior to issuing its final statement according to section 6.3.1; and
 - ii. a written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, confirming that, during all periods of the BC Hydro System Constraint in which the Seller is claiming a right to be paid for Constraint Energy, the Seller was unable to deliver Energy at the POI solely as a result of the BC Hydro System Constraint.

The Buyer may request additional Records in support of the amount of any Constraint Energy and any costs the Seller avoided or, acting reasonably, could have avoided during the BC Hydro System Constraint.

5.8 Buyer Dispatch/Turn-Down Right -

The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to Dispatch/Turn-Down and the Seller will promptly comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.

In respect of any period of a Dispatch/Turn-Down, but subject to sections 5.2, 5.8.3 and 5.8.5, the Buyer will pay to the Seller in accordance with Article 6 an amount equal to the price payable for Eligible Energy under section 6.1 multiplied by that amount of Energy that could have been generated and delivered to the POI in each hour up to the Buyer Customer Load (and would have been actually available for delivery to the Buyer in accordance with section 5.9) but for the occurrence of the Dispatch/Turn-Down ("**Dispatch/Turn-Down Energy**"), less any costs the Seller avoided or, acting reasonably, could have avoided during the Dispatch/Turn-Down.

The Buyer will not be required to pay for any Dispatch/Turn-Down Energy:

- (a) during any period where the Seller's Plant would not have been operating;
- (b) during any period specified as an Outage in any Outage Notice, revised Outage Notice or in an Operating Plan;
- (c) during any period when either Party is or would be excused, in accordance with section 8.8 or 8.9, from its obligation to deliver or to accept delivery of Energy as a result of

Force Majeure;

- (d) if the Seller has not provided the Buyer with an Operating Plan in accordance with section 4.10 for the period in which the Dispatch/Turn-Down occurs;
- (e) if the Buyer's requirement for the Seller to Dispatch/Turn-Down is the result of the operation of the Seller's Plant in a manner inconsistent with section 4.3; and
- (f) if the Seller has not provided the Buyer with:
 - i. a reasonably detailed statement of any Dispatch/Turn-Down Energy for which the Seller is claiming a right to be paid, and associated avoided or avoidable costs, and received the Buyer's approval of the amounts in such statement prior to issuing its final statement according to section 6.3.1; and
 - ii. a written attestation, in a form acceptable to the Buyer and signed by an authorized representative of the Seller, confirming that, during all periods of the Dispatch/Turn-Down in which the Seller is claiming a right to be paid for Dispatch/Turn-Down Energy, the Seller was unable to deliver Energy at the POI solely as a result of the Dispatch/Turn-Down.

The Buyer may request additional Records in support of the amount of any Dispatch/Turn-Down Energy and any costs the Seller avoided or, acting reasonably, could have avoided during the Dispatch/Turn-Down.

Where the Buyer requires the Dispatch/Turn-Down as result of a BC Hydro System Constraint, section 5.7 will apply for the purposes of determining the amount of Dispatch/Turn-Down Energy for which the Buyer is required to pay the Seller.

5.9 Access to Electricity Supply

The Parties acknowledge that the Seller has, on the Effective Date, and may in the future have, residential and industrial customers other than BC Hydro, and that this Agreement is not intended to commit Seller to selling and delivering all Energy generated by Seller's Plant to BC Hydro, or to selling and delivery Energy generated by Seller's Plant to BC Hydro in first priority to Seller's other customers. In the event that the Seller is unable to supply enough Energy to service the Buyer Customer Load and the loads of all such other customers from time to time, and service curtailment is required to maintain reliable operation of the Seller's Plant, the Seller will, to the extent practicable and consistent with Good Utility Practice, curtail service to BC Hydro and such other customers on an equal and non-discriminatory basis. The Seller will not, without the Buyer's prior consent, sell or commit to sell Energy to any third person if the effect of such sale or commitment to sell would derogate from the access to the supply of Energy from the Seller's Plant given to the Buyer by the preceding sentence.

5.10 Disposition of Surplus Electricity

If the Seller intends to sell Energy to any third person other than the Buyer as permitted under this EPA, the Seller, at its cost, will obtain all permits, licenses and other approvals of any government or governmental agency, including regulatory approvals, all additional

interconnection facilities, all additional metering facilities, all interconnection agreements, and all transmission facilities or services, including wheeling agreements, required to enable it to lawfully generate, sell and deliver Energy to such third persons.

6. PRICE AND PAYMENT TERMS

6.1 Energy Price - Subject to section 5.1, section 5.7 and section 5.8, the price payable by the Buyer for each MWh of Eligible Energy from and following the Effective Date and prior to expiry of the Term or earlier termination of this EPA will be:

- (a) For each MWh of Eligible Energy up to [] MWh for any period from July 1 to June 30 of the following year, is \$[X]/MWh, adjusted as follows:
- (i) effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{Payment Price}_n = ([A] * \$[B]/\text{MWh} * \text{CPI}_{\text{January } 1, n} / \text{CPI}_{\text{January } 1, \text{ }}) + ([C] * \$[D]/\text{MWh})$$

[Note: "A" and "C" (which must total 1) will be determined by the parties prior to execution of the EPA. "B" and "D" will be completed with the Base Price as described above. The blank in the subscript will be set as the year in which the EPA is signed.]

where:

n = the year for which the relevant calculation is being conducted

$\text{CPI}_{\text{January } 1, n}$ = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

- (b) For each MWh of Eligible Energy above [] MWh in any period from July 1 to June 30 is \$[Y]/MWh.

6.2 No Further Payment - The amount payable by the Buyer as specified in section 6.1 is the full and complete payment and consideration payable by the Buyer for Eligible Energy and for the Environmental Attributes.

6.3 Statements and Payment -

6.3.1 Statements:

- (a) The Seller will, by the 15th day of each month, deliver to the Buyer a statement (i) for the preceding month, in respect of Delivered Energy that is Eligible Energy, and (ii) for the month that precedes the preceding month, in respect of Deemed Delivered Energy that is Eligible Energy. The statement will be in such form as the Buyer may require from time to time, and must indicate, among other things, (i) the amount of Delivered Energy that is Eligible Energy, (ii) the amount of Deemed Delivered Energy that is Eligible Energy, and any associated avoided or avoidable costs, pursuant to sections 5.7

and 5.8 that have been approved in advance by the Buyer, (iii) the price payable for the Eligible Energy, and (iv) any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.

- (b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.
- (c) If the Buyer gives notice to the Seller of an error, omission or disputed amount on a statement as described in subsection 6.3.1(b), the Buyer may direct the Seller to promptly produce new statements for the relevant month(s). The new statements will show the undisputed amount and disputed amount each in a separate statement or will otherwise separate the amounts in a single statement in a manner acceptable to the Buyer.

6.3.2 Payment:

- (a) Within 30 days after receipt of a statement delivered under section 6.3.1, and subject to section 6.5, the Buyer will pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller as described in subsection 6.3.1(b).
- (b) If the Buyer disputes any portion of a statement, the Buyer must pay the undisputed net amount payable by the Buyer pursuant to the statement or, if applicable, the new statement of the undisputed amount described in subsection 6.3.1(c).
- (c) The Parties will endeavor to resolve any error, omission or disputed amount on a statement within 30 days of the notice described in subsection 6.3.1(b).
- (d) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

- 6.4 Taxes** - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Eligible Energy and Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

6.5 Set-off - If the Buyer and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party will be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount will pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Eligible Energy owing by the Buyer to the Seller, and any Final Amount owing by either Party to the other Party; and
- (b) no Final Amount will be added to or deducted from the price owing by the Buyer to the Seller for Eligible Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing.

Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

7. ENVIRONMENTAL ATTRIBUTES – CERTIFICATION AND ADMINISTRATION

7.1 Environmental Certification and Administration - Without limiting the Seller's obligation to deliver Energy in compliance with the Project Standards, the Seller will, at the Buyer's request, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency that is identified by the Buyer evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes, and the Buyer will reimburse the Seller for any certification, audit and licensing fees charged by the applicable Governmental Authority or independent certification agency for such certification, licensing or approval that the Buyer requires the Seller to obtain. Any failure by the Seller to promptly comply with its obligations in this section 7.1 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 10.1(i).

8. EPA ADMINISTRATION

8.1 Records - The Seller will prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such Records for the purposes of an inspection or audit under section 8.2.

8.2 Inspection and Audit Rights - For the sole purpose of verifying:

- (a) compliance with this EPA;
- (b) the accuracy of statements, supporting information and calculations delivered by the Seller to the Buyer under this EPA;
- (c) the qualification of the Energy as Clean Energy;

- (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or
- (e) the liability of each of the Parties for Network Upgrade Costs,

the Seller will, on reasonable prior notice from the Buyer, provide the Audit Parties with prompt access during normal business hours to the Seller's Plant and all Records, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties will exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or Records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer will first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

- 8.3 Seller Consents** - The Seller will promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of the Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and Permits applicable to the Seller's Plant.

8.4 Assignment -

- (a) Requirement for Consent: The Seller (which includes the General Partner) may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender under subsection (b) of the definition of "Assignment" in Appendix 1, or an Assignment arising as a result of a change of Control of the Seller or the General Partner) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller and the General Partner under this EPA and the Interconnection Agreement arising both before and after the Assignment, and providing the representations and warranties set out in section 11.1 effective as at the time of Assignment.
- (b) Time for Request: Any request by the Seller for the Buyer's consent under subsection 8.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, details of any consultation with First Nations that may be impacted by the Seller's Plant or the Assignment with respect to the proposed Assignment, a list of the directors and

officers of the assignee and information concerning the assignee's operations, experience and financial status.

- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 8.4(a).

8.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator will have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It will not be incompatible with this EPA to arbitrate for a Party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 6.3.2(d) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 6.3.2(d), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.
- (c) **Confidentiality:** The Parties will maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties will be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Province of British Columbia.

- 8.6 Notices** – Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix 1 and:

- (a) notices under sections 8.8 and 8.9, Article 9, section 10.1, and section 10.3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 8.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

8.7 Confidentiality

8.7.1 Confidentiality Agreement - The Confidentiality Agreement continues in full force and effect in accordance with its terms, and section 2.4 thereof is amended to provide that the obligations thereunder will expire two years following the Effective Date.

8.7.2 Additional Confidentiality Obligation - Without limiting the effect of the Confidentiality Agreement, during the Term and for two years thereafter:

- (a) the Buyer will treat as confidential, and will not disclose to any third Person, Seller Confidential Information, and
- (b) the Seller will treat as confidential, and will not disclose to any third Person, Buyer Confidential Information.

8.7.3 Disclosure of Confidential Information - Notwithstanding the Confidentiality Agreement or section 8.7.2 above:

- (a) the Seller may disclose Buyer Confidential Information, and the Buyer may disclose Seller Confidential Information, in the following circumstances:
 - i. disclosures expressly authorized under this EPA or otherwise set out in this EPA;
 - ii. disclosures to enable a Party to fulfill its obligations under this EPA;
 - iii. disclosure in any arbitration or legal proceedings for the enforcement of this EPA;
 - iv. disclosure to the Party's directors, officers, employees, Facility Lenders, consultants and advisors, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - v. subject to subsection 8.7.3(b)(iv), disclosure required to be made by a Party by an order of a court, a regulatory agency or a tribunal or under any law, regulatory requirements or any requirement of any stock exchange that is binding upon a Party, provided that the Party intending to make the disclosure

- (i) to the extent reasonably practicable, gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order Laws or regulatory or stock exchange requirement, and provided further that in the case of disclosure of any Buyer Confidential Information that is required or proposed to be made by the Seller (iii) the Seller makes all reasonable efforts to resist and limit such exposure including but not limited to applying to the court, tribunal or other regulatory entity to do so, and (iv) the Seller will indemnify and hold harmless the Buyer from all reasonable costs and expenses (including full legal costs and expenses) incurred by or on behalf of the Buyer in connection with resisting, limiting, reviewing and responding to such disclosure (which may include taking measures to oppose or restrict the disclosure);
- vi. disclosure to a third Person if such information was known by that third Person before disclosure by the Buyer or Seller, as the case may be, provided the third Person did not know of the information as a result of a breach of the non-disclosure obligations in this EPA or the Confidentiality Agreement; or
 - vii. disclosure with the consent of the Buyer, in the case of Buyer Confidential Information, or the Seller, in the case of Seller Confidential Information;
- (b) the Buyer may disclose Seller Confidential Information in the following circumstances:
- i. disclosure to the Buyer's Affiliates or to a third Person, and their respective employees, consultants and advisors, for the purpose of reselling or marketing any Energy or Environmental Attributes, including disclosure of the Seller Confidential Information by such Affiliate or third Person to those who have purchased or may purchase the Energy or Environmental Attributes;
 - ii. for purposes other than those described in subsection 8.7.3(a), to the Buyer's Affiliates and to any directors, officers, employees, consultants and advisors of any Affiliates, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality;
 - iii. to any ministers, deputy ministers, servants or employees of the Province of British Columbia, provided each of them is advised of the confidential nature of the information and agrees to respect such confidentiality; or
 - iv. disclosure in any regulatory proceeding, whether related to this EPA or not, to the extent that the Buyer considers disclosure is necessary or desirable to support its position in such proceeding. For greater certainty, subsection 8.7.2(a) does not apply to such disclosures.

8.7.4 Freedom of Information and Protection of Privacy Act - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

8.7.5 Exemption from Disclosure - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 8.7.4, all Seller Confidential Information disclosed by the Seller to the Buyer will be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

8.8 Force Majeure -

- (a) If there is a Force Majeure affecting a Party's ability to perform an obligation under this EPA, and that Party wishes to declare a Force Majeure, that Party will promptly notify the other Party of the Force Majeure. The notice of Force Majeure must identify the nature of the Force Majeure, the date the Force Majeure commenced, the expected duration of the Force Majeure, and the particular obligations affected by the Force Majeure. A Party will be deemed to have invoked Force Majeure from the later of:
- i. the date when the Party gives notice of the Force Majeure in accordance with this subsection 8.8(a); and
 - ii. if such date is not a Business Day, the next following Business Day;
 - iii. provided that if such notice is given by 17:00 PPT on the fifth Business Day following the later of:
 - (1) the day on which the Force Majeure occurs; and
 - (2) the day when the Party knew, or reasonably ought to have known, of the occurrence of the Force Majeure;
- the Party will be deemed to have invoked Force Majeure from the date on which the event of Force Majeure occurred.
- (b) Neither Party will be in default of any obligation under this EPA if a Party is unable to perform that obligation due to an event or circumstance of Force Majeure, provided notice is delivered in accordance with this section and the circumstances are, in fact, an event or circumstance of Force Majeure.
- (c) Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure will promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and will give prompt notice of the end of the Force Majeure.

8.9 First Nations -

- (a) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 8.9(a), any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nations, in relation to this EPA, the Project, the Seller's Plant or the Interconnection of the Seller's Plant to the BC Hydro System, (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nations, with respect to activities occurring on the Buyer's side of the POI or on the BC Hydro System), will be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented will use commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 9.2.1.
- (b) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 8.9(a) if such order or decision results from a wilful act or omission of a Party as contemplated in subsection (d) of the definition of Force Majeure in Appendix 1, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nations may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under this EPA, including any further amendment of this EPA that the Buyer may provide in respect of the Seller's activity.
- (c) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 8.9(a) if such order or decision results from a failure by the Seller to comply with its obligations under Article 9 of this EPA.
- (d) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 8.9(a) if:
 - i. the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
 - ii. the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in paragraph (a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any

liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;

- iii. the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
- iv. the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in subsection 8.9(d)(i).

8.10 Notice of Bankruptcy, Etc. - The Seller shall notify the Buyer promptly if (i) the Seller or General Partner is Bankrupt or Insolvent or if there is a material risk that the Seller or General Partner will become Bankrupt or Insolvent; or (ii) the Seller or General Partner has defaulted under any agreement with a Facility Lender; or (iii) any land tenure agreement for the Seller's Plant or any Permit is terminated or expires or the Seller or General Partner is in material default or breach of any such land tenure agreement or Permit; or (iv) any liens, charges or encumbrances of any kind have been filed against the Seller's Plant:

9. ABORIGINAL CONSULTATION

9.1 Definitions: - For the purposes of this EPA, the following terms will have the following meanings, respectively:

(a) **"First Nations"** means:

- (i) for the purposes of this EPA (other than subsection 9.2.2), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller's Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller's Plant, and
- (ii) for the purposes of subsection 9.2.2, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 9.1(a),

(b) **"Order or Decision"** means:

- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and
 - (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;
- (c) **“Potential Impacts”** means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nations as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer’s side of the POI or on the BC Hydro System:
- (i) this EPA;
 - (ii) the Project;
 - (iii) the interconnection of the Seller’s Plant to the BC Hydro System; or
 - (iv) any activities carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law directly related to the Seller’s Plant to enable the Seller to comply with its obligations under this EPA; and
- (d) **“Verification”** means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both Parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller will each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 8.5 and each of the Buyer and the Seller will, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties will ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator’s opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller will each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

9.2 Order or Decision -

If the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, will:

- (a) carry out that consultation to the extent the Seller is legally capable of doing so and in accordance with applicable Laws, or assist the Buyer if and to the extent requested by the Buyer in the consultation process;
- (b) take measures, to the extent (if any) required under the Order or Decision, or under applicable Laws, to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts; and
- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, or such other information and communications as may be reasonably requested by the Buyer.

Notwithstanding subsection 9.2.1, the Buyer hereby confirms that the responsibilities of the Seller in subsection 9.2.1 do not in any way whatsoever encompass or apply to the following matters:

- (a) any duty to consult or accommodate applicable to any Crown decision-maker or regulatory authority, which for greater certainty does not include the Buyer, that is considering or dealing with the Project in any way, including in connection with the consideration of the issuance of any of the Permits;
- (b) any measure of reconciliation or accommodation that the Buyer may offer or be required to provide to a First Nations related to land or resource use that is not associated with the Potential Impacts, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export; and
- (c) any measure of reconciliation or accommodation that the Crown may offer or be required to provide to a First Nations related to land or resource use, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export.

The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 9.2.1. Any failure by the Buyer to notify the Seller as required under subsection 9.2.1 or this subsection 9.2.3 will not limit or otherwise affect the Seller's obligations under subsection 9.2.1 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 14.10 applies to the obligations of the Seller in subsection 9.2.1 and section 9.3, and the Seller will reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to

perform its obligations under subsection 9.2.1 and 9.3. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 9.2.1 and 9.3; including agreeing to reasonable amendments of this EPA as contemplated by section 9.3; provided however, that any proposed amendment of this EPA must be in the public interest.

At any time prior to the second anniversary of the Effective Date, the Buyer will not have any discussions with any First Nations with respect to the consultation or accommodation regarding the Project without first notifying the Seller of its intention to have such discussions and seeking the consent of the relevant First Nations for the Seller to participate in such discussions. The foregoing obligation does not extend to any properties or infrastructure owned by the Buyer.

- 9.3 Right to Termination** - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 9.2 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of this EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the commercially unreasonable cost or other obligation on the Seller or the consent or agreement to an amendment of this EPA has been provided, as applicable. A termination by the Seller under this section will, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 10.3(c) of this EPA. If the Seller terminates this EPA pursuant to this section, the Seller will not be, or be deemed to be or have been, in breach of section 9.2 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate this EPA under this section 9.3. For purposes of this section 9.3, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 9.2, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of this EPA to the Seller over the entire Term.

10. TERMINATION

- 10.1 Termination by Buyer** - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Buyer may have under this EPA, or at law or in equity in respect of any of the following events, the Buyer may terminate this EPA by notice to the Seller if:

- (a) the Seller has not delivered any Energy to the Buyer for a period of 180 continuous days due to any reason other than a BC Hydro System Constraint or Dispatch/Turn-

Down under sections 5.7 or 5.8, or Force Majeure invoked by the Buyer; or

- (b) the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 8.8 or 8.9 or a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.7; or
- (c) the Seller breaches section 5.9; or
- (d) any Interconnection Agreement or Interconnection Review that is completed, amended, revised or restated after the Effective Date contains information that is inconsistent with the description of the Seller's Plant at Appendix 2 and the Seller has not received the Buyer's consent under section 4.5 for the change to Appendix 2; or
- (e) any of the Seller or the General Partner is Bankrupt or Insolvent; or
- (f) ~~the Seller, as a result of an act or omission of any of the Seller or the General Partner, ceases to be exempt from regulation as a "public utility" (as defined in the UCA) on the terms of Order G-26-10 of the BCUC dated February 18, 2010, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA, and the loss of, or any change in, such exemption from regulation as a "public utility" in accordance with the terms of Order G-26-10 could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA;~~²
- (g) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 60 days after the Buyer has given notice of the default to the Seller; or
- (h) **[not used];**
- (i) any of the Seller or the General Partner is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by any of the Seller or the General Partner to comply with section 4.3 in respect of subsection (e) of the "Project Standards" definition in Appendix 1, section 5.9 or section 7.1; or
- (j) in any period of 730 continuous days from and following the Effective Date of this

² This provision would not be applicable, and would be deleted, if these terms and conditions were to be approved by the Commission as part of a regulated service

Agreement, the Seller has not delivered Energy to the Buyer that is sufficient to fully meet the Buyer Customer Load in 657 days (whether or not continuous) due to any reason other than a BC Hydro System Constraint or or Dispatch/Turn-Down under sections 5.7 or 5.8, or Force Majeure invoked by the Buyer.

Any termination pursuant to this section will be effective immediately upon delivery of the notice of termination to the Seller.

10.2 Notice of Termination Event - The Seller will notify the Buyer promptly if the Seller or the General Partner is Bankrupt or Insolvent or if there is a material risk that the Seller or the General Partner will become Bankrupt or Insolvent or if the Seller or the General Partner has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller's Plant is terminated or expires.

10.3 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 5.7.1 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 5.7 in respect of that period; or
- (b) the Seller's Plant has suffered Major Damage; or
- (c) the Seller has been unable to deliver Energy to the POI for a period of 730 continuous days solely as a result of Force Majeure invoked by the Seller in accordance with section 8.8 or 8.9 or a BC Hydro System Constraint other than a BC Hydro System Constraint for which the Seller is entitled to receive payment under section 5.7; or
- (d) the Buyer is Bankrupt or Insolvent; or
- (e) except where an amount has been disputed in the manner specified in subsection 6.3.1(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 30 days after its due date and such default has not been cured within 60 days after the Seller has given notice of the default to the Buyer; or
- (f) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section will be effective immediately upon delivery of the notice of termination to the Buyer.

10.4 Effect of Termination - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:

- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity in respect of any prior breach or breaches of this EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under the Interconnection Agreement), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA;
- (b) both Parties will remain bound by:
 - i. Article 6 with respect to any final billing and resolution of disputed amounts only;
 - ii. the Interconnection Agreement and Article 10 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination;
 - iii. Article 12 and sections 8.5 and 8.7; and
 - iv. all provisions of this EPA with respect only to Environmental Attributes associated with Delivered Energy and Deemed Delivered Energy prior to the expiry of the Term or earlier termination of this EPA; and
- (c) the Seller will remain bound by:
 - i. section 8.1; and
 - ii. section 8.2 for a period of 36 months following expiry of the Term or earlier termination of this EPA;

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

10.5 Buyer Payment on Seller Termination – If the Seller terminates this EPA under subsection 10.3(d), the Buyer will pay to the Seller an amount equal to: (a) the energy price set out in subsection 6.1 of this Agreement, multiplied by (b) Eligible Energy in an amount equal to the Buyer Customer Load for the lesser of [] months or the remainder of the Term, less (c) the reasonably estimated operating and maintenance costs that the Seller would have incurred during such period under this EPA had it not been terminated.

10.6 Seller Payment on Termination – If the Buyer terminates this EPA on or before the second anniversary of this EPA, or the Seller terminates this EPA under any of subsections 10.3(a), (b) or (c) on or before the first anniversary of this EPA, the Seller will, within 30 days after receipt of an invoice from the Buyer, reimburse the Buyer for:

- (a) all Network Upgrade Costs incurred by the Buyer, or which the Buyer has become

contractually obligated to pay, prior to the termination of this EPA including Network Upgrade Costs the Buyer would otherwise be responsible for under the Interconnection Agreement;

- (b) any incremental Network Upgrade Cost liability the Buyer will incur as a result of the termination of this EPA; and
- (c) any Network Upgrade Costs the Seller is responsible for under any reimbursement agreement pursuant to section 4.5.

10.7 Calculation and Payment – The Seller will calculate the amount of any payment owed by the Buyer under section 10.5 and will notify the Buyer of such amount and provide reasonable particulars satisfactory to Buyer with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 10.5. Any amounts owing by the Seller to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 10.5. The Buyer will pay any amount owing by the Buyer under section 10.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer, subject to Buyer providing notice to Seller of an error, omission or disputed amount within ten (10) Business Days after the statement was first issued together with reasonable detail to support its claim, in which case Buyer shall pay such amount not subject to dispute. Amounts disputed under this subsection will be resolved in accordance with this EPA..

10.8 Exclusive Remedies - Subject to section 10.4, payment by the Buyer of the amount determined under section 10.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to subsection 10.3(d). Subject to section 10.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller, as the case may be, is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 10.1, or subsection 10.3(a), (b), (c), (e) or (f). Subject to section 10.4, the actions contemplated by sections 3.1 and 3.2 are the exclusive remedies to which the Parties are entitled for termination of this EPA pursuant to section 3.2. For greater certainty, subject to sections 10.4 and 10.6, the Seller will not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

11. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

11.1 Seller's Representations - Each of the Seller and the General Partner represents and warrants to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - the Seller is duly formed, organized, validly existing and in good standing under the laws of the jurisdiction of its formation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own its assets and to carry on its business as now conducted and to enter into and to perform its obligations under this EPA. The General Partner is duly incorporated, organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, is registered or otherwise lawfully authorized to carry on business in British Columbia, and has full power, capacity and authority to own

its assets and to carry on business as now conducted and to enter into and to perform its obligations under this EPA;

- (b) Bankruptcy - no actions are threatened, or have been taken or authorized by the Seller, the General Partner or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or the General Partner, or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller or the General Partner;
- (c) Assets - no appropriation, expropriation or seizure of all or any portion of the Seller's Plant, or any of its material properties or assets, is pending or threatened;
- (d) No Conflict - neither the signing of this EPA, nor the carrying out of the obligations of the Seller or the General Partner under this EPA will (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller or the General Partner, any permit, franchise, lease, license, approval or agreement to which the Seller or the General Partner is a party, or any other covenant or obligation binding on the Seller or the General Partner or affecting any of their respective properties, (ii) cause a lien or encumbrance to attach to the Seller's Plant, other than a security interest granted in respect of financing the design, construction or operation of the Seller's Plant, or (iii) result in the acceleration, or the right to accelerate, any obligation under, or the termination of, or the right to terminate, any Permit, franchise, lease, license, approval or agreement related to the Seller's Plant;
- (e) Binding Obligation - this EPA constitutes a valid and binding obligation of the Seller and the General Partner enforceable against the Seller and the General Partner in accordance with its terms;
- (f) Authorization, Execution and Delivery - this EPA has been duly authorized, executed and delivered by the Seller and the General Partner, and this EPA has been duly authorized, executed and delivered by the General Partner on behalf of the Seller;
- (g) ~~Exemption From Regulation – the Seller is exempt from regulation as a “public utility”, as defined in the UCA, on the terms of BCUC Order G-26-10 with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA;~~³
- (h) Permits – the Seller has all Permits legally required to own, operate, and maintain the Seller's Plant and perform the Seller's obligations set out in this EPA; and
- (i) Information Submittals – all information in the Information Submittals is true and correct in all material respects and there is no material information omitted from the Information Submittals that makes the information in the Information Submittals

³ This provision would not be applicable, and would be deleted, if these terms and conditions were to be approved by the Commission as part of a regulated service

misleading or inaccurate in any material respect.

11.2 Buyer's Representations - The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - the Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
- (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.

11.3 Limit of Liability - The Buyer's liability for damages for any failure to take or pay for Eligible Energy under this EPA is limited to the price payable by the Buyer for that Eligible Energy under Article 6 and any interest thereon calculated under this EPA less the amount of any revenue received by the Seller from any third Person for that Eligible Energy.

11.4 Consequential Damages - Neither Party will be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

12. INDEMNITIES

12.1 Seller Indemnity - The Seller and the General Partner will, jointly and severally, indemnify, defend and hold harmless the Buyer Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Buyer Indemnified Parties:

- (a) with respect to any emissions from the Seller's Plant; or
- (b) for personal injury, including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Seller or the General Partner, any contractor or subcontractor or supplier to the Seller or the General Partner or any director, officer, employee or agent of the Seller or the General Partner or any other Person for whom the Seller or the General Partner is responsible at law where such wilful act or omission or negligence is in connection with the Project or the performance of, or the failure to perform, any of the Seller's obligations under this EPA.

12.2 Buyer Indemnity - The Buyer will indemnify, defend and hold harmless the Seller Indemnified Parties from and against all claims, demands, actions, causes of action, suits, orders and proceedings made or brought against any of the Seller Indemnified Parties for personal injury,

including death, to third Persons and for damage to property of third Persons, to the extent caused or contributed to by the wilful act or omission or negligence of the Buyer, any contractor or subcontractor or supplier to the Buyer or any director, officer, employee or agent of the Buyer or any other Person for whom the Buyer is responsible at law while the Buyer or any such Person is at the Seller's Plant.

12.3 Indemnification Conditions - The right of a Party ("**Indemnatee**") to be indemnified by the other Party ("**Indemnitor**") under any indemnity contained in this EPA in respect of a claim by a third Person is subject to the conditions that:

- (a) the Indemnatee gives the Indemnitor prompt notice of such claim, the right to select and instruct counsel, and all reasonable cooperation and assistance, including the availability of documents and witnesses within the control of the Indemnatee, in the defence or settlement of the claim; and
- (b) the Indemnatee does not compromise or settle the claim without the prior consent of the Indemnitor.

12.4 Third Party Beneficiary Conditions - The Parties acknowledge that the Buyer holds the benefit of section 12.1 for itself, and on behalf of the Buyer Indemnified Parties, which are not party to this EPA, and the Seller holds the benefit of section 12.2 for itself, and on behalf of the Seller Indemnified Parties, which are not party to this EPA. The Parties further acknowledge that each of the Buyer Indemnified Parties and the Seller Indemnified Parties may enforce those sections respectively for their own benefit by action taken directly against the Seller or the Buyer respectively, and/or such actions may be taken by the Buyer or the Seller against the other for the benefit of their respective indemnified parties.

13. GENERAL PROVISIONS

13.1 Electric Service to the Seller - If at any time the Buyer makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with the Buyer's electric tariff applicable at the relevant time (which the Parties acknowledge is, on the Effective Date, the first revision of Electric Tariff Supplement #7, as approved and accepted for filing by the BCUC by Order G-90-15 dated May 28, 2015), and not under this EPA.

13.2 Independence - The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

13.3 Enurement - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

13.4 Entire Agreement - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof, provided that this EPA will not supercede any obligations of the Parties under the Original EPA that by their nature survive expiry or termination of the Original EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA.

- 13.5 Amendment** - This EPA may not be amended except by an agreement in writing signed by both Parties.
- 13.6 No Waiver** - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.
- 13.7 Interconnection Notices** - Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement will constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA.
- 13.8 Future Agreements** – At the end of the Term, the Buyer will have no obligation to extend the Term or to enter into a new electricity purchase agreement with the Seller or the General Partner. In the event the Parties wish to enter into a new agreement at the end of the Term, the Parties expect to negotiate the terms (including the energy price) based on conditions in effect at that time.
- 13.9 Commodity Contract/Forward Contract** - The Parties agree and intend that this EPA constitutes an “eligible financial contract” under the *Bankruptcy and Insolvency Act* (Canada) and *Companies’ Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a “forward contract” within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- 13.10 Further Assurances** - Each Party will, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.
- 13.11 Severability** - Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.
- 13.12 Counterparts** - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA effective as of the date set out on page one of this EPA.

For : **BORALEX OCEAN FALLS LIMITED PARTNERSHIP,**
by its general partner, **BORALEX WESTERN ENERGY INC.**

Authorized Representative

Print Name and Office

Date

For: **BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:**

Authorized Representative

Print Name and Office

Date

APPENDIX 1**DEFINITIONS AND INTERPRETATION****1. DEFINITIONS**

References in an Appendix to a section or subsection mean a section or subsection of this EPA, and not an Appendix, unless otherwise stated. The following words and expressions wherever used in this EPA have the following meaning:

- 1.1 “Affiliate”** means, with respect to the Seller, the General Partner, or any third Person, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, the General Partner, or the third Person, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, will include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.2 “Assign” or “Assignment”** means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller’s ownership interest of the Seller or the General Partner in the Seller’s Plant, or of all or any interest of the Seller or the General Partner in this EPA or revenue derived from this EPA;
 - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant or the ownership interest of the Seller or the General Partner therein; and
 - (c) any change of Control, merger, amalgamation or reorganization of the Seller or the General Partner.
- 1.3 “Audit Parties”** means the Buyer and its Affiliates, representatives, consultants, advisors and any third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors.
- 1.4 “Bankrupt or Insolvent”** means, with respect to a Person (which, the case of the Seller, includes the General Partner):
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
 - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
 - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or

- (d) the Person has voluntarily suspended the transaction of its usual business; or
 - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.
- 1.5 “BC Hydro System”** means the transmission, distribution, protection, control and communication facilities owned, controlled or operated by the Buyer in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof, all as more particularly described in the Interconnection Agreement.
- 1.6 “BC Hydro System Constraint”** means any outage, suspension, constraint or curtailment in the operation of the BC Hydro System preventing or limiting deliveries of Energy to the Buyer at the POI.
- 1.7 “BCUC”** means the British Columbia Utilities Commission or any successor thereto.
- ~~**1.8 “BCUC Acceptance”** means that the BCUC has issued an order accepting for filing, or approving, this EPA 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 EPA, or (ii) otherwise have an adverse effect on one or both of the Parties.⁴~~
- 1.9 “Buyer Customer Load”** means the amount of electricity required to fully meet the load requirements of the Buyer’s customers located in the general geographic area referred to as Shearwater and/or Bella Bella, [up to/not greater than •].
- 1.10 “Business Day”** means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.11 “Buyer”** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
- 1.12 “Buyer Confidential Information”** means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.13 “Buyer Indemnified Parties”** means the Buyer and its Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns.

⁴ This provision would not be applicable, and would be deleted, if these terms and conditions were to be approved by the Commission as part of a regulated service

- 1.14 “Clean Energy”** means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia’s *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.15 “Confidentiality Agreement”** means the confidentiality agreement, a copy of which is attached as Appendix 3 to this EPA.
- 1.16 “Constraint Energy”** has the meaning given in section 5.7.2.
- 1.17 “Control”** of any Person means:
- (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions;
 - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
 - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.18 “CPI”** means the British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix 1.
- 1.19 “Crown”** means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.
- 1.20 “Deemed Delivered Energy”** means, in any hour after the Effective Date:
- (a) Constraint Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.7; and
 - (b) Dispatch/Turn-Down Energy in that hour for which the Buyer is required to pay the Seller pursuant to section 5.8.
- 1.21 “Delivered Energy”** means, in each hour after the Effective Date, the amount of Energy delivered by the Seller to the Buyer at the POI in that hour as recorded by the Meter, or the duplicate revenue meter installed by the Buyer under section 4.6, if any, as adjusted for Line Losses.
- 1.22 “Dispatch/Turn-Down”** means a turn down or shut off of the Seller’s Plant.
- 1.23 “Dispatch / Turn-Down Energy”** has the meaning given in section 5.8.2.
- 1.24 “Effective Date”** means the date set out on page one of this EPA.
- 1.25 “Eligible Energy”** means, in any hour after the Effective Date, the total of:
- (a) Delivered Energy in that hour; and

- (b) Deemed Delivered Energy in that hour.
- 1.26 “Energy”** means all electric energy expressed in MWh generated by the Seller’s Plant, excluding electricity required to service the Seller’s Plant.
- 1.27 “Environmental Attributes”** means the following as attributable to Delivered Energy and Deemed Delivered Energy:
- (a) all attributes directly associated with, or that may be derived from, the Delivered Energy and Deemed Delivered Energy having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, “green” tag, ticket, certificate or other “green” marketing attribute or proprietary or contractual right, whether or not tradeable;
 - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller’s Plant as a result of the generation, purchase or sale of the Delivered Energy and Deemed Delivered Energy;
 - (c) any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller’s Plant; and
 - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
 - i. benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in subsections (a) to (c) above; and
 - ii. benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in subsections (a) to (c) above.
- 1.28 “Environmental Certification”** means any certification the Buyer requires the Seller to obtain under section 7.1.
- 1.29 “Exemption”** means a lawful exemption from the requirement under section 71 of the UCA that this EPA be filed thereunder as an “energy supply contract” as defined therein.
- 1.30 “Facility Lender”** means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller’s Plant and any successors or assigns thereto and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s Plant.

- 1.31 “Final Amount”** means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 8.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
- 1.32 “First Nations”** has the meaning given in section 9.1.
- 1.33 “Force Majeure”** means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:
- (a) any economic hardship or lack of money, credit or markets;
 - (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
 - (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
 - (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
 - (e) any BC Hydro System Constraint; or
 - (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the Person described above was a party to this EPA in place of a Party invoking Force Majeure.
- 1.34 “Forced Outage”** means a partial or total interruption in the delivery of, or ability to deliver, Energy that is not a result of a Planned Outage or a Force Majeure invoked in accordance with this EPA.
- 1.35 “General Partner”** means Boralex Western Energy Inc. and its successors and permitted assigns.
- 1.36 “Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice,

method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.

- 1.37 “Governmental Authority”** means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
- 1.38 “GST”** means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.39 NOT USED.**
- 1.40 “Indemnitee”** has the meaning given in Section 12.3.
- 1.41 “Indemnitor”** has the meaning given in Section 12.3.
- 1.42 “Information Submittals”** means the documents and information in relation to the Seller’s Plant and the Project provided by the Seller to the Buyer in the period between *[insert]* and the Effective Date in connection with the negotiation and execution of this EPA, including provided documents and information in connection with First Nations, the Seller’s cost of service, Interconnection and Permits, and the condition assessment of the Seller’s Plant. *[Note: The blank in this section to be based on commencement of renewal discussions between the Seller and BC Hydro.]*
- 1.43 “Interconnection”** means the facilities and procedures that enable the flow of electric power from the Seller’s Plant to the BC Hydro System and vice versa.
- 1.44 “Interconnection Agreement”** means the Interconnection Agreement between the Seller and the Buyer dated *[insert]* in respect of the Interconnection, as amended from time to time. *[Note: The blank in this section will be completed based on Interconnection Agreement in place between Seller and BC Hydro as of the date of execution of the EPA.]*
- 1.45 “Interconnection Review”** means the *[study]* in respect of the Interconnection dated *[insert]*, a copy of which is set forth in Appendix 4. *[Note: The blanks in this section will be completed based on date and nature of Interconnection Review.]*
- 1.46 “Laws”** means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time
- 1.47 “Lender Consent Agreement”** means a lender consent agreement in the form posted on the Buyer’s website as of the date the Seller submits the Lender Consent Agreement to the Buyer.
- 1.48 “Line Losses”** means all losses of Energy associated with the transmission of Energy and other electricity, if applicable, on the Seller’s side of the POI:
- (a) that are recorded by the Meter; and/or

- (b) that are associated with or otherwise result from multiple interconnections on the Seller's side of the POI, as estimated by the Buyer in accordance with Good Utility Practice.
- 1.49 "Major Damage"** means damage to the Seller's Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under this EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller's Plant for the remainder of the Term.
- 1.50 "Meter"** means a meter leased by the Buyer to the Seller that is: (a) capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI in each hour independent of all other generation equipment or facilities and transmitting the information to the Buyer, and (b) capable of being remotely interrogated.
- 1.51 "Network Upgrades"** means additions, modifications and upgrades to the BC Hydro System that are determined by the Buyer to be interconnection or transmission network upgrades under the applicable policies of the Buyer or under the Buyer's Open Access Transmission Tariff in effect from time to time.
- 1.52 "Network Upgrade Costs"** means all costs incurred by the Buyer before or after the Effective Date for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades under the Interconnection Agreement.
- 1.53 "Operating Plan"** means an operating plan for the Seller's Plant that includes for the term of each operating plan, (a) a schedule of the expected total deliveries of Energy at the POI in each month, (b) a schedule of any Planned Outages of the Seller's Plant expected by the Seller, and (c) such other information concerning the operations of the Seller's Plant as the Buyer may from time to time request.
- 1.54 "Order or Decision"** has the meaning given in section 9.1.
- 1.55 "Original EPA"** means Electricity Purchase Agreement dated February 19, 1986, as amended, supplemented or otherwise modified from time to time, under which the Seller sells, and the Buyer purchases, electricity from the Seller's Plant.
- 1.56 "Outage"** means a Planned Outage or a Forced Outage.
- 1.57 "Outage Notice"** means a notification of any Outage or revised notification of any Outage required to be delivered by the Seller to the Buyer under this EPA that describes the timing, frequency, nature and duration of the Outage and that is in a format that may be prescribed by the Buyer from time to time as posted on the Buyer's website.
- 1.58 "Party"** means: (a) the Buyer; or (b) the Seller, and **"Parties"** means both the Buyer and the Seller.
- 1.59 "Permits"** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.

- 1.60** “**Person**” means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.61** “**Planned Outage**” means a partial or total interruption in the delivery of, or ability to deliver, Energy for purposes of scheduled inspection, repair and/or maintenance in the Seller’s Plant.
- 1.62** “**Plant Capacity**” means the maximum electrical capacity of the Seller’s Plant expressed in MW as set out in Appendix 2 (as amended in accordance with section 4.5), being the numerical sum of the maximum electrical capacity of each individual generator that forms part of the Seller’s Plant, as established by documentation in respect of each generator that is satisfactory to the Buyer in its sole discretion. Where the capacity is expressed in MVA, the capacity will be multiplied by the power factor stipulated in the Interconnection Agreement to determine the capacity in MW.
- 1.63** “**POI**” or “**Point of Interconnection**” means the point at which the Seller’s Plant interconnects with the BC Hydro System, as described in Appendix 2.
- 1.64** “**Potential Impacts**” has the meaning given in section 9.1.
- 1.65** “**PPT**” means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.66** “**Present Value Rate**” means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of this EPA, plus 3%.
- 1.67** “**Prime Rate**” means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, British Columbia, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.68** “**Project**” means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
- 1.69** “**Project Standards**” means:
- (a) all applicable Laws;
 - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller’s Plant;
 - (c) Good Utility Practice;
 - (d) the description of the Seller’s Plant in Appendix 2;
 - (e) the requirement that Energy must qualify as Clean Energy;
 - (f) the terms and conditions of this EPA and the Interconnection Agreement; and

- (g) the Contractor Standards for Ethical Conduct applicable to Buyer contracts, as it may be amended, revised or restated from time to time, that is posted on the Buyer's website.

1.70 “**PST**” means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.

1.71 “**Records**” means all records and logs required to properly administer this EPA, including:

- (a) for each generator comprising part of the Seller's Plant, energy generation records and operating logs;
- (b) a log of all outages of the Seller's Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output);
- (c) Meter readings;
- (d) maintenance reports;
- (e) invoice support records;
- (f) documents concerning compliance with Project Standards, but excluding any such documents that are protected by solicitor-client privilege;
- (g) any avoided or avoidable costs during the period of any BC Hydro System Constraint or Dispatch/Turn-Down; and
- (h) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

~~**1.72** “**Regulatory Condition Expiry Date**” means the date that is 180 days after the Effective Date, or such later date as the Buyer, in its sole discretion, may from time to time elect by notice to the Seller.⁵~~

1.73 “**Seller**” means the Party so identified on page one of this EPA, and its successors and permitted assigns.

⁵ This provision would not be applicable, and would be deleted, if these terms and conditions were to be approved by the Commission as part of a regulated service

- 1.74 “Seller Confidential Information”** means any of the Seller’s confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information, but excluding:
- (a) this EPA; and
 - (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.75 “Seller Indemnified Parties”** means the Seller, the General Partner and their respective Affiliates, directors, officers, employees, agents, representatives, successors and permitted assigns.
- 1.76 “Seller’s Plant”** means the Seller’s Plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the BC Hydro System, whether real or personal and whether tangible or intangible including all land tenure and all books, Records and accounts with respect to the Seller’s Plant described in Appendix 2.
- 1.77 “Term”** has the meaning given in Article 2.
- 1.78 “UCA”** means the *Utilities Commission Act* (British Columbia).
- 1.79 “Verification”** has the meaning given in section 9.1.

2. INTERPRETATION

- 2.1 Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- 2.2 Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 2.3 Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 8.5, any suit, action or proceeding (a “**Proceeding**”) arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- 2.4 Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well-known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.

- 2.5 Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- 2.6 Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 2.7 Reference Indices** – Except as otherwise provided in section 2.9 of Appendix 1, if any rating, index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA will be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 8.5.
- 2.8 Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.
- 2.9 Payment Calculations** - All payments under this EPA will be calculated applying the following principles:
- (a) all payment calculations will be rounded to the nearest cent;
 - (b) Energy will be expressed in MWh rounded to two decimal places; and
 - (c) if Statistics Canada (or the then recognized statistical branch of the Government of Canada):
 - i. computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Government of Canada);
 - ii. at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
 - iii. has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller will prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller will recalculate the invoice amounts in the next succeeding invoice and will include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
 - iv. recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller will recalculate the invoice amounts for the relevant period in the next succeeding invoice and will include

a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2.10 Additional Interpretive Rules - For the purposes of this EPA, except as otherwise expressly stated:

- (a) “this EPA” means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words “herein”, “hereof” and “hereunder” and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word “including” or “includes” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto;
- (d) the words “year” and “month” refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested;
- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, will be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2.11 General Partner - All references to the “Seller” herein include the General Partner, unless the contrary is expressly stated. Acts or omissions of the General Partner in relation to this EPA are deemed to be acts or omissions of the Seller.

3. ADDRESSES FOR NOTICES

3.1 Notices to Buyer and Insurance - Except as noted below, all notices addressed to the Buyer will be delivered to the following address:

To: Business & Economic Development
 333 Dunsmuir Street, 17th floor
 Vancouver, B.C.
 V6B 5R3
 Attention: Director, Business & Economic Development
 Email: IPP.Contract@bchydro.com

Statements and Supporting Information

To: Business & Economic Development
333 Dunsmuir Street, 17th floor
Vancouver, B.C.
V6B 5R3
Attention: Manager, Commercial Operations & Planning
Email: IPP.Contract@bchydro.com

3.2 Notices to Seller - All notices addressed to the Seller will be delivered to the following address:

[Note to Seller: This information will be completed based on the information provided by Seller.]

APPENDIX 2**SELLER'S PLANT DESCRIPTION**

1. **Location:** The Seller's Plant is located at: *[Insert.]*

The approximate latitude and longitude of the site of the power house forming part of the Seller's Plant is: *[Insert.]*

The Seller's Plant is located on property legally described as: *[Insert.]*

2. **Principal Equipment:** The Seller's Plant includes the following principal equipment:

Type of Equipment	Description	Key Technical Parameters
Turbine		
Generator		
Transformer		
Transmission Line		
<i>[Insert other, as applicable.]</i>		

3. **Access Roads:** Access to the site on which the Seller's Plant is located is: *[Insert.]*
4. **POI and Interconnection Facilities:** As described in the Interconnection Review and the Interconnection Agreement.
5. **Plant Capacity:** The Plant Capacity is [____] MW. *[Note: To be confirmed.]*
6. **Site Layout:** A depiction of the layout of the key facilities in the Seller's Plant is attached as Schedule 1 hereto.
7. **Interconnection Review:** The data and assumptions set forth in the Interconnection Review are attached as Schedule 2 hereto.
8. **Energy Source:** The primary Energy Source used to generate Energy at the Seller's Plant is water which accounts for 100% of the annual Energy generated.

SCHEDULE 1

SITE LAYOUT

[Note: To be attached.]

SCHEDULE 2

INTERCONNECTION REVIEW

[Note: To be attached.]

APPENDIX 3

CONFIDENTIALITY AGREEMENT

[Note: To be attached.]

APPENDIX 4

INTERCONNECTION REVIEW

[Note: To be attached.]

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix C

History of Ocean Falls Facilities

History of the Ocean Falls Facilities

Milestone	Description
Initial industrial development at Ocean Falls	<ul style="list-style-type: none"> In 1912-13 Ocean Falls Company Ltd. constructed a pulp mill, dam and hydroelectric generating facility at Ocean Falls. The community of Ocean Falls began as a company town housing the pulp mill workers and their families. The community also had a saw mill, hotel and school. Before the pulp mill began operation, the company went bankrupt. In 1915, Pacific Mills Limited took over the operation, and began producing pulp and paper in 1917.
Provincial Crown Corporation buys the town and industrial facilities	<ul style="list-style-type: none"> In 1972-73 the pulp mill owner (then Crown Zellerbach) announced the permanent closure of the pulp mill. The Province of British Columbia established a Crown Corporation called Ocean Falls Corporation to buy the town, industrial site and facilities, including the hydroelectric facilities, and operate them.
Pulp mill permanently closes, and equipment is auctioned off	<ul style="list-style-type: none"> Ocean Falls Corporation ran the pulp mill until 1980 when the mill was permanently closed. Ocean Falls Corporation dismantled the mill and demolished some town buildings. It maintained certain community buildings and provided limited services to approximately 50 residents. On April 14, 1986, Ocean Falls Corporation held an auction of the contents and equipment of the mill. According to a report, one of the founders of Quebec pulp and paper company Cascades Inc. came to Ocean Falls and bought the paper machine. The Ocean Falls Improvement District was officially chartered on March 26, 1986. It assumed control of Ocean Falls Corporation's facilities providing services to the community. Ocean Falls Corporation was wound up shortly thereafter.
Hydroelectric facilities are sold, and BC Hydro enters into 1986 EPA with new owner	<ul style="list-style-type: none"> Various unsuccessful attempts were made to attract investment to the Ocean Falls industrial site. Ultimately a request for proposals was issued for private operation of the Ocean Falls electric system including the dam and hydroelectric generation. A BC Hydro employee – Mr. Tony Knott – submitted the successful proposal to purchase and take over operation of the Ocean Falls electric system including the generation facility, and build a substation and a transmission line to Bella Bella to sell energy to BC Hydro. Mr. Knott incorporated Central Coast Power Corporation (CCPC) to own the Ocean Falls electric facilities. CCPC and BC Hydro entered into the 1986 EPA dated February 19, 1986 for the purpose of supplying hydroelectric power to meet the requirements of the community of Bella Bella and allowing BC Hydro to displace diesel generation at Bella Bella: <ul style="list-style-type: none"> The agreement was for a 20-year term; The specified pricing for the period from 1991 to 1996, and also provided that the price for the period from 1997 to the end of the agreement term "shall be determined by negotiation between the parties. If, 3 months prior to the 121st month of the term of this agreement a new price has not been

Milestone	Description
	<p>agreed upon for this subsequent period the issue shall be referred to the British Columbia Utilities Commission for determination. To the extent that the BCUC does not have or declines such jurisdiction the issue shall be referred to arbitration in accordance with the <i>Arbitration Act</i>;</p> <ul style="list-style-type: none"> • A month later, CCPC and Ocean Falls Corporation entered into an agreement dated March 27, 1986 for the purchase and sale of the Ocean Falls electric facilities. Key terms of this agreement included: <ul style="list-style-type: none"> – Reportedly, the purchase price was \$1; – CCPC assumed responsibility to maintain the system; – The agreement was subject to the BCUC (i) approving the transfer of land and assets to CCPC, and (ii) with LGIC approval, issuing an exemption order on terms set out in Schedule F to the agreement and other terms satisfactory to the vendor; and – Schedule F set out terms to be incorporated into an exemption order for CCPC: CCPC shall fully abide by and comply with the terms of the Original EPA, and CCPC shall supply electric power to all customers wishing service in Ocean Falls and Martin Valley at rates specified in the appendix (generally at rates not to exceed the BC Hydro rate for comparable service).
BCUC approved CCPC acquiring the utility assets and grants CCPC an exemption from the <i>UCA</i>	<ul style="list-style-type: none"> • On February 19, 1986, CCPC applied to the BCUC for exemption from regulation as a public utility in respect of owning and operating the Ocean Falls generating facility, construction of the substation and transmission facilities, the sale of power to the community of Ocean Falls, and the sale of power to BC Hydro at Bella Bella, all in accordance with the terms set out in Schedule F to the agreement with Ocean Falls Corporation. • On July 4, 1986 the BCUC issued Order No. G-40-86 exempting CCPC from the <i>UCA</i> except Part 2 and Sections 30, 44, 47 and 133 (as the <i>UCA</i> was then), subject to conditions including CCPC fully complying with the Original EPA, CCPC maintaining the system in a safe condition, CCPC providing service to all applicants in Ocean Falls at rates no higher than those specific in Appendix F and no time to exceed those charged by BC Hydro for similar service, and subject to resolution of any disputes by BCUC.
BCUC approves BC Hydro Tariff Supplement No. 7 for interruptible service to CCPC	<ul style="list-style-type: none"> • BC Hydro applied to the BCUC for approval of and by Order No. G-44-91 dated May 23, 1991 the BCUC approved, BC Hydro Tariff Supplement No. 7 for interruptible electricity supply from BC Hydro's diesel generation at Bella Bella to CCPC at Ocean Falls. • The tariff supplement provides for BC Hydro to provide emergency supply for up to 30 days for CCPC to serve its customers in Ocean Falls.
BC Hydro and CCPC settle a contractual dispute under the 1986 EPA by arbitration	<ul style="list-style-type: none"> • As noted above, the 1986 EPA provided that the price for the period from 1997 to the end of the agreement term shall be determined by negotiation between the parties, and failing successful negotiation shall be determined by the BCUC or arbitration as applicable. • In 1996 BC Hydro and CCPC attempted to negotiate the price BC Hydro would pay under the 1986 EPA for the period beginning 1997 but the negotiations were not successful. BC Hydro asked the BCUC to determine the price, and the BCUC declined to do so because the price adjustment was a contractual development under the 1986 EPA over which the BCUC had no jurisdiction. The parties therefore referred the determination of the price under the 1986 EPA to commercial arbitration.

Milestone	Description
	<ul style="list-style-type: none"> After a lengthy arbitration process, CCPC and BC Hydro settled the issue of the renegotiation of the price for the period from 1997 onward, and as part of the price settlement also agreed to extend the term of the EPA to December 31, 2016.
BCUC amends CCPC's exemption order to facilitate Marine Harvest Canada developing a fish farming operation at Ocean Falls	<ul style="list-style-type: none"> In 2002 Marine Harvest Canada Ltd. proposed to develop a fish farming operation at Ocean Falls and sought electricity service from CCPC. On February 27, 2002, CCPC applied to the BCUC for an amendment to the Order No. G-40-86 exemption to allow CCPC to negotiate industrial rates with industrial customers up to BC Hydro's equivalent rate (at the time RS 1821 or RS 1200). By Order No. G-30-02 dated April 17, 2002 the BCUC approved amendments to the exemption order: <ul style="list-style-type: none"> The approved amendment changed the Schedule F terms with respect to rates for a CCPC industrial customer by striking out the existing language and replacing it with new language as set out in the Order. The BCUC also noted in the preamble of its Order (paragraph D) that in the event of a complaint by an interested party, the BCUC may review whether the exemption for CCPC continues to be in the public interest.
The Heiltsuk First Nation complains to BCUC about CCPC, the 1986 EPA, and BC Hydro rates applicable in Bella Bella	<ul style="list-style-type: none"> During the BCUC proceeding regarding BC Hydro's 2007 Rate Design Application (2007 RDA), the Heiltsuk Tribal Council and Shearwater Marine Limited raised several issues and complaints about BC Hydro's rates applicable in Bella Bella and about CCPC. Ocean Falls is in the traditional territory of the Heiltsuk, and at that time BC Hydro was providing service to Shearwater Marine and other customers in the Bella Bella area at Rate Zone 2 rates, which apply in non-integrated areas and are roughly 20 per cent higher than the rates for similar service in the integrated system area: <ul style="list-style-type: none"> The Heiltsuk and Shearwater Marine complained that the limited exemption of CCPC from the <i>UCA</i> by Order No. G-40-86 as amended by Order No. G-30-02 may not be in the public interest; They also complained that service by CCPC to BC Hydro and by BC Hydro to its customers in the Bella Bella area might be unreasonable or unreasonably discriminatory. That is, the price CCPC was charging to BC Hydro might be unreasonably high; By Order No. G-92-07 dated August 13, 2007 the BCUC decided to sever the complaints from the 2007 RDA proceeding and hold them in abeyance until the completion of Phases 1 and 2 of the 2007 RDA. On December 21, 2007 the BCUC issued its decision regarding Phases 1 and 2 of the 2007 RDA. In that decision the BCUC directed BC Hydro to provide service to its Bella Bella customers at rates equivalent to Rate Zone 1 rates and that such customer be exempt from the residential inclining block rate structure. A new Rate Zone 1B was established for the Bella Bella area.
Boralex LP buys the CCPC utility assets	<ul style="list-style-type: none"> On August 1, 2008, CCPC and Boralex LP applied to the BCUC for approval of the sale and disposition of CCPC's utility assets at Ocean Falls to Boralex LP: <ul style="list-style-type: none"> Boralex Inc. is the limited partner of Boralex LP (and holds 99.9% of the partnership units). Boralex Inc. develops, builds and operates renewable energy power facilities in Canada, France and the United States. The Boralex group operates around 20 generation sites; In 1989 Cascades Inc. (the Quebec pulp and paper company referred to above) moved into the energy sector by developing a cogeneration plant

Milestone	Description
	<p>in Quebec. In 1995, Cascades acquired an 82.5 per cent interest in Boralex Inc. Boralex Inc. is now 17.4 per cent owned by Cascades Inc; and</p> <ul style="list-style-type: none"> – According to a report, Boralex's decision to purchase the CCPC assets has its roots in the Cascades founder's visit to Ocean Falls in 1986 when he purchased the paper machine at auction. • On December 5, 2008 by Order No. G-180-08 the BCUC approved the disposition of CCPC's utility assets to Boralex LP. The following items are of note in connection with that proceeding and the BCUC's decision: <ul style="list-style-type: none"> – We have found no evidence that Boralex LP sought any form of comfort from BC Hydro with respect to the Original EPA or renewal of it; – The Heiltsuk Tribal Council was the only intervenor in the BCUC proceeding. The Heiltsuk did not support the proposed sale and disposition of CCPC's utility assets; however, their arguments did not address the merits of the proposed sale and disposition, from a public utility perspective, but instead requested that the BCUC delay its decision pending adequate consultation by the B.C. Government; – CCPC stated that it had 95 customer accounts, plus one industrial customer Marine Harvest Canada; – The purchase price was not disclosed on the public record; – In response to BCUC IRs, Boralex LP confirmed that no acquisition premium, transaction fees, litigation expenses, retention bonuses, termination costs or any other related cost of the sale will be recovered from customers; – Boralex LP also confirmed that it would continue to record the CCPC assets at their historical, depreciated value (not fair market value) to protect customers from the potential increased rate effects of having the value of utility assets being increased by a new owner; – The BCUC specifically commented that "customer rates will only be set based on the historical, depreciated cost of Utility Assets in the event that a customer complaint cannot be resolved by Boralex and if the Commission decides to set cost-based rates"; and – Boralex LP also confirmed that it had no concern with the BCUC including the following in a new exemption order for Boralex LP, "This exemption, granted pursuant to this Order, shall remain in effect until the Commission orders otherwise, for reasons that may include the determination of any complaint it receives from a person whose interests are affected."
BCUC grants Boralex LP an exemption from the <i>UCA</i>	<ul style="list-style-type: none"> • Pursuant to BCUC Order No. G-26-10 dated February 18, 2010, the BCUC exempted Boralex LP from the <i>UCA</i> on similar terms as CCPC was exempted pursuant to Order No. G-40-86 as amended by Order No. G-30-02.
BCUC approves BC Hydro Tariff Supplement No. 7 for interruptible service to Boralex LP	<ul style="list-style-type: none"> • Pursuant to BCUC Order No. G-90-15 dated June 3, 2015, the BCUC approved BC Hydro Tariff Supplement No. 7 under which BC Hydro provides interruptible electricity service to Boralex LP at Ocean Falls. The price for the interruptible service is based on BC Hydro's marginal cost of diesel generation at Shearwater.

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix D

BCUC Orders

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix D-1

BCUC Order G-40-86



BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER NUMBER	G-40-86

PROVINCE OF BRITISH COLUMBIA
BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF an Exemption Application
pursuant to Subsection 103(3) of the Act
by Central Coast Power Corporation

BEFORE:	M. Taylor,)	
	Chairman;)	
	J.D.V. Newlands,)	
	Deputy Chairman;)	
	D.B. Kilpatrick,)	July 4, 1986
	Commissioner; and)	
	N. Martin,)	
	Commissioner)	

O R D E R

WHEREAS on February 19, 1986 a 20-year Agreement was executed between Central Coast Power Corporation ("CCPC") and British Columbia Hydro and Power Authority ("B.C. Hydro") covering the sale and supply to B.C. Hydro of electric power generated at the hydroelectric generating facilities of CCPC to be transmitted over transmission facilities to be constructed and owned by CCPC connecting Ocean Falls to a delivery point at B.C. Hydro's substation in Bella Bella, B.C.; and

WHEREAS the electric power involved in the sale by CCPC to B.C. Hydro is for the purpose of enabling such electric service to meet the requirements of the community of Bella Bella, B.C. thereby allowing B.C. Hydro to substitute such purchased electricity as a replacement for electricity derived from diesel generators owned and operated by B.C. Hydro; and

.../2

BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER	
NUMBER	G-40-86

WHEREAS in addition to the foregoing CCPC indicated its intention to attempt to attract industrial enterprises to the Ocean Falls by means of making electric power available to such industrial enterprises at an attractive price; and

WHEREAS on March 27, 1986 an Agreement was executed between Central Coast Power Corporation ("CCPC") as the Purchaser and Ocean Falls Corporation ("OFC") as the Vendor; and

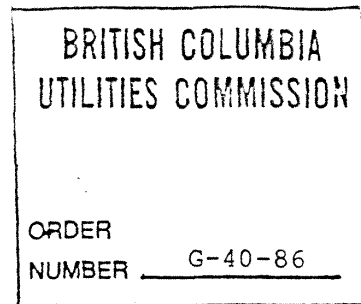
WHEREAS in accordance with the aforesaid Agreement, CCPC stated its intention to purchase from OFC certain lands and chattels (as specified in Schedule G of the Agreement between OFC and CCPC) for the purpose of generating electric power to serve the needs of the community known as The Ocean Falls Improvement District and of B.C. Hydro at Bella Bella, B.C.; and

WHEREAS the aforementioned chattels embody the storage, generating, distribution and transmission facilities in the Ocean Falls Improvement District, and they, together with the proposed transmission facilities between Ocean Falls and Bella Bella will constitute the System of Central Coast Power Corporation; and

WHEREAS CCPC has agreed to provide hydro electric power from the System to the Ocean Falls Improvement District at rates as specified in Schedule F to the March 27, 1986 Agreement with the Ocean Falls Corporation, and to B.C. Hydro at rates as specified in the February 19, 1986 Agreement with B.C. Hydro; and

WHEREAS on June 4, 1986 CCPC applied to the Commission for exemption from the Utilities Commission Act ("the Act") pertaining to the sale of electric power to Residential, Commercial and Industrial consumers located in the Ocean Falls Improvement District; and to B.C. Hydro at Bella Bella, B.C.; and

.../3



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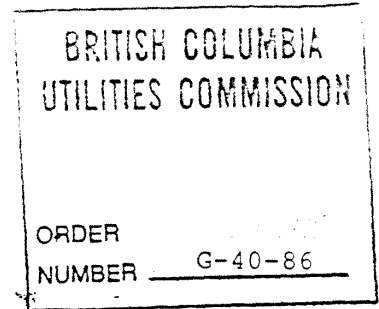
WHEREAS the Commission held a hearing at the Martin Inn, Ocean Falls, on Wednesday, July 2, 1986 for the purpose of reviewing all factors related to the Application and to enable all Interested Parties to participate by providing comment pertaining to the Application by CCPC; and

WHEREAS the Commission has considered the matter and is satisfied that an Exemption Order properly conserves public convenience and interest.

NOW THEREFORE the Commission, pursuant to its powers under Section 103 (3) of the Utilities Commission Act ("the Act") orders as follows:

1. The transfer of the land and chattels listed in Schedule G of the March 27, 1986 Agreement between CCPC and the Ocean Falls Corporation (attached) be approved.
2. The CCPC System be exempt from the application of all of the provisions of the Act save and except Part 2 and Sections 30, 44, 47 and 133. This exemption will be in effect until total demand on the System exceeds 6,000 kW, at which time continuation of this exemption will be subject to review by the Commission. The exemption is subject to the following conditions:
 - (a) CCPC shall fully comply with the terms of its agreements with B.C. Hydro and Ocean Falls Corporation attached as Appendices I and II respectively;
 - (b) CCPC shall maintain the System in a safe condition at all times and provide appropriate maintenance as required;
 - (c) CCPC shall provide on demand hydro electric services to all applicants requesting service within the Ocean Falls Improvement District at rates not to exceed those specified in Schedule F (attached) and at no time to exceed those charged by B.C. Hydro from time to time for similar categories of service.
 - (d) If CCPC and a new applicant for electric service are unable to agree as to the appropriate rates and terms and conditions applicable to such service, then within 60 days of a request by the new applicant for service the Commission will determine the rates and terms and conditions pursuant to the Utilities Commission Act.

.../4



4

- (e) Except for the disposition of its property in the normal course of business CCPC shall not, without first obtaining the Commission's approval, dispose of the whole or part of its property.

DATED at the City of Vancouver, in the Province of British Columbia, this *25th* day of July, 1986.

BY ORDER

Chairman

Attachments

APPENDIX I

THIS AGREEMENT, made as of the 19th day of February 1986.

BETWEEN:

CENTRAL COAST POWER CORPORATION, a company
incorporated in the Province of British
Columbia with its registered office as
4594 Montford Crescent, Victoria, British
Columbia V8N 3W5

(hereinafter called "CCPC")

OF THE FIRST PART

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a
body corporate having an office at 970 Burrard
Street, in the City of Vancouver, Province of
British Columbia

(hereinafter called "B.C. Hydro")

OF THE SECOND PART

WITNESS THAT the parties hereto have mutually agreed as follows:

DEFINITIONS

1. In this agreement,
 - (a) "electricity" means electric power and also means and includes electric energy;
 - (b) "point of delivery" means the point where CCPC's transmission connection meets B.C. Hydro's substation in Bella Bella;
 - (c) "kilowatt consumption" or "kW consumption" means the amount of electrical energy measured in kilowatt-hours and determined by a CCPC meter or meters to pass from CCPC's electrical system to B.C. Hydro's electrical system;
 - (d) "transmission connection" means all facilities required to supply electricity from CCPC's Ocean Falls generating station to the point of delivery including any right-of-way, lines or equipment; and
 - (e) "Bella Bella distribution load" means all electricity supplied to B.C. Hydro's customers presently or in the future in the general geographic area referred to as Shearwater and/or Bella Bella.

- 2 -

AGREEMENT TO SUPPLY AND PAY FOR

2. CCPC will supply electricity to B.C. Hydro at the point of delivery and B.C. Hydro will pay CCPC for such electricity supplied to it by CCPC upon the terms and conditions set forth in this agreement.

ELECTRICITY SUPPLIED AND TAKEN

3. The electricity supplied hereunder shall be alternating current, three-phase, having a normal frequency of 60 cycles per second. Variations from the said frequency shall not normally exceed plus or minus 1 1/2 percent of such frequency and will be adjusted to provide a zero time error every 24 hours. The voltage of the electricity supplied and metered hereunder shall be regulated to normally maintain voltage between the limits of 12,000 V \pm 2.5 percent. Variations from the normal voltage and frequency shall not exceed these limits except with respect to both frequency and voltage at times of sudden load changes or in cases of emergency or accident.

COMMENCEMENT DATE

4. The date of the commencement of the supply and taking of the electricity under this agreement shall be the date specified by CCPC in a notice in writing delivered to B.C. Hydro not later than 1 month prior to the supply of electricity, provided such date shall not extend beyond 1 September 1987. If CCPC is unable to supply the electricity upon the date of commencement because circumstances beyond its control (including therein strikes and lockouts) have delayed the construction of the necessary plant, shall be entitled to postpone the date of commencement for the period of time that it has been so delayed.

TERM OF AGREEMENT

5. This agreement, unless terminated as herein provided, shall continue and remain in force for a period of 240 months from the date of commencement.

RATES, TERMS AND CONDITIONS

6. B.C. Hydro shall take and pay electricity supplied hereunder in accordance with the rate, terms and conditions which are set out as follows:

- (a) B.C. Hydro will at all times use the power supplied by CCPC to supply the Bella Bella distribution load when that power is available in the quality stated in Section 3 except:

- (i) the intent of the parties is to perform those minimum operational checks which are required to ensure the reliability of the standby units at the B.C. Hydro Shearwater Diesel Plant. To accomplish this, B.C Hydro will endeavour to operate the units at the Shearwater plant on line no more frequently than 1 hour per unit every bi-weekly period.
 - (ii) if the growth of the Bella Bella distribution load exceeds 7% per year projected from the 31 March 1986 annual load, B.C. Hydro may purchase or supply from other sources the incremental load over the 7% normal growth.
- (b) the cost of electricity to B.C. Hydro shall be the following rate structure:

	<u>Rate</u>
(i) from that time power is first delivered to B.C. Hydro by CCPC to 31 December 1987	12.5¢/kW·hr
(ii) from 1 January 1988 to 31 December 1988	12.6¢/kW·hr
(iii) from 1 January 1989 to 31 December 1989	12.7¢/kW·hr
(iv) from 1 January 1990 to 31 December 1990	12.9¢/kW·hr
(v) from 1 January 1991 to 31 December 1996	13.0¢/kW·hr

The cost of electricity to B.C. Hydro during the period between the 121st and the 240th month of this agreement shall be determined by negotiation between the parties. If, 3 months prior to the 121st month of the term of this agreement a new price has not been agreed upon for the subsequent period the issue shall be referred to the British Columbia Utilities Commission (BCUC) for determination. To the extent that the BCUC does not have or declines such jurisdiction the issue shall be referred to arbitration in accordance with the Arbitration Act.

BILLING AND PAYMENT OF ACCOUNTS

7. CCPC will for each month render its accounts to B.C. Hydro for electricity supplied under this agreement. Upon receipt thereof B.C. Hydro shall pay such accounts to CCPC in lawful money of Canada at Victoria, British Columbia. Any account remaining unpaid 21 days from the date of receipt thereof by B.C. Hydro shall be in arrears and CCPC

will, in addition to all other remedies charge interest on the monies owed in an amount of 1.75 percent per month or part thereof until the said account is paid.

METERING

8. (a) The point of metering the electricity supplied under this agreement shall be at a safe and suitable location in CCPC's substation as near as practical to the point of delivery;
- (b) Measurement, directly or indirectly, of kilowatt-hours or other factors or quantities shall be determined at the voltage at the point of delivery by CCPC by means of suitable metering equipment provided, installed and maintained by CCPC;
- (c) The Electricity Inspection Act of Canada and the regulations made thereunder shall govern the metering used under this agreement;
- (d) CCPC may test, calibrate, remove or change its metering equipment at any reasonable time and shall, whenever practical, advise B.C. Hydro in advance of its intention to do so. B.C. Hydro may have a representative present at any test or calibration;
- (e) Should CCPC's metering equipment fail to register correctly or for any reason meter readings be unobtainable, the amount of electricity supplied will be estimated by CCPC from the best information available based on B.C. Hydro's operations during the month in question and such estimate, except in the case of manifest error shall for billing purposes have the same force and effect as a true meter reading; and
- (f) CCPC will advise B.C. Hydro by letter before the beginning of each year of the time and dates which CCPC will read its meter. B.C. Hydro may have a representative present at any reading of the meter.

CCPC'S EQUIPMENT

9. CCPC will supply electricity to the point of delivery through suitable plant and equipment in accordance with good electric utility standards.

INTERRUPTING CAPACITY AND RELAY SETTINGS

10. (a) B.C. Hydro shall at all times be responsible for maintaining, testing and setting all protective devices for B.C. Hydro's electrical system;
- (b) CCPC shall provide to B.C. Hydro connections to CCPC's potential transformers, current transformers and neutral current transformers to enable B.C. Hydro to provide protection to its electrical plant and equipment at a level used by B.C. Hydro in its present operation;
- (c) CCPC further agrees to provide information on CCPC's generation and electrical plant to enable B.C. Hydro to apply appropriate settings to its protective relays;
- (d) CCPC agrees to provide a reclosure or circuit breaker having an interrupting capacity not less than the fault duty imposed on it by B.C. Hydro's system; and
- (e) CCPC further agrees to provide remote closing and tripping facilities to this circuit breaker or reclosure to B.C. Hydro.

CONSTRUCTION COSTS

11. It is the intent of the parties that CCPC will bear all costs of construction of the transmission line and the connecting infrastructure needed by CCPC to supply electrical energy to B.C. Hydro:
 - (a) CCPC will make available all materials, equipment, skilled workmen and engineering personnel necessary to accomplish this intent; and
 - (b) CCPC will pay those labour costs B.C. Hydro incurs under the following conditions:
 - (i) the work is directly related and necessary to the construction or wiring of electrical equipment in Bella Bella used to intertie CCPC electrical system to B.C. Hydro's electrical system;
 - (ii) CCPC has approved in advance the terms, conditions and amount of work; and
 - (iii) B.C. Hydro has adequately demonstrated that this work can only be performed by B.C. Hydro permanent employees for reasons of prior contractual arrangements.

- 5 -

OPERATIONAL COSTS

12. After inception of delivery of energy by CCPC to B.C. Hydro, each party shall be responsible for operating and maintaining their respective equipment except as outlined in (a) below:

- (a) B.C. Hydro employees shall be allowed to operate CCPC's intertie reclosure or circuit breaker to separate or energize the B.C. Hydro distribution system as operational conditions dictate.

LAND LEASE

13. B.C. Hydro agrees to negotiate a lease to CCPC for the nominal sum of ONE (\$1.00) DOLLAR lands owned by B.C. Hydro for the purpose of constructing a substation and transmission line to the point of delivery. Such lease shall be granted over any property needed therefor, and shall be of adequate size and shall be located in such area as is mutually agreed. The said lease shall be granted for the term of this agreement. CCPC shall bear the cost of any Property Taxes assessed with respect to the property leased to CCPC.

REMOVAL OF EQUIPMENT

14. Upon termination of this agreement, each party may remove at its own discretion and shall remove within 90 days of receipt of a written request by the other party all its plant and equipment from the other's lands and premises and for such purposes each party may at all reasonable times enter upon the lands and premises of the other party.

DAMAGE TO PROPERTY OR APPARATUS

15. CCPC and B.C. Hydro are each responsible for plant or equipment installed on its land or premises by the other in accordance with agreement but shall not be liable for damage thereto from a cause beyond its control.

TERMINATION OF AGREEMENT

16. If, for a period of 30 consecutive days after it has commenced delivery of electricity to B.C. Hydro, CCPC is unable to continue delivery of electricity, and it can be demonstrated that CCPC will be unable to resume delivery of electricity to B.C. Hydro in the future for reasons relating to its financial condition, this agreement may be terminated by B.C. Hydro on 7 days' notice.

EQUIPMENT FAILURE

17. CCPC will maintain its equipment in accordance with good utility standards. If equipment fails CCPC will proceed expeditiously to repair or replace that piece of equipment.

DISCONTINUANCE OF SUPPLY

18. (a) CCPC may without notice discontinue or curtail the supply to B.C. Hydro of electricity under this agreement for the purpose of safeguarding life or property. CCPC shall whenever practical give to B.C. Hydro reasonable notice of such discontinuation;
- (b) CCPC shall have the right to discontinue the supply of electricity for the purpose of performing maintenance, making repairs, renewals or replacements to the plant or equipment of CCPC and such discontinuation shall be arranged whenever possible to occur at a time least objectionable to B.C. Hydro and shall be of the shortest practical duration. CCPC shall, where practical, give B.C. Hydro reasonable notice of such discontinuation. Such notice shall not be subject to Clause 23 and may be given to B.C. Hydro in any way which in the circumstances is practical; and
- (c) CCPC shall not be liable for any loss, injury or damage caused by or arising out of the discontinuance by it of the supply of electricity to B.C. Hydro for any of the purposes aforesaid in this Clause 18 or for the failure to give any notice in accordance with this Clause.

INTERFERENCE

19. B.C. Hydro will operate the Bella Bella distribution system and accept new loads in the same manner as B.C. Hydro would if it operated the system using the B.C. Hydro diesel plant.

POWER FACTOR

20. (a) B.C. Hydro shall maintain the average power factor at the point of delivery at not less than 85 percent lagging or 95 percent leading; and
- (b) B.C. Hydro shall without undue delay adjust its system or its manner of operating the said system so as to achieve the power factor required under this agreement and if CCPC deems that there is undue delay in achieving the said power factor it may so notify B.C. Hydro and thereupon without restricting any

- 3 -

other rights of CCPC under this agreement will charge a penalty of 10 percent of each monthly bill in which the power factor falls below that limit imposed.

LIABILITY

21. CCPC will endeavour to provide a regular and uninterrupted supply of electricity but shall not be liable for any loss, injury, damage or expense caused by or resulting from any interruption, termination, failure or defect in the supply of electricity which CCPC can demonstrate was a result of force majeure as defined herein.

"Force majeure" is defined as: fire, explosion, flood, tempest, or act of God, sabotage or acts of the Queen's enemies of such nature as to force CCPC to terminate, suspend or curtail the supply of electricity to B.C. Hydro.

Without limiting any other rights or remedies B.C. Hydro may have, in the event that an interruption, termination, failure or defect in the supply of electricity cannot be demonstrated by CCPC to be a result of force majeure then CCPC shall bear the differential costs as defined herein reasonably incurred by B.C. Hydro to supplement and/or substitute for the loss in supply of electricity by CCPC.

The differential costs are defined as those additional costs attributable to operating and manning the B.C. Hydro Shearwater Diesel Plant during times of power interruptions which would be over and above the costs of operating the B.C. Hydro Shearwater Diesel Plant in standby mode.

RIGHTS AND REMEDIES

22. No failure by CCPC or B.C. Hydro at any time or from time to time to enforce or require a strict observance and performance of any of the terms or conditions of this agreement shall constitute a waiver of such terms and conditions or affect or impair such terms or conditions or the right of CCPC or B.C. Hydro at any time to enforce such terms or conditions or to avail itself of any remedy it may have for any breach or breaches thereof. The exercise by B.C. Hydro or CCPC of any remedy provided in this agreement shall not prevent or stop B.C. Hydro or CCPC respectively from pursuing any other remedy it may have and all the respective rights and remedies of B.C. Hydro and CCPC may be exercised and continued concurrently or separately.

NOTICES

23. Any notice required to be given to CCPC under this agreement shall be written and shall be well and sufficiently given if mailed by registered mail or hand delivered to an officer of CCPC addressed as follows:

Central Coast Power Corporation
4594 Montford Crescent
Victoria, B.C.
V8N 3W5

and any notice required to be given to B.C. Hydro shall be written and shall be well and sufficiently given if mailed by registered mail as follows:

British Columbia Hydro and Power Authority
970 Burrard Street
P.O. Box 8910
Vancouver, B.C.
V6B 4X3

and any notice shall be deemed to have been given when delivered or, if mailed, on the third business day following the date of mailing.

ASSIGNMENT

24. Neither this agreement nor any rights hereunder shall be assigned by B.C. Hydro without the consent in writing of CCPC nor by CCPC without the consent in writing of B.C. Hydro.

25. Wherever the singular is used in this agreement the same shall be deemed to include the plural.

MARGINAL REFERENCES

26. The headings and marginal references in this agreement are inserted for convenience of reference only and not as an aid to construction.

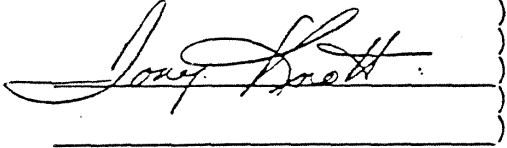
27. In this agreement any reference to revenue, rate, minimum guarantee or payment for electricity shall be considered as exclusive of sales tax. CCPC shall bear the cost for all taxes associated with the generating and/or delivery of power to B.C. Hydro. B.C. Hydro shall bear the costs of any taxes associated with the purchase of power by B.C. Hydro.

SUCCESSORS AND ASSIGNS

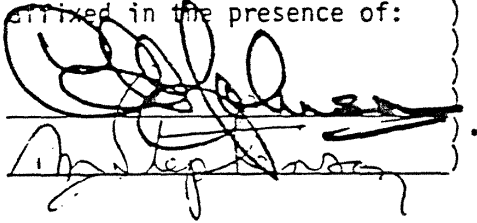
28. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have caused this agreement to be executed as of the day and year first above written.

The Common Seal of CENTRAL
COAST POWER CORPORATION
was hereunto affixed in
the presence of:

A handwritten signature in cursive script, appearing to read "Doug Smith", is written over a horizontal line. To the right of the signature is a vertical line of closing parentheses ")", indicating the end of a section.

The Common Seal of BRITISH
COLUMBIA HYDRO AND POWER
AUTHORITY was hereunto
affixed in the presence of:

A handwritten signature in cursive script, appearing to read "Doug Smith", is written over a horizontal line. To the right of the signature is a vertical line of closing parentheses ")", indicating the end of a section.

SKETCH OF PROPOSED STATUTORY RIGHT OF WAY
OVER PART OF LOT _____ OF DISTRICT LOTS 31,
104 AND _____ RANGE 3 COAST DISTRICT

SCALE 1:1250

NOTES: DIMENSIONS TO BE DETERMINED
AT TIME OF FIELD SURVEY

LINK RIVER

DL 31

DL BOUNDARY

TOG TO INCLUDE CONNECTIONS
ON NO 2 PENSTOCK AND
20" ϕ WATER LINE

3' GRASS LANE

POWER-HOUSE

LOT _____
(CCPC PROPERTY)

DL BOUNDARY

NO 2 PENSTOCK

NO 1 PENSTOCK

PROPOSED

RIGHT OF WAY

GRINDER
ROOM

15.0

LINK
LAKE

D.L. 31

STATION AND ASSOCIATES
10000 BURBANK
10000 BURBANK AVE

APPENDIX II

THIS AGREEMENT dated for reference the 27th day of March, 1986.

BETWEEN:

OCEAN FALLS CORPORATION, a body corporate incorporated under the laws of the Province of British Columbia and having a place of business at 2659 Douglas Street, Victoria, British Columbia

(hereinafter called the "Vendor") ..

OF THE FIRST PART

AND:

CENTRAL COAST POWER CORPORATION (Inc. No.288016) a body corporate duly organized pursuant to the laws of the Province of British Columbia, having its registered office at 1800 Four Hundred Burrard, Vancouver, British Columbia, V6C 3A6

(hereinafter called the "Purchaser")

OF THE SECOND PART

WHEREAS The Vendor has agreed to sell and the Purchaser has agreed to purchase certain lands and chattels owned by the Vendor in Ocean Falls B.C. in accordance with the terms and conditions herein contained.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and other good and valuable consideration, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.01 In this agreement:

"Chattels" means the goods, equipment and other chattels described in Schedule "G";

"Closing Documents" means the documents referred to in Article VII;

- 1 -

"Completion Date" means the 30th day following satisfaction or waiver of the Conditions Precedent set out in section 5.01;

"Conditions Precedent" means the conditions precedent set out in sections 5.01;

"Land" means the parcel of land shown outlined by a bold line on the proposed plan attached as Schedule "A";

"Option" means an option to purchase the lands in the form set out in Schedule "B";

"Purchase Price" means the sum of \$1.00;

"Statutory Right of Way" means a Statutory Right-of-Way pursuant to section 214 of the Land Title Act in favour of the Vendor and in accordance with the specifics set out in Schedule "C";

"215 Covenant" means the covenant respecting the use of the Land pursuant to section 215 of the Land Title Act whereby the Purchaser is obligated to maintain and repair the facility in accordance with the specifics set out in Schedule "D";

"Transfer" means a transfer of an estate in fee simple executed by the Vendor;

"Water Licence" means the water licence held by the Vendor under number 43165.

ARTICLE II REPRESENTATIONS OF THE PURCHASER

2.01 The Purchaser warrants and represents to the Vendor that:

- (a) it is not in breach of any statute, regulation, or by-law applicable to the Purchaser or its operations;
- (b) the making of this agreement and the completion of the transactions contemplated hereby and the performance of and compliance with the terms of this agreement do not conflict with or result in a breach of, or the acceleration of any indebtedness under, any terms, provisions, or conditions of, or constitute a default under, the constituting documents of the Purchaser or any indenture, mortgage, deed of trust, agreement, lease, franchise, certificate, consent, permit, license, authority or other instrument to which the Purchaser is a party or is bound or any judgment, decree, order, rule or regulation of any court or administrative body by which the Purchaser is bound or, to the knowledge of the Purchaser any statute or regulation applicable to the Purchaser;
- (c) it now holds or will take all necessary steps to obtain when legally required to do so, all permits, licenses, consents and authorities issued by any federal, provincial, regional or municipal government or agency or any of them that are necessary in connection with its business operations;
- (d) it is not a party to or threatened with any litigation and has no knowledge of any claims against it that would materially affect its undertaking;
- (e) it is fully qualified to develop and operate a hydro electric power generating facility on the Land;
- (f) it has fully informed itself of all applicable laws and regulations concerning the development and use of the Land for a hydro electric power generating facility and agrees to comply therewith; and

- (g) the Purchaser, its officers and directors, have no knowledge of any untrue or inaccurate representation or assurance, whether verbal or written, given by the Purchaser, its directors or officers to the Vendor, its servants or agents in connection with the Purchaser's proposals to develop the Land.

2.02 The Purchaser acknowledges and agrees that:

- (a) it has inspected the Land and Chattels;
- (b) it is satisfied that the Land and Chattels are suitable for its business purposes;
- (c) it has made its own investigation of the economic feasibility of the development of the Land as aforesaid;
- (d) there are no representations, warranties, collateral agreements or conditions affecting this agreement or relating directly or indirectly to the Land or Chattels or the use of the Land or of other lands adjacent to the Land except as expressed herein and that this agreement constitutes the entire agreement between the parties; and
- (e) without restricting the generality of the section 2.02(d), the Vendor has not warranted and does not warrant that the Land or Chattels are suitable for the purpose or purposes for which the Purchaser may intend to use them.

2.03 The Purchaser hereby covenants and agrees with the Vendor that it shall not mortgage, charge, encumber, assign or otherwise dispose of all or substantially all of the Land or Chattels unless:

- (a) the mortgagee, assignee or transferee first agrees with the Vendor to assume all of the Purchaser's obligations under this agreement and, without limiting the generality of the foregoing, agrees to construct, operate and maintain the hydro-electric generating facility in accordance with this agreement and all schedules hereto; AND
- (b) the Purchaser has first submitted the mortgage, assignment or transfer documents to the Vendor for the Vendor's written approval as to the assumption by the mortgagee, assignee or transferee.

ARTICLE III

SALE OF THE LAND AND CHATTELS

- 3.01 The Vendor hereby agrees to sell and the Purchaser hereby agrees to purchase all of the Vendor's right, title and interest:
- (a) in fee simple in and to the Land; and
 - (b) in the Chattels,
- for the Purchase Price on the terms and conditions herein set forth.
- 3.02 The Land shall be conveyed and the Chattels transferred by the Vendor to the Purchaser free and clear of all liens, charges and encumbrances save and except the Statutory Right-of-Way, the 215 Covenant and the Option.
- 3.03 The purchase and sale of the Land and Chattels shall be completed and possession yielded to the Purchaser on the Completion Date provided however, that if the Victoria Land Title Office is closed on such date then completion and possession shall be extended to the next date such office is open.
- 3.04 The parties agree that no adjustments will be made to the Purchase Price for the Land or Chattels on account of taxes or any other matter.

ARTICLE IV

PURCHASE PRICE

4.01 The Purchase Price for the Land and Chattels shall be paid by the Purchaser to the Vendor on the Completion Date.

ARTICLE V

CONDITIONS PRECEDENT

5.01 The obligation of the parties to complete the purchase and sale of the Land and Chattels is subject to the following Conditions Precedent, namely that on or before May 1, 1986:

- (a) A certificate of indefeasible title will have been issued by the Victoria Land Title Office showing the Vendor as registered owner in fee-simple of the Land, free and clear of all liens, charges and encumbrances;
- (b) The Purchaser will have received from Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Lands, Parks and Housing a licence of occupation authorizing the construction of a Hydro Transmission Line from the Land to Bella Bella;
- (c) The Water Licence held by the Purchaser will be amended by the Comptroller of Water Rights in accordance with the specifics set out in Schedule "E"; and
- (d) The British Columbia Utilities Commission will have:
 - (i) approved of the transfer of the Land and Chattels proposed by this agreement; AND
 - (ii) issued an order, with the approval of the Lieutenant Governor in Council, exempting the Purchaser from provisions of the Utilities Commission Act on the terms set out in schedule "F" and other terms satisfactory to the Vendor in its sole discretion.

5.02 If any of the Conditions Precedent described in section 5.01 are agreed in writing by the parties hereto to be unnecessary for the completion of the transactions hereby contemplated and the lawful carrying on, by the Purchaser, of the business of a hydro electric generating facility on the Land, the parties hereto shall waive, or be deemed to have waived, the fulfillment of that Condition Precedent agreed to be unnecessary.

-
- 5.03 The Purchaser and the Vendor shall use all reasonable efforts to ensure that the Conditions Precedent set out in section 5.01 are satisfied.
- 5.04 In the event that the Conditions Precedent set out in section 5.01 are neither satisfied nor waived on or before the date specified in that section this agreement shall terminate and thereafter neither party shall be under any further obligation under this agreement.

ARTICLE VI

SURVEY

- 6.01 The Vendor shall bear all costs to prepare and deposit at the Victoria Land Title Office the requisite plan to establish the boundaries of the Land.

ARTICLE VII

CLOSING DOCUMENTS

- 7.01 Not later than 15 days prior to the Completion Date the Vendor, at its expense will cause the 215 Covenant, the Option and such other agreements and documents as its solicitors may recommend to conclude the transactions contemplated by this agreement to be prepared and delivered to the Purchaser for execution.
- 7.02 Not later than 10 days prior to the Completion Date the Purchaser at its expense will execute and deliver the 215 Covenant and the Option to the Vendor's solicitor in trust and the other agreements and documents referred to in section 7.01.
- 7.03 Not later than 5 days prior to the Completion Date, the Vendor at its expense will execute and deliver the Transfer and a bill of sale absolute in respect of the Chattels to the Purchaser's solicitor in trust.

ARTICLE VIII

COMPLETION

- 8.01 On the Completion Date, the parties or their agents shall meet at the Victoria Land Title Office and conduct a pre-registration index search of the Land, and, upon determining that title to the Land is registered in the name of the Vendor free and clear of all liens, charges and encumbrances save and except the Statutory Right-of-Way, the Purchaser or its agent shall forthwith make application to register the Transfer concurrently with an application by the Vendor or its agent to register the Option and the 215 Covenant..
- 8.02 The Purchaser will cause a post-registration search to be conducted of the Land on the Completion Date and upon confirming that it will be registered as the owner in fee-simple of the Land, free and clear of all liens, charges and encumbrances, except the Option, the 215 Covenant and the Statutory Right-of-Way, it will cause its solicitors to deliver to the Vendor forthwith, at its expense a cheque payable to the Minister of Finance for the Purchase Price.

ARTICLE IX

MISCELLANEOUS

- 9.01 No term, condition, covenant or other provision herein shall be considered to have been waived by the Vendor unless such waiver is expressed in writing by the Vendor. The waiver by the Vendor of any breach by the Purchaser of any term, condition, covenant or other provision herein shall not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision and the consent or approval of the Vendor to any act by the Purchaser requiring the consent or approval of the Vendor shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the Purchaser.
- 9.02 No remedy conferred upon or reserved to the Vendor is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- 9.03 The Purchaser shall not directly or indirectly assign, transfer or dispose of its rights under this agreement in whole or in part without the prior written consent of the Vendor, such consent not to be unreasonably withheld.
- 9.04 The terms and provisions of this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
- 9.05 This agreement creates contractual rights only between the parties, does not create any equitable or legal interest in the Land and shall not be registered by the Purchaser at the Victoria Land Title Office at any time.
- 9.06 The Vendor and the Purchaser shall perform such further acts and execute such further documents as may reasonably be required to give effect to the content of this agreement.
- 9.07 Time shall be of the essence of this agreement.
- 9.08 The Option shall be released and discharged from the Land by the Vendor upon the commencement by the Purchaser of the delivery of electrical power from the Land to Bella Bella, and written confirmation to the Vendor from British Columbia Hydro and Power Authority to that effect shall be conclusive evidence of that fact.

ARTICLE X

INTERPRETATION

- 10.01 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 10.02 The captions and headings contained in this agreement are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the provisions hereof.
- 10.03 This agreement shall be interpreted according to the laws of the Province of British Columbia.
- 10.04 If any section of this agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.
- 10.05 This agreement constitutes the entire agreement between the parties and may not be modified except as herein explicitly provided, or except by subsequent agreement in writing.

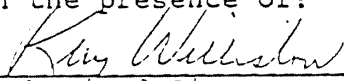
ARTICLE XI

NOTICE

- 11.01 Subject to section 11.03, any written notice to be served upon or given to either the Vendor or the Purchaser pursuant to this agreement shall be sufficiently served and given if delivered or mailed, prepaid and registered, in the case of the Vendor, addressed to it at 2659 Douglas Street, Victoria, B.C. and in the case of the Purchaser, addressed to it at 4594 Montford Crescent, Victoria, B.C., V8N 3W5 and if the notice is mailed the date of receipt shall be deemed to be the 4th day after the date of mailing. In the event of interruption of postal services, notices shall only be effective if delivered.
- 11.02 Either party may, by notice in writing to the other, specify another address for service of notices under this agreement, and where another address is specified under this section, notices shall be mailed to that address in accordance with this Article.
- 11.03 Notwithstanding section 11.01, delivery of the Closing Documents and delivery of all installments of the Purchase Price shall be effected only by hand or prepaid courier.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the dates indicated below.

The Common Seal of OCEAN FALLS CORPORATION was hereunto affixed in the presence of:

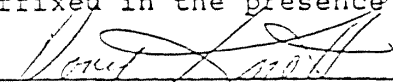


Authorized Signatory


c/s

Authorized Signatory

The Common Seal of CENTRAL COAST POWER CORPORATION was hereunto affixed in the presence of:



Authorized Signatory



Authorized Signatory

c/s

LIST OF SCHEDULES

- "A".....Parcel of Land on Proposed
plan"
- "B".....Option to Purchase
- "C".....Statutory Right-of-Way
- "D".....215 Covenant
- "E".....Water Licence
- "F".....Order
- "G".....Chattels

SCHEDULE "B"
Form 17
(Sections 151, 152 (1), 215)
APPLICATION

Charge: Option to Purchase True Value: Nil

Herewith Fees of \$ _____

Address of person entitled to be registered as owner, if
different than shown in instrument _____

Full name, address, telephone number of person presenting
application: _____

(Signature of applicant, or
solicitor or authorized agent)

THIS AGREEMENT dated the ____ day of _____, 19__.

B E T W E E N:

CENTRAL COAST POWER CORPORATION (Inc.
No. 288016) a body corporate duly organized
pursuant to the laws of the Province of
British Columbia, having its registered
office at 1800 - 400 Burrard Street,
Vancouver, British Columbia, V6C 3A6

(hereinafter called the "Vendor")

OF THE FIRST PART

A N D:

OCEAN FALLS CORPORATION, a body corporate
incorporated under the laws of the Province
of British Columbia and having a place of
business at 2659 Douglas Street,
Victoria, British Columbia

(hereinafter called the "Purchaser")

OF THE SECOND PART

WHEREAS the Vendor is the registered owner of those lands
situated in the Town of Ocean Falls and in the Province of
British Columbia and more particularly known and described as:

(hereinafter called the "Lands").

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of ONE (\$1.00) DOLLAR paid by the Purchaser to the Vendor (the receipt and sufficiency of which is by the Vendor hereby acknowledged) the parties hereto covenant and agree as follows:

1. The Vendor hereby grants to the Purchaser the full and exclusive first right and option, irrevocable within the term limited hereby, to purchase the Lands, free and clear of all encumbrances, claims, liens, charges, save and except reservations in the original grant from the Crown, a Statutory Right-of-Way and a Restrictive Covenant both of even date and in favour of the Purchaser, for the sum of ONE (\$1.00) DOLLAR (hereinafter called the "Purchase Price").
2. The option hereby granted may be exercised at any time on or after September 1, 1987, provided that the Completion Date shall not, unless otherwise agreed by the parties, occur prior to September 1, 1988 and provided further that, notwithstanding that the Purchaser may have exercised the option hereby granted in accordance with section 3 hereof, if electrical power is delivered from the Lands to Bella Bella prior to September 1, 1988 the option hereby granted and any agreement for the purchase and sale of the Lands arising out of the exercise thereof, shall be void and of no effect; and the option hereby granted may not be exercised after the earlier of:
 - (a) the commencement by the Vendor of the delivery of electrical power from the Lands to Bella Bella, and written confirmation to the Purchaser from B.C. Hydro and Power Authority to that effect shall be conclusive evidence of that fact; or
 - (b) 12:00 o'clock noon on April 1, 1991.
3. This option may be exercised by notice in writing delivered or mailed by prepaid double registered mail to the Vendor at the address shown on the certificate of title for the Lands.

4. In the event this option is exercised, the date for completion of the purchase (herein called the "Completion Date") shall be, subject to section 2, thirty (30) days following the receipt by the Vendor of the notice referred to in paragraph 3 hereof and the Purchaser shall be entitled to possession of the Lands on the Completion Date.
5. In the event this option is exercised, a binding agreement for the purchase and sale of the Lands shall be constituted on the terms herein contained.
6. In the event this option is exercised, the Purchase Price shall be adjusted so that the Vendor shall pay all taxes, water rates and assessments levied against the Lands up to 12:00 o'clock noon on the Completion Date, and the Purchaser shall pay all taxes, water rates and assessments levied against the Lands, after 12:00 o'clock noon on the Completion Date.
7. The Purchase Price shall be paid in full on the Completion Date.
8. The Vendor covenants and agrees that on the Completion Date the Vendor shall:
 - (a) convey the Lands to the Purchaser free and clear of all liens, charges and encumbrances save and except the reservation in the original grant from the Crown, a Statutory Right-of-Way and a Restrictive Covenant both of even date and in favour of the Purchaser;
 - (b) execute and deliver to the Purchaser in registrable form all documents necessary and incidental to transfer the title of the Lands to the Purchaser.
9. The Vendor covenants and agrees that during and throughout the term of this option, the Vendor shall:
 - (a) pay all taxes, rates, and assessments, general property, school, special, ordinary, extraordinary of every nature and kind that may be charged or assessed against the Lands;
 - (b) not grant to any person or persons, company or companies an option to purchase the Lands.
10. The Vendor covenants and agrees to do such things and execute and deliver such further documents and assurances that may be necessary to effect registration of this option in the Victoria Land Title Office and to carry out the transactions contemplated hereby.

11. If this option is exercised, the necessary documents to transfer the title of the Lands to the Purchaser shall be prepared by the solicitor for and at the cost of the Purchaser.
12. Any notice, or written confirmation given by mail shall be by prepaid double registered mail, and pursuant to the terms of this Agreement shall be deemed to have been received by the intended recipient on the third business day following the mailing thereof.
13. Notwithstanding paragraphs 3 or 12 hereof; it is understood and agreed that in the event postal services are disrupted by labour dispute, all notices and written confirmations, provided for herein, shall be deemed to have been given when personally delivered to the intended recipient.
14. It is understood and agreed that the Lands shall remain at the risk of the Vendor until 12:00 o'clock noon on the Completion Date and that after 12:00 o'clock noon on the Completion Date, the Lands shall be at the risk of the Purchaser.
15. It is understood and agreed that time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the date and year first above written.

The common seal of CENTRAL)
COAST POWER CORPORATION)
was hereunto affixed in the)
presence of:)

Authorized Signatory)

c/s

Authorized Signatory)

The common seal of OCEAN)
FALLS CORPORATION was)
hereunto affixed in the)
presence of:)

Authorized Signatory)

c/s

Authorized Signatory)

LAND TITLE ACT

FORM 6

Section 46

PROOF OF EXECUTION BY CORPORATION

I CERTIFY that on the _____ day of _____, 1986,
at _____, in the Province of British Columbia,
_____ personally known to me,
appeared before me and acknowledged to me that he/she is the
authorized signatory of CENTRAL COAST POWER CORPORATION and
that he/she is the person who subscribed his/her name and
affixed the seal of the corporation to the instrument, and
that he/she was authorized to subscribe his/her name and
affix the seal to it.

IN TESTIMONY of which I set my hand and seal of office
at _____, in the Province of British
Columbia this _____ day of _____, 1986.

A Commissioner for taking
Affidavits in and for the
Province of British Columbia

LAND TITLE ACT

FORM 6

Section 46

PROOF OF EXECUTION BY CORPORATION

I CERTIFY that on the ____ day of _____, 1986,
at _____, in the Province of British Columbia,
_____, personally known to me,
appeared before me and acknowledged to me that he/she is the
authorized signatory of OCEAN FALLS CORPORATION and that
he/she is the person who subscribed his/her name and affixed
the seal of the corporation to the instrument, and that
he/she was authorized to subscribe his/her name and affix
the seal to it.

IN TESTIMONY of which I set my hand and seal of office
at _____, in the Province of British
Columbia this ____ day of _____, 1986.

A Commissioner for taking
Affidavits in and for the
Province of British Columbia

SCHEDULE "C"
LAND TITLE ACT
Form 17
(Sections 151, 152 (1), 220)
APPLICATION

NATURE OF INTEREST	True Value:
Charge	
Statutory Right-of-Way	
(Nature of Charge)	
Herewith Fees of \$	
Address of person entitled to be registered as owner, if different than shown in instrument	
Full Name, address, telephone number of persons presenting application	

THE GRANT OF THE ATTACHED STATUTORY RIGHT-OF-WAY IS NECESSARY FOR THE OPERATION AND MAINTENANCE OF THE GRANTEE'S UNDERTAKING.

Signature of applicant,
solicitor or authorized agent)

THIS INDENTURE made and entered into this day of ,
198_.

B E T W E E N:

OCEAN FALLS CORPORATION, a body corporate
incorporated under the laws of the Province
of British Columbia and having a place of
business at 2659 Douglas Street
Victoria, British Columbia

(hereinafter called the "Grantor")

OF THE FIRST PART

A N D:

OCEAN FALLS CORPORATION, a body corporate
incorporated under the laws of the Province
of British Columbia and having a place of
business at 2659 Douglas Street
Victoria, British Columbia

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS:

A. The Grantor is the registered owner in fee simple of all and singular that certain parcel or tract of land and premises situate in the _____, in the Province of British Columbia, and more particularly known and described as _____ (hereinafter called the "Lands");

B. It is necessary for the operation and maintenance of the Grantee's undertaking that the Grantor grants to the Grantee this easement for a right-of-way over a portion of the Lands.

NOW THEREFORE THIS INDENTURE WITNESSETH AS FOLLOWS:

1. The Grantor, as owner of the Lands, in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, now paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, hereby grants to the Grantee the exclusive right at all times to:
 - (a) enter over, on, under and through, that portion of the Lands shown outlined in red on Plan Number registered in the Victoria Land Title Office under number _____, a copy of which is attached to this agreement as Attachment I (hereinafter called the "Statutory Right-of-Way") and to use the Statutory Right-of-Way for the purposes of utilizing and operating all existing penstocks and pipelines and related equipment thereon for the transmission of water and constructing such further improvements as the Grantee may require to facilitate the transmission of water;
 - (b) do all acts which in the opinion of the Grantee are necessary and incidental to the use of the Statutory Right-of-Way for the purposes aforesaid,

PROVIDED always that the Grantee, its successors, assigns and licensees, shall not and shall not permit any use of the Statutory Right-of-Way nor any improvements, repairs or maintenance of the Statutory Right-of-Way or any fixtures or chattels deposited or used thereon by the Grantee, its successors, assigns or licensees, to materially interfere with or obstruct:

- (a) the ordinary operation of the hydro electric dam, transmission facility and related equipment located on the Lands, or

(b) the use of the grinder room,

without the prior consent of the registered owner of the Lands from time to time.

2. The Grantor covenants and agrees with the Grantee:

- (a) not to do or permit to be done any act or thing which in the opinion of the Grantee might interfere with the use of the Statutory Right-of-Way as aforesaid or obstruct access to the Statutory Right-of-Way in any way;
- (b) to do and execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Grantee of the rights hereby granted; and
- (c) to permit the Grantee to peaceably hold and enjoy the rights hereby granted; and
- (d) to at all times maintain and repair, at the sole expense of the Grantee, any and all improvements now existing within the Statutory Right-of-Way, and to repair and maintain the same according to notice from the Grantee.

3. It is mutually understood, and agreed and declared by and between the parties hereto:

- (a) this agreement shall be interpreted according to the laws of the Province of British Columbia;
- (b) the rights hereby granted are and shall be of the same force and effect to all intents and purposes as a covenant running with the lands and this instrument including all the covenants and conditions herein contained shall extend to and be binding upon and enure to the benefit of the successors and assigns of the parties hereto respectively;
- (c) wherever the singular or masculine is used in this agreement, the same shall be deemed to include the plural or the feminine or body politic or corporate as the context so requires or the parties so require;
- (d) that a reference to each party hereto shall be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents and officers of such parties wherever the context so requires or the parties so require.

- (e) if any section of this agreement or any part of a section is found to be illegal or unenforceable, that part of section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law;
- (f) the Grantor shall perform such further acts and execute such further documents as may reasonably be required to give effect to the content of this agreement; and
- (g) the Grantee may, in its sole discretion, and without the prior consent or approval of the Grantor, grant licences to third parties of its choosing to utilize all or a part of the Grantee's rights hereunder.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

The Corporate Seal of the)
OCEAN FALLS CORPORATION WAS)
hereunto affixed in the)
presence of:)

_____)
Authorized Signatory)

c/s

_____)
Authorized Signatory)

The Corporate Seal of the)
OCEAN FALLS CORPORATION was)
hereunto affixed in the)
presence of:)

_____)
Authorized Signatory)

c/s

_____)
Authorized Signatory)

DEPARTMENT OF LANDS AND HOUSING

File No. 2265201

Date 24 February, 1986

WATER ACT
(Section 15)

Application for Change of Works

I/We, Ocean Falls Corporation, of P.O. Box 730, Ocean Falls,
British Columbia, V0T 1P0
hereby apply to the Comptroller of Water Rights for authority to alter or add to the works authorized under
Conditional/Final Licence No. 43165, Link River (Stream), as follows:—

(a) The works (pipe-lines, ditches, etc.) to be abandoned are:—
no works to be abandoned

(b) The new works to be constructed are:—
no works to be constructed but ammend licence to change the maximum
quantity of water which may be diverted from 2,120 cubic feet per second
to 168 cubic feet per second.

(c) The proposed new works will cross or otherwise affect the following lands:—

Legal Description	Length	Breadth	Kind of Works	Owner's Name
a powerhouse site on Lot 31, Range 3, Coast District.			diversion structure, penstocks, pipe, and powerhouse.	Ocean Falls Corporation

(d) A copy of this application has been served on each of the following owners of land touched or
crossed by the proposed works:—

Province of British Columbia,
Ministry of Lands, Parks and Housing.
Ocean Falls Corporation Licensee.

NOTE.—A sketch must accompany the application showing the course of the stream, the works to be abandoned, the
proposed new works, and the lands affected by the proposed change.

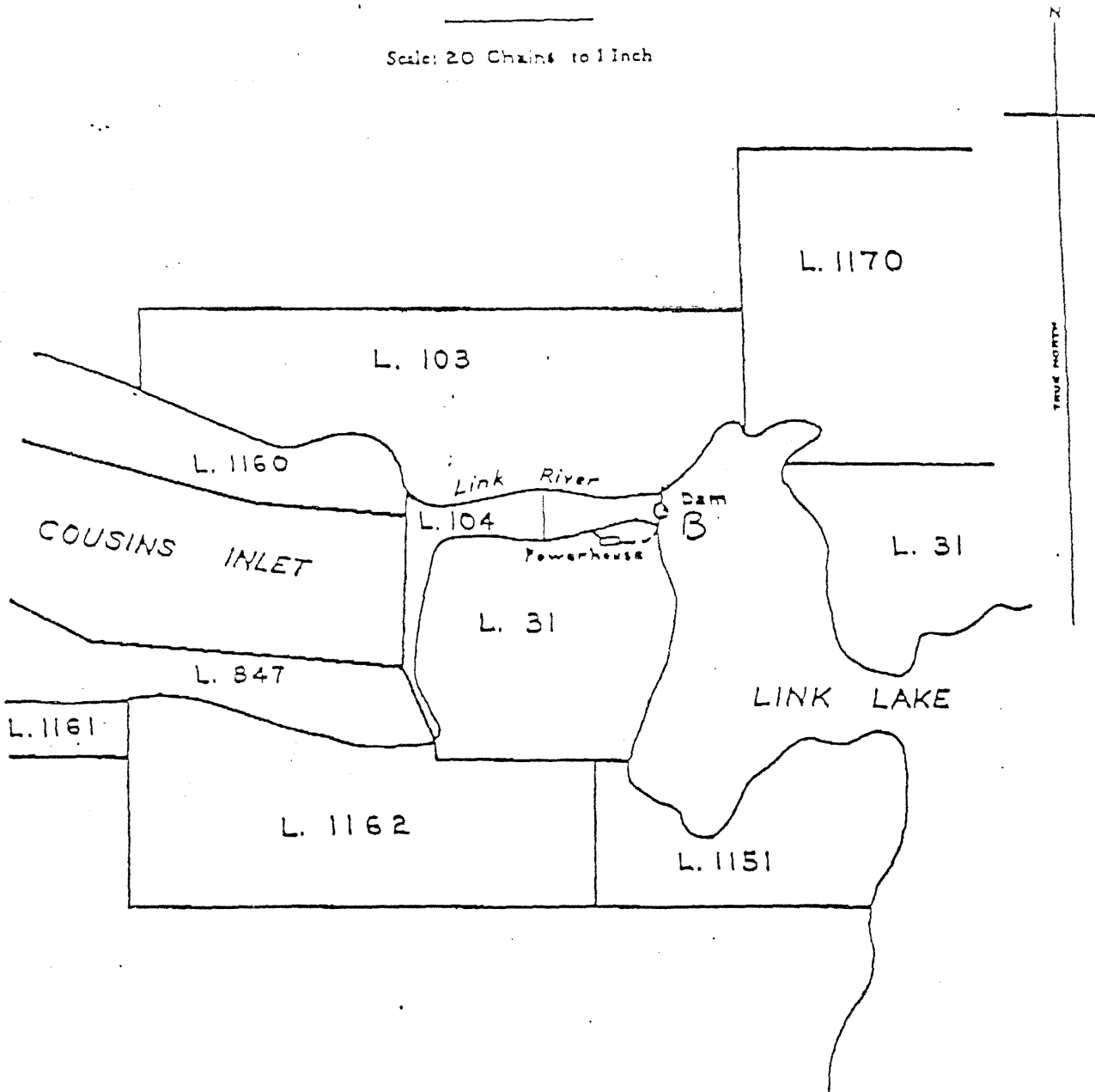
The fee for amendment of a licence is \$10.

W.R.D. 3- c


93-002

~~FRANCIS WATER DISTRICT~~
RANGE 3, COAST DISTRICT

Scale: 20 Chains to 1 Inch



LEGEND

Point of Diversion 
Map 93D/SW (2) 93D-032
Dams & Penstocks ———

Signature 

Date 1964 Sept 1976
F.L. 43105 for F.L. 9537 in pt.
File 0265001

BELLA COOLA Coast Precinct
For Storage see F.L. 43100

LAND TITLE ACT

FORM 6

Section 46

PROOF OF EXECUTION BY CORPORATION

I CERTIFY that on the _____ day of _____, 1986,
at _____, in the Province of British Columbia,
_____ personally known to me,
appeared before me and acknowledged to me that he/she is the
authorized signatory of OCEAN FALLS CORPORATION and that
he/she is the person who subscribed his/her name and affixed
the seal of the corporation to the instrument, and that
he/she was authorized to subscribe his/her name and affix
the seal to it.

IN TESTIMONY of which I set my hand and seal of office
at _____, in the Province of British
Columbia this _____ day of _____, 1986.

A Commissioner for taking
Affidavits in and for the
Province of British Columbia

SCHEDULE "D"
Form 17
(Sections 151, 152 (1), 215)
APPLICATION

Charge: Section 215 Covenant True Value: Nil

Herewith Fees of \$

Address of person entitled to be registered as owner, if different than shown in instrument

Full name, address, telephone number of person presenting application:

(Signature of applicant, or solicitor or authorized agent)

Section 215 Covenant
THIS AGREEMENT made this day of , 19 .

B E T W E E N:

CENTRAL COAST POWER CORPORATION (Inc.
No. 288016) a body corporate duly organized
pursuant to the laws of the Province of
British Columbia, having its registered
office at 1800 - 400 Burrard Street,
Vancouver, British Columbia, V6C 3A6

(hereinafter called the "Grantor")

OF THE FIRST PART

A N D:

OCEAN FALLS CORPORATION, a body corporate
incorporated under the laws of the Province
of British Columbia and having a place of
business at 2659 Douglas Street,
Victoria, British Columbia

(hereinafter called the "Grantee")

OF THE SECOND PART

WITNESSES THAT WHEREAS:

A. The Grantor is the registered owner of the Land, as
hereinafter defined;

- 3.03 This agreement shall be interpreted according to the laws of the Province of British Columbia.
- 3.04 Where there is a reference to an enactment of the Province of British Columbia in this agreement, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
- 3.05 If any section of this agreement or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.
- 3.06 This agreement and all the covenants and agreements herein shall be registered as a charge against the Land pursuant to section 215 of the Land Title Act.

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

The Corporate Seal of the)
CENTRAL COAST POWER CORPORATION)
was affixed in the presence of:)

)

Authorized Signatory)

c/s

)

Authorized Signatory)

)
The Corporate Seal of the)
OCEAN FALLS CORPORATION was)
hereunto affixed in the)
presence of:)

)

Authorized Signatory)

c/s

)

Authorized Signatory)

-
- B. The Grantor has agreed to enter into a covenant with the Grantee concerning the use of the Land pursuant to section 215 of the Land Title Act.
- C. The Grantee, as a condition of transferring the Land to the Grantor for nominal consideration, requested the Grantor to enter into the covenants and agreements hereinafter contained.

NOW THEREFORE in consideration of the sum of ONE DOLLAR (\$1.00) now paid by the Grantee to the Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Grantor, the parties agree as follows:

ARTICLE I DEFINITIONS

- 1.01 In this agreement "Land" means the lands described in Schedule "A" of this agreement.

ARTICLE II GRANTOR'S COVENANTS

- 2.01 The Grantor hereby covenants and agrees with the Grantee to use the Land solely for the purposes of operating a hydro electric dam and facility, water transmission facility and related equipment and that it shall at all times and at the Grantor's sole expense maintain and repair the improvements existing on the Land as at the date of this agreement, and other improvements constructed or installed by the Grantor in a good workmanlike manner.
- 2.02 The Grantor further covenants and agrees with the Grantee to indemnify and save harmless the Grantee from all losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of any breach, violation or non-performance of any term or covenant of this agreement.

ARTICLE III MISCELLANEOUS

- 3.01 The terms and provisions of this agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors, transferees and assigns.
- 3.02 In this agreement, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.

SCHEDULE "F"

Terms to be incorporated into
prepared exemption order for
Central Coast Power Corporation (the "Company")

1. The Company shall fully abide by and comply with the terms of the agreement entered into between it and British Columbia Hydro and Power Authority ("B.C. Hydro") dated February 19th, 1986.
2. The Company shall supply hydro-electric power to all customers wishing service in Ocean Falls and Martin Valley as follows:
 - (a) Residential Services

Residential hydro-electric power will be supplied at the B.C. Hydro rate for Rate Zone 11, schedules 1107, 1117, 1127, 1132 and 1134, as amended from time to time.
 - (b) Street Lighting

Hydro-electric service for streetlighting shall be provided to the local improvement district at rates not to exceed B.C. Hydro rate schedule 1701, as amended from time to time.
 - (c) Industrial

Industrial customers are to be charged rates not to exceed 20 mills per kilowatt hour for the first five years of the customer operation. In the succeeding years, the price increase for hydro-electric power shall be no more than the percentage increases authorized by the B.C. Hydro Industrial User's Rate, schedules 1821, 1200, 1201, 1210 and 1211 during the same period.
 - (d) Hotel

The applicable rate to be charged the operation of the Martin Valley Inn will not exceed 30 mills per kilowatt hour.
3. The Company shall, at its expense, repair and maintain all existing streetlighting equipment in Ocean Falls.

SCHEDULE "G"

Chattels

The Chattels shall consist of:

- (a) the dam,
- (b) the #2 powerhouse, including all the power-generating equipment and material contained therein,
- (c) penstocks No. 1 and No. 2,
- (d) the grinder and groundwood screen room, excluding equipment installed or stored therein,
- (e) transmission and distribution systems in the Ocean Falls townsite and mill site and Martin Valley,
- (f) at the Hydro Substation North Bus:
 - 350 MVA, 2,000 amp, 6 cells
 - 2 only 2,000 amp circuit breakers
 - 3 only 1,200 amp circuit breakers
 - 1 only auxiliary cell
- (g) at the Hydro Substation South Bus:
 - 350 MVA, 2,000 amp, 6 cells
 - 2 only 2,000 amp circuit breakers
 - 3 only 1,200 amp circuit breakers
 - 1 only auxiliary cell
- (h) Accessories:
 - 12 CT's 1200-5
 - 18 surge arrestors - 3 kv
 - 6 surge capacitors - 7.2 KV 3 dia
 - 12 lightning arrestor 3 KV
 - 5 CT's 100-5

G-1

(i) Other:

- Spare 1,200 amp circuit breaker - 350 MVA
- Spare 2,000 amp circuit breaker - 350 MVA
- 1 roll 300 metres single conductor 500 MCM tech cable
- 300 feet 24" cable tray
- 43" x 26" high forge

G-2

SCHEDULE "F"

Terms to be incorporated into
prepared exemption order for
Central Coast Power Corporation (the "Company")

1. The Company shall fully abide by and comply with the terms of the agreement entered into between it and British Columbia Hydro and Power Authority ("B.C. Hydro") dated February 19th, 1986.

2. The Company shall supply hydro-electric power to all customers wishing service in Ocean Falls and Martin Valley as follows:

(a) Residential Services

Residential hydro-electric power will be supplied at the B.C. Hydro rate for Rate Zone 11, schedules 1107, 1117, 1127, 1132 and 1134, as amended from time to time.

(b) Street Lighting

Hydro-electric service for streetlighting shall be provided to the local improvement district at rates not to exceed B.C. Hydro rate schedule 1701, as amended from time to time.

(c) Industrial

Industrial customers are to be charged rates not to exceed 20 mills per kilowatt hour for the first five years of the customer operation. In the succeeding years, the price increase for hydro-electric power shall be no more than the percentage increases authorized by the B.C. Hydro Industrial User's Rate, schedules 1821, 1200, 1201, 1210 and 1211 during the same period.

(d) Hotel

The applicable rate to be charged the operation of the Martin Valley Inn will not exceed 30 mills per kilowatt hour.

3. The Company shall, at its expense, repair and maintain all existing streetlighting equipment in Ocean Falls.

SCHEDULE "G"

Chattels

The Chattels shall consist of:

- (a) the dam,
- (b) the #2 powerhouse, including all the power-generating equipment and material contained therein,
- (c) penstocks No. 1 and No. 2,
- (d) the grinder and groundwood screen room, excluding equipment installed or stored therein,
- (e) transmission and distribution systems in the Ocean Falls townsite and mill site and Martin Valley,
- (f) at the Hydro Substation North Bus:
 - 350 MVA, 2,000 amp, 6 cells
 - 2 only 2,000 amp circuit breakers
 - 3 only 1,200 amp circuit breakers
 - 1 only auxiliary cell
- (g) at the Hydro Substation South Bus:
 - 350 MVA, 2,000 amp, 6 cells
 - 2 only 2,000 amp circuit breakers
 - 3 only 1,200 amp circuit breakers
 - 1 only auxiliary cell
- (h) Accessories:
 - 12 CT's 1200-5
 - 18 surge arrestors - 3 kv
 - 6 surge capacitors - 7.2 KV 3 dia
 - 12 lightning arrestor 3 KV
 - 5 CT's 100-5

G-1

(i) Other:

- Spare 1,200 amp circuit breaker - 350 MVA
- Spare 2,000 amp circuit breaker - 350 MVA
- 1 roll 300 metres single conductor 500 MCM tech cable
- 300 feet 24" cable tray
- 43" x 26" high forge

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix D-2

BCUC Order G-30-02

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-30-02

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Central Coast Power Corporation
for Approval to Amend Order No. G-40-86

BEFORE: P. Ostergaard, Chair)
K.L. Hall, Commissioner) April 17, 2002

O R D E R

WHEREAS:

- A. Commission Order No. G-40-86 approved the Transfer of Lands and Chattels from Ocean Falls Corporation to Central Coast Power Corporation ("CCPC") and exempted CCPC from the Utilities Commission Act ("the Act") (S.B.C. 1980 Chapter 60) except for Part 2 and Sections 30, 44, 47, and 133 which are now identified in the current Act as Part 2 and Sections 25, 38, 41 and 117; and
- B. CCPC applied to the Commission on February 27, 2002 to amend Order No. G-40-86 to allow CCPC to negotiate industrial rates with industrial customers up to British Columbia Hydro and Power Authority's ("B.C. Hydro") equivalent Rate Schedules 1821, 1200, 1201, 1210 and 1211 for present generation, and to negotiate rates for additional generation considering the costs of installing new generation; and
- B. Order No. G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations as set down in Schedule F of the Agreement between CCPC and Ocean Falls Corporation that was attached to the Order; and
- C. Order No. G-40-86 also required that in the event of a dispute between a new applicant and CCPC the Commission will determine the appropriate rate; and
- D. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and
- E. The Commission has reviewed the matter and considers that Order No. G-40-86 should be amended.

.../2

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-30-02

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NOW THEREFORE the Commission orders as follows:

1. Order No. G-40-86 is amended with respect to Schedule F, which is appended to the Order, by striking out Section 2(c) and replacing it with “For present firm installed capacity in CCPC’s Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by B.C. Hydro’s Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity of the plant is required, the parties may negotiate rates with consideration of the cost of installing additional generation.”
2. Order No. G-40-86 is further amended by striking paragraph 2(a) and replacing it with “CCPC shall fully comply with the terms of its agreements with B.C. Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively”.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of April 2002.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix D-3

BCUC Order G-180-08

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-180-08

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
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SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.b cuc.com>



IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Central Coast Power Corporation
and Boralex Ocean Falls Limited Partnership
for Approval of the Sale and Disposition of Utility Assets of
Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership

BEFORE: P.E. Vivian, Commissioner December 5, 2008

O R D E R

WHEREAS:

- A. On August 1, 2008, Central Coast Power Corporation ("CCPC") and Boralex Ocean Falls Limited Partnership ("Boralex LP") applied, pursuant to Section 52(1) of the Utilities Commission Act ("the Act") or alternatively pursuant to section 2.(e) of British Columbia Utilities Commission ("the Commission") Order G-40-86 dated July 4, 1986, for an Order approving the sale and disposition of Utility Assets of CCPC to Boralex LP as set out in an agreement dated June 3, 2008 (the "Purchase Agreement") (the "Application"); and
- B. Central Coast Hydro Ltd. ("CCH"), a non-regulated business, owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Bella Valley in BC ("CCH Rights") that CCH will sell to Boralex LP as part of the Purchase Agreement; and
- C. On February 19, 1986, a 20 year agreement was signed by CCPC and British Columbia Hydro and Power Authority ("BC Hydro"). CCPC would supply electricity to BC Hydro at the point of delivery, which was the point where CCPC's transmission connection met BC Hydro's substation in Bella Bella (the "Power Purchase Agreement"); and
- D. On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from the Ocean Falls Corporation ("OFC"). On June 4, 1986 CCPC applied to the Commission for an exemption from the Act pertaining to the sale of electric power to residential, commercial and industrial consumers located at Ocean Falls and to Bella Bella, BC; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-180-08**

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- E. Commission Order G-40-86 approved the Transfer of Lands and Chattels from OFC to CCPC and exempted CCPC from the Act (S.B.C 1980 Chapter 60) except for Part 2 and Sections 30, 44, 47 and 133. Part 2 has since been repealed and the sections have been renumbered as Sections 25, 38, 41 and 117, respectively; and
- F. Order G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the Agreement between CCPC and OFC that was attached to the Order. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and
- G. The 20 year Power Purchase Agreement between CCPC and BC Hydro was extended for another 10 years to December 31, 2016 (BC Hydro 2007 Rate Design Phase II Hearing, Exhibit B-79); and
- H. Commission Order G-30-02 amended Order G-40-86 with respect to Schedule F, by striking out Section 2 (c) of Schedule F and replacing it with the following wording: “For present firm installed capacity in CCPC’s Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro’s Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity of the plant is required, the parties may negotiate rates with consideration of the cost of installing additional generation”; and
- I. Order G-30-02 was also amended by striking out paragraph 2(a) of the Order and replacing it with the following wording: “CCPC shall fully comply with the terms of its agreements with B.C. Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively”; and
- J. Boralex LP is a limited partnership under British Columbia’s Partnership Act. The Partners of Boralex LP are Boralex Inc. (limited partner) and Boralex B.C. Development Inc. (general partner). Boralex Inc. is one of Canada’s largest and most experienced private corporations in the development and production of renewable energy and is based in Quebec; and
- K. Boralex LP is also applying for the continuation of the exemption for rates currently charged to residents and other customers as set out in Order G-40-86 and for industrial customers as amended in Order G-30-02; and
- L. CCPC has informed its customers by personally meeting with every permanent customer in Ocean Falls. A copy of the letter was posted in the Ocean Falls Post Office. A letter was sent to all non-resident account holders informing them of the sale. The industrial customer agreed to the transfer of its contract with CCPC to Boralex LP; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

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- M. By Order G-121-08 the Commission established Regulatory Timetable for a written public hearing process to review the Application; and
- N. CCPC and Boralex LP, as part of the stakeholder consultation process, were directed to inform the public of the Application and respond to questions from the public concerning the Application and process to consider the Application; and
- O. On September 19, 2008, Heiltsuk Tribal Council (the “Heiltsuk”) filed for Registered Intervenor status; and
- P. On October 3, 2008 by Letter L-48-08, the Commission amended the Regulatory Timetable to provide additional time for issuance of Information Request No.2 and for the Heiltsuk to direct their questions to CCPC and Boralex LP; and
- Q. On October 20, 2008, the Heiltsuk filed its comments on the Application; and
- R. On October 27, 2008, CCPC and Boralex LP submitted their Final Argument; and
- S. By letter dated November 10, 2008 (the “Heiltsuk Filing”), the Heiltsuk filed its closing comments in response to the Final Argument of CCPC and Boralex LP dated October 27, 2008; and
- T. On November 14, 2008 by Letter L-54-08, the Commission informed CCPC and Boralex LP and all other participants that the amended Regulatory Timetable did not provide for a right of reply by Intervenor after October 20, 2008, consistent with the Commission’s practice and that the Commission Panel had established a process to address the Heiltsuk Filing; and
- U. By letter dated November 17, 2008, CCPC and Boralex LP advised that that they did not oppose the Commission accepting for filing the Heiltsuk Filing; and
- V. Section 52 of the Act states:
 - (1) “Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission’s approval,
 - a) dispose of or encumber the whole or a part of its property, franchises, licenses, permits, concessions, privileges or rights, or
 - b) by any means, direct or indirect, ,merge, amalgamate or consolidate in whole or in part its property, franchises, licenses, permits, concessions, privileges or rights with those of another person.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-180-08

4

(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest”; and

W. The Commission has reviewed the Application, the evidence and the submissions and considers the sale and disposition of the Utility Assets, subject to one condition, desirable in the public interest.

NOW THEREFORE the Commission orders as follows:

1. Subject to compliance within 60 calendar days of the date of this Order with the condition set out in Section 5.7.2 of the Decision issued concurrently with this Order by Boralex LP, the Commission approves, pursuant to Section 52 of the Act, the **sale and disposition** of the Utility Assets of CCPC to Boralex LP as set forth in the Purchase Agreement.
2. In the event of the failure of Boralex LP to comply with the said condition within 60 calendar days of the date of this Order, the Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of December 2008.

BY ORDER

Original signed by:

P.E. Vivian
Panel Chair and Commissioner

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix D-4

BCUC Order G-26-10

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: <http://www.bcuc.com>



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-26-10**

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Boralex Ocean Falls Limited Partnership
for Approval of Continuation of the Exemption for Rates Charged to Residents
as set out in Order G-40-86 and for Industrial Customers as amended in Order G-30-02

BEFORE: L.F. Kelsey, Commissioner
D.A. Cote, Commissioner

February 18, 2010

ORDER

WHEREAS:

- A. On August 1, 2008, Central Coast Power (CCPC) and Boralex Ocean Falls Limited Partnership (Boralex LP) applied, pursuant to section 52(1) of the *Utilities Commission Act* (the Act) or alternatively pursuant to section 2.(e) of British Columbia Utilities Commission (the Commission) Order G-40-86 dated July 4, 1986, for an Order approving the sale and disposition of Utility Assets of CCPC to Boralex LP as set out in the agreement dated June 3, 2008 (the Purchase Agreement) (the Application); and
- B. Central Coast Hydro Ltd. (CCH), a non-regulated business, owns certain rights respecting potential hydroelectric projects located at or near the Atnarko River and Bella Bella Valley in BC (CCH Rights) that CCH will sell to Boralex LP as part of the Purchase Agreement; and
- C. On February 19, 1986, a 20-year agreement was signed by CCPC and British Columbia Hydro and Power Authority (BC Hydro). CCPC would supply electricity to BC Hydro at the point of delivery, which was the point where CCPC's transmission connection met BC Hydro's substation in Bella Bella (the Power Purchase Agreement); and
- D. On March 27, 1986, CCPC purchased certain lands and chattels that included the dam, powerhouse, transmission and distribution systems in the Ocean Falls, BC town site and mill site from Ocean Falls Corporation (OFC). On June 4, 1986, CCPC applied to the Commission for an exemption from the Act pertaining to the sale of electric power to residential, commercial and industrial consumers located at Ocean Falls and to Bella Bella, BC; and
- E. Commission Order G-40-86 approved the Transfer of Lands and Chattels from OFC to CCPC and exempted CCPC from the Act (S.B.C. 1980 Chapter 60) except for Part 2 and sections 30, 44, 47, and 133. Part 2 was repealed in 2003 and the sections have been renumbered as sections 25, 38, 41 and 117, respectively; and
- F. Order G-40-86 allowed CCPC to negotiate rates with industrial customers subject to certain limitations set out in Schedule F of the Agreement between CCPC and OFC that was attached to the Order. In the event of a complaint by an interested party, the Commission may review whether the exemption for CCPC continues to be in the public interest; and

BC Hydro Application Requesting the Commission Set a Rate
for Boralex LP's Electricity Service to BC Hydro

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
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- G. The exemption was to be in effect until total demand exceeded 6,000 KW, at which time continuation of the exemption would be subject to review by the Commission; and
- H. The 20-year Power Purchase Agreement between CCPC and BC Hydro was extended for another 10 years to December 2016 (BC Hydro 2007 Rate Design Phase II Hearing, Exhibit B-79); and
- I. Commission Order G-30-02 amended Order G-40-86 with respect to Schedule F, by striking out Section 2(c) of Schedule F and replacing it with the following wording: "For present firm installed capacity in CCPC's Ocean Falls generating facility, industrial customers are to be charged rates as negotiated by the parties, but not to exceed the rate authorized by BC Hydro's Rate Schedules 1821, 1200, 1201, 1210, or 1211 as amended from time to time, for similar service. In the event that additional generation, above the firm installed capacity is required, the parties may negotiate rates with consideration of the cost of installing additional generation"; and
- J. Order G-30-02 was also amended by striking out paragraph 2(a) of the Order and replacing it with the following wording: "CCPC shall fully comply with the terms of its agreements with BC Hydro and Ocean Falls Corporation (except for Schedule F) attached as Appendices I and II respectively"; and
- K. Boralex LP is a limited partnership under British Columbia's Partnership Act. The Partners of Boralex LP are Boralex Inc. (limited partner) and Boralex B.C. Development Inc. (general partner). Boralex Inc. is one of Canada's largest and most experienced private corporations in the development and production of renewable energy and is based in Quebec; and
- L. By Order G-121-08 the Commission established the Regulatory Timetable for a written public hearing process to review the Application; and
- M. CCPC informed its customers by personally meeting with every permanent customer in Ocean Falls. A letter was sent to all non-resident account holders informing them of the sale and a copy of the letter was posted in the Ocean Falls Post Office. The industrial customer agreed to the transfer of its contract with CCPC to Boralex LP; and
- N. Only two parties registered as Intervenor: Heiltsuk Tribal Council (the Heiltsuk) and Shearwater Marine Ltd. (Shearwater). Neither filed evidence. The Heiltsuk was the only active Intervenor in this proceeding. The Heiltsuk did not support the proposed sale and disposition of CCPC's Utility Assets to Boralex LP and sought delay of the Commission's decision on the Application pending adequate consultation. The request for delay was denied by the Commission with reasons in the CCPC Decision dated December 5, 2008; and
- O. In the Application Boralex LP also applied to the Commission for an order for the continuation of the exemption from regulation for rates currently charged to residents and other customers as set out in Order G-40-86 and for industrial customers as amended in Order G-30-02; and
- P. The Applicant's Final Submission stated that the continuation of the exemption from regulation was in the interest of the CCPC system and utility customers and observed that no utility customers had expressed any concern or objection to the continuation; and
- Q. By Order G-180-08 dated December 5, 2008, the Commission determined that subject to the one condition set out in Section 5.7.2 of the Decision issued concurrently with the Order, the sale and disposition of the Utility Assets was desirable in the public interest. The condition required CCPC and Boralex LP to confirm within 60 calendar days of the Decision that Boralex LP would record the CCPC Utility Assets at their historical, depreciated value; and

BC Hydro Application Requesting the Commission Set a Rate
for Boralex LP's Electricity Service to BC Hydro

**BRITISH COLUMBIA
UTILITIES COMMISSION**

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- R. In Section 5.9 of the Decision, the Commission determined that it was unable to continue the CCPC exemption for Boralex LP and denied the request to continue the exemption. However, it also stated that if Boralex LP advised the Commission within 60 days of the date of the Order accompanying the Decision that Boralex LP accepted the condition set out in Section 5.7.2 and that the transfer was proceeding, the Commission would send a request to the Lieutenant Governor in Council (LGIC) for approval to grant Boralex LP an exemption from regulation from the Act except for sections 25, 38, 41, 99 and 117 and with the inclusion of the Commission's ability to revisit the exemption for reasons that may include the determination of any complaint it receives from a person whose interests are affected; and
- S. In a confidential letter dated January 10, 2009, CCPC filed material in respect to Directive No. 1 in Order G-180-08 with regard to a detailed listing of the CCPC Utility Assets with its historic depreciated value. The Asset Valuation did not provide a total of the net book value of the assets as at December 31, 2008; and
- T. By letter dated January 20, 2009, the Commission prepared a tabulation of the CCPC Utility Assets with a total Net Book Value as at December 31, 2008 based on CCPC's January 10, 2009 submission. By letter dated January 21, 2009 CCPC confirmed the Commission's tabulation; and
- U. By letter dated January 30, 2009, Boralex LP confirmed that it accepted the conditions as set out in Sections 5.7.2 and 5.9 of the Decision dated December 5, 2008. In accordance with those conditions, Boralex LP accepted the accounting condition which required a record of utility assets, and the detailed listing of CCPC utility assets, at historical depreciated value and Boralex LP confirmed that the utility asset transfer for CCPC to Boralex LP was proceeding. Boralex LP also asked the Commission to request a grant of approval from the LGIC pursuant to section 88(3) for exemption from application of the Act, except for sections 25, 38, 41, 99 and 117; and
- V. By letter dated February 4, 2009, the Commission informed CCPC and Boralex LP that they had complied with the conditions established in the Decision. In accordance with Section 5.9 of the Decision and following review and approval by the Commission, a request was made to the LGIC for approval to grant Boralex LP an exemption from application of the Act except for sections 25, 38, 41, 99 and 117 pursuant to section 88(3) of the Act and including the provision on page 31 of the Decision related to the Commission's ability to revisit the exemption; and
- W. Section 88(3) of the Act provides as follows :

"The commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council, exempt a person, equipment or facilities from the application of all or any of the provisions of this Act or may limit or vary the application of this Act."; and
- X. By Order in Council No. 062-10 and attached as Appendix A to this Order, the LGIC granted advance approval to the Commission to exempt Boralex LP from certain provisions of the Act for the purpose and subject to the terms set out in the draft Commission Order attached to the Order in Council; and
- Y. The Commission has considered the Application and submissions it has received and has determined that an exemption for Boralex LP from certain provisions of the Act is in public interest.

**BRITISH COLUMBIA
UTILITIES COMMISSION**

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NUMBER** G-26-10

4

NOW THEREFORE the Commission orders as follows:

1. Pursuant to section 88(3) of the Act, the Commission exempts Boralex LP from application of the Act except for sections 25, 38, 41, 99, and 117.
2. The exemption, granted pursuant to this Order, will be effective from the date of this Order and shall remain in effect until the Commission orders otherwise, for reasons that may include the determination of any complaint the Commission receives from a person whose interests are affected in accordance with page 31 of the Decision.
3. For customers in Ocean Falls, Boralex LP is to follow the BC Hydro binders [for rates and terms and conditions of service] in accordance with Section 5.9 of the Decision and the commitments made by Boralex LP in response to Commission Information Request 1.9.1 attached as Appendix B to this Order.
4. Boralex LP is to continue to charge retail customers at the same rates as BC Hydro Zone II rates and new industrial customers are to be charged negotiated rates in accordance with Sections 5.8 and 5.9 of the Decision, Commission Orders G-40-86 and G-30-02 and the commitments made by Boralex LP in response to Commission Information Request 1.9.2 also attached as Appendix B to this Order.
5. Despite Directive 2 of this Order, once total demand exceeds 6,000 KW, the exemption is subject to review by the Commission.
6. Boralex LP is responsible for the safe and proper operation of its facilities consistent with the requirements of the Electrical Safety Branch.

DATED at the City of Vancouver, In the Province of British Columbia, this 18th day of February 2010.

BY ORDER

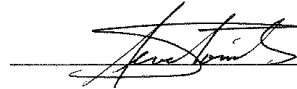
Original signed by:

Dennis A. Cote
Commissioner

Attachments

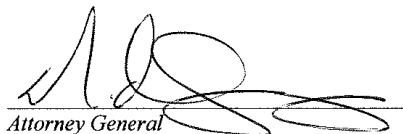
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **062**, Approved and Ordered **JAN 29 2010**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to exempt Boralex Ocean Falls Limited Partnership from the *Utilities Commission Act*, except for sections 25, 38, 41, 99 and 117 of the Act, for the purpose and subject to the terms set out in the attached draft order of the British Columbia Utilities Commission.


Attorney General
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 88 (3)
Other (specify):-

August 24, 2009

O/Log 675/2009/27

9.0 Reference: Application G. Continuation of the 1986 Exemption 43 (a) p. 12 of 20

"...the current tolls that are linked to BC Hydro's tolls for resident retail. Rates currently charged to residents and other customers located in Ocean Falls are determined by the 1986 order. The amending Order G-30-02 relates to the rates charged the industrial customers on the industrial site in Ocean Falls."

- 9.1 CCPC has been following the BC Hydro tariff binder for rates and terms and conditions of service for customers in Ocean Falls. Will Boralex LP be following the BC Hydro binder for rates and terms and conditions of service? If not, please file Boralex's proposed tariff setting out rates and term and conditions of service.

Response:

Boralex LP will be following the BC Hydro binders.

- 9.2 Will the new customers be offered identical BC Hydro rates or will they be negotiated rates (subject to BCUC approval).

Response:

Retail customers will continue to be charged the same rates. New industrial customers will be charged negotiated rates.

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix E

Electric Tariff Supplement No. 7

07/02/02 11:30 FAX 604 660 1102

BCUC

+ R ALDEGUER

001/001



ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

LETTER No. L-26-02

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-883-1385
FACSIMILE: (604) 660-1102

Log No. 1297

VIA FACSIMILE

June 28, 2002

Mr. Ray Aldeguer
Senior Vice President
Legal, Regulatory Affairs and General Counsel
British Columbia Hydro and Power Authority
17th Floor, 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

Dear Mr. Aldeguer:

Re: British Columbia Hydro and Power Authority
Unit Pricing - Electric Tariff Supplements No. 7 and 8

The Commission approves and accepts for filing B.C. Hydro's Diesel Generation Costs, as outlined in the June 20, 2002 letter, covering the period July 1, 2002 to June 30, 2003. The rates for Tariff Supplements No. 7 and 8 are therefore adjusted to the following:

- Electric Tariff Supplement No. 7 - Interruptible Electricity Supply Agreement with Central Coast Power Corporation at an energy charge of 18.71 cents per kWh; and
- Electric Tariff Supplement No. 8 - Interruptible Electricity Supply Agreement with Queen Charlotte Power Corporation at an energy charge of 18.71 cents per kWh.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Pellatt".

Robert J. Pellatt

RJP/ac

BCH/Cor/TS#7&8 Adjust Zone II Rates

JUL 02 2002 11:34

604 660 1102

PAGE.01



**B.C. Hydro
Electric Tariff
Supplement No. 7**

Original Page 1 of 4
Effective: 1 July, 1999

This Interruptible Electricity Supply Agreement made as of and dated the 1st of July, 1999.

BETWEEN:

CENTRAL COAST POWER CORPORATION
629 Senanus Drive
Saanichton, B.C. V8M 1S6

(“the IPP Customer”)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

(“B.C. Hydro”)

WHEREAS the IPP Customer entered into an Interruptible Electricity Supply Agreement with B.C. Hydro on the 17th of April, 1991,

WHEREAS the need for electricity at the IPP Customer’s premises is in excess of the 45 kV.A criterion established by Page B-35 of the Electric Tariff of B.C. Hydro,

WHEREAS the supply of electricity to the IPP Customer is in whole or in part provided by B.C. Hydro from electricity purchased by B.C. Hydro from others or from the standby diesel-driven generators of B.C. Hydro at Bella Bella DGS, Shearwater, and,

WHEREAS B.C. Hydro now considers it necessary that the Interruptible Electricity Supply Agreement be revised.

NOW THEREFORE, the IPP Customer and B.C. Hydro agree as follows:

1. The IPP Customer may, from time to time during this Agreement, request that B.C. Hydro supply a specified quantity of electricity to the IPP Customer for a specified period of time not exceeding 30 days. Each such request shall constitute a request for a separate transaction for all purposes of this Agreement and shall be expressly made, in writing, to B.C. Hydro at the local address of B.C. Hydro noted in Appendix A of this Agreement.
2. At the time specified by the request, noted in Section 1 of this Agreement, B.C. Hydro will make all reasonable efforts to supply electricity in accordance with this Agreement to the IPP Customer at the point of delivery noted in Section 5 of this Agreement. The supply may be made, or interrupted at any time, by B.C. Hydro in its sole discretion having due regard for:



**B.C. Hydro
Electric Tariff
Supplement No. 7**

Original Page 2 of 4
Effective: 1 July, 1999

-
- (a) the ability of B.C. Hydro to make available any amount of electricity up to the maximum demand noted in this Agreement, and
 - (b) the electrical requirements of other B.C. Hydro customers supplied with electricity generated at the Bella Bella Diesel Generating Stations (Shearwater) of B.C. Hydro.
- 3. The IPP Customer shall use the electricity solely for emergency purposes and may, subject to Section 10 of this Agreement, sell all or part of the electricity to others solely for such purposes but, notwithstanding any such resale, the IPP Customer shall pay for all electricity in accordance with Section 6 of this Agreement.
 - 4. The electricity supplied by B.C. Hydro shall be three-phase alternating current at a nominal frequency of 60 hertz and a nominal voltage of 12 kV. The IPP Customer shall take all necessary action so that the maximum demand of the IPP Customer at the point of delivery for electricity supplied by B.C. Hydro shall not exceed 250 kV.A.
 - 5. The point of delivery for the electricity supplied by B.C. Hydro shall be the B.C. Hydro disconnect switch, known as BEL 12 D3, located in the B.C. Hydro Substation at the Bella Bella Diesel Generating Station. The amount of electricity supplied shall be metered at or near the point of delivery by meters owned and maintained by the IPP Customer. At no cost to B.C. Hydro and at all reasonable times, the IPP Customer shall provide, to B.C. Hydro servants or agents, access to the IPP Customer's meters located within the IPP Customer's Substation adjacent to the B.C. Hydro Substation. When B.C. Hydro decides that any supply to the IPP Customer needs to be immediately interrupted, because of B.C. Hydro system requirements, B.C. Hydro servants or agents shall operate B.C. Hydro disconnect switch, BEL 12 D3.
 - 6. The IPP Customer will pay B.C. Hydro, as required by any bill prepared by B.C. Hydro, for each month of this Agreement an amount including:
 - 6.1 the Administration Fixed Charge of \$200.00 per transaction, and
 - 6.2 the Energy Charge shall be the greater of:



**B.C. Hydro
Electric Tariff
Supplement No. 7**

Original Page 3 of 4
Effective: 1 July, 1999

-
- a) the unit price paid by B.C. Hydro to the IPP Customer for the most recent purchase of electricity from the IPP Customer, or
 - b) the average unit cost incurred by B.C. Hydro to generate electricity at all diesel generating stations owned and operated by B.C. Hydro in Rate Zone II, plus a 10% profit margin. The average unit cost shall be calculated by summing all costs to B.C. Hydro in Rate Zone II of fuel oil, operating and maintenance and dividing that sum by the total kilowatt hours generated by all such diesel generating stations during B.C. Hydro's immediately prior fiscal year and this average unit cost, plus a 10% profit margin, shall apply starting the 1st of July of each year and shall continue until the 1st of July of the following year, at which time it will be adjusted as provided in this Subsection. The Energy Charge can be found in Appendix A to this Agreement.
- 7. This Agreement shall be in force as of the 1st of July 1999 and shall continue unless terminated by either party giving the other not less than thirty days notice in writing at the local address which shall be provided in Appendix A of this Agreement.
 - 8. This Agreement shall incorporate all relevant definitions, terms and conditions included in the Electric Tariff of B.C. Hydro and amendments thereto or replacements thereof except in the case of conflict in which case the terms of this Agreement shall prevail.
 - 9. The IPP Customer has the right to inspect the Electric Tariff during normal business hours at any general office of B.C. Hydro and such right is sufficient notice of the terms and conditions contained herein.
 - 10. This Agreement shall be subject to the *Utilities Commission Act* and amendments thereto and replacements thereof and, without limiting the generality of the foregoing, IPP Customer shall not sell or otherwise dispose of for compensation all or part of the electricity, supplied by B.C. Hydro to the IPP Customer pursuant to this Agreement, to the customers of the IPP Customer or any other person without prior authorization from the British Columbia Utilities Commission, including authorization as to the rates which the IPP Customer may charge for such sale or disposal.
 - 11. This Agreement shall be subject to the approval of the British Columbia Utilities Commission.



**B.C. Hydro
Electric Tariff
Supplement No. 7**

Original Page 4 of 4
Effective: 1 July, 1999

IN WITNESS WHEREOF the duly authorized representatives of the parties
have executed this Agreement as of the 1st of July, 1999.

CENTRAL COAST POWER CORPORATION

By: _____

Date: _____

Title: _____

Print Name: _____

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

By: _____

Date: _____

Title: _____

Print Name: _____



**B.C. Hydro
Electric Tariff
Supplement No. 7**

Original Appendix A, Page 1 of 1
Effective: 1 July, 1999

1. Energy Charge

Further to section 6.2 of the Interruptible Electricity Supply Agreement, the average cost per kilowatt hour shall be 15.38¢ per kilowatt hour for the period 1 July, 1999 to 30 June 2000.

2. Notice

Unless otherwise provided for by this Interruptible Electricity Supply Agreement, a notice, consent, request, demand, statement or bill that either party may be required or may desire to give to the other party shall be in writing and shall be deemed to be given to and received by the addressee on the business day next following when it is delivered by hand, by courier, by telex, or by facsimile copier, and is deemed to be given when received if delivered by prepaid mail at the address that each party shall give notice of from time to time.

The address for B.C. Hydro shall be:

B.C. Hydro
Non-Integrated Area
12310 - 88th Avenue
Surrey, B.C. V3W 3J6

Attention: Manager, Distribution Ops/Mtce

Telephone: (604) 596 - 9132
Fax: (604) 597 - 4093

The address for the IPP Customer shall be:

Central Coast Power Corporation
629 Senanus Drive
Saanichton, B.C. V8M 1S6

Attention: A. Knott, President

Telephone: (250) 544 - 4985
Fax: (250) 544 - 4986

THIS INTERRUPTIBLE ELECTRICITY SUPPLY AGREEMENT made as of
and dated this 17th day of April 1991.

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,
having its head office at 970 Burrard Street,
Vancouver, British Columbia V6Z 1Y3

(herein called "B.C. Hydro")

AND:

CENTRAL COAST POWER CORPORATION, at
4594 Montford Crescent,
Victoria, British Columbia V8N 3W5

(herein called "CCPC")

NOW B.C. HYDRO AND CCPC AGREE AS FOLLOWS:

1. CCPC may, from time to time during this Agreement, request that B.C. Hydro supply a specified quantity of electricity to CCPC for a specified period of time not exceeding 30 days. Each such request shall constitute a request for a separate transaction for all purposes of this Agreement and shall be expressly made, in writing, to B.C. Hydro at the local address of B.C. Hydro noted in Section 7 of this Agreement.
2. At the time specified by the request, noted in Section 1 of this Agreement, B.C. Hydro will make all reasonable efforts to supply electricity in accordance with this Agreement to CCPC at the point of delivery noted in Section 5 of this Agreement. The supply may be made, or interrupted at any time, by B.C. Hydro in its sole discretion having due regard for:
 - (a) the ability of B.C. Hydro to make available any amount of electricity up to the maximum demand noted in this Agreement, and

CCPC.IESA

Accepted for filing: MAY 23 1991
Effective: APR 17 1991
Order No: *[Signature]*
G-44-91
SECRETARY
B.C. UTILITIES COMMISSION

- (b) the electrical requirements of other B.C. Hydro customers supplied with electricity generated at the Bella Bella Diesel Generating Station (Shearwater) of B.C. Hydro.
3. CCPC shall use the electricity solely for emergency purposes and may, subject to Section 9 of this Agreement, sell all or part of the electricity to others solely for such purposes but, notwithstanding any such resale, CCPC shall pay for all electricity in accordance with Section 6 of this Agreement.
4. The electricity supplied by B.C. Hydro shall be three-phase alternating current at a nominal frequency of 60 Hz and a nominal voltage of 12 kV. CCPC shall take all necessary action so that the maximum demand of CCPC at the point of delivery for electricity supplied by B.C. Hydro shall not exceed 250 kW.A.
5. The point of delivery for the electricity supplied by B.C. Hydro shall be the B.C. Hydro disconnect switch, known as BEL 12 D3, located in the B.C. Hydro Substation at the Bella Bella Diesel Generating Station. The amount of electricity supplied shall be metered at or near the point of delivery by meters owned and maintained by CCPC. At no cost to B.C. Hydro and at all reasonable times CCPC shall provide, to B.C. Hydro servants or agents, access to the CCPC meters located within the CCPC Substation adjacent to the B.C. Hydro Substation. When B.C. Hydro decides that any supply to CCPC needs to be immediately interrupted, because of B.C. Hydro system requirements, B.C. Hydro servants or agents shall operate B.C. Hydro disconnect switch, BEL 12 D3.
6. CCPC will pay, for all electricity supplied by B.C. Hydro, an amount including an administration fixed charge for each separate transaction and an energy unit charge for all kW.h made available at the point of delivery, and more specifically:

CCPC.IESA

Accepted for filing: MAY 23 1991
Effective: APR 17 1991
Order No. *GF 44-91*

SECRETARY
B.C. UTILITIES COMMISSION

- (a) the administration fixed charge shall be \$200 for each separate transaction, and
 - (b) the energy unit charge shall be the greater of:
 - i. the unit price paid by B.C. Hydro to CCPC for the most recent purchase of electricity from CCPC, and
 - ii. the average unit cost incurred by B.C. Hydro to generate electricity at all diesel generating stations owned and operated by B.C. Hydro, other than Fort Nelson Generating Station, during the immediately prior fiscal year, plus 10% of that average unit cost. The average unit cost shall be calculated by summing all costs to B.C. Hydro of fuel oil, lube oil, operating and maintenance and dividing that sum by the total kilowatt hours generated by all such diesel generating stations during the immediately prior fiscal year. That latter calculation plus 10% produces, for the fiscal year immediately prior to the date of this Agreement, the amount of 12.74¢ per kilowatt hour and this amount shall be valid until 30 June 1991 at which time, and every anniversary of that date, the amount shall be adjusted to reflect the immediately prior fiscal year.
7. This Agreement shall be in force from the date it is approved by the British Columbia Utilities Commission and shall continue unless terminated by either party giving 30 days' notice of termination to the other party at the local address which shall be:
- (a) Generation Maintenance Supervisor, B.C. Hydro
Box 5
Bella Coola, B.C. V0T 1C0
Telephone (604) 799-5512

Accepted for filing: **MAY 23 1991**
Effective: **APR 17 1991**
Order No.: *[Signature]*
B-144-91
SECRETARY
B.C. UTILITIES COMMISSION


CCPC.IESA

(b) CCPC:
4594 Montford Crescent
Victoria, B.C.
V8N 3W5

8. This Agreement shall incorporate all relevant definitions, terms and conditions included in the Electric Tariff of B.C. Hydro and amendments thereto or replacements thereof except in the case of conflict, in which case the terms of this Agreement shall take precedence.
9. This Agreement shall be subject to the relevant provisions of the Utilities Commission Act and amendments thereto and replacements thereof and, without limiting the generality of the foregoing, CCPC shall not sell or otherwise dispose of for compensation all or part of the electricity, supplied by B.C. Hydro to CCPC pursuant to this Agreement, to the customers of CCPC or any other person without prior authorization from the British Columbia Utilities Commission, including authorization as to the rates which CCPC may charge for such sale or disposal.

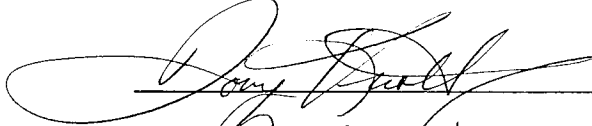
IN WITNESS WHEREOF duly authorized representatives of the parties have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY

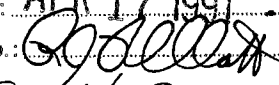


APRIL 17/91

CENTRAL COAST POWER CORPORATION



April 30/91

Accepted for filing: _____
Effective: APR 17 1991
Order No.: 
G-44-91

SECRETARY
B.C. UTILITIES COMMISSION

CCPC.IESA

**BC Hydro Application requesting the Commission
set a Rate for
Boralex LP's Electricity Service to BC Hydro**

Appendix F

Bella Bella Power System Map

Bella Bella Power Sytem Map

