

MINING CUSTOMER PAYMENT PLAN

- A. The Lieutenant Governor in Council issued a Direction to the British Columbia Utilities Commission Respecting Mining Customers, pursuant to section 3 of the *Utilities Commission Act* (British Columbia), dated effective February 29, 2016 (the “**Direction**”);
- B. Pursuant to the Direction, Eligible Customers (as defined below) shall be permitted, upon admission to the Mining Customer Payment Plan, to defer payment of a portion of their account with BC Hydro for electricity service respecting an Applicable Mine (as defined below) when the average daily settlement price of copper or coal, as applicable, falls below a reference settlement price (as outlined below); and
- C. The terms and conditions of participation in the Mining Customer Payment Plan, as provided in the Direction, are incorporated into this Supplement to Electric Tariff Supplement No. 5;

1.0 INTERPRETATION

1.1 Definitions

In this Supplement:

- (a) “**Account Balance**” means, in relation to an Applicable Mine of a Mining Customer, an amount determined by BC Hydro prior to issuing each bill during the Application Period, as follows:

$$\text{Account Balance} = (\text{TSA} + \text{I}) - (\text{TAA} + \text{A})$$

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Where:

- (i) **“TSA”** means the total amount that would have been payable by the Mining Customer under Rate Schedule 1823, but for the application of this Supplement, during the period beginning on the date the Supplement begins to apply to the Mining Customer and ending on the date BC Hydro makes a determination of the Account Balance;
 - (ii) **“I”** means the interest accumulated on the Account Balance as of the last day of the most recent Billing Period prior to the determination of the Account Balance, calculated in accordance with section 2.6;
 - (iii) **“TAA”** means the sum of all Adjusted Amounts paid by the Mining Customer; and
 - (iv) **“A”** means any payments made by the Mining Customer in addition to an Adjusted Amount, including payments made on account of the Account Balance, in accordance with sections 2.4(a)(i), 2.4(b), 2.4(c) and 2.5;
- (b) **“Act”** means the *Utilities Commission Act* (British Columbia);
- (c) **“Adjusted Amount”** has the meaning given to that term in section 2.2;
- (d) **“Applicable Mine”** means any of the following mines:
- (i) Coal Mountain;
 - (ii) Copper Mountain;
 - (iii) Elkview;
 - (iv) Fording River;
 - (v) Gibraltar;

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- (vi) Greenhills;
 - (vii) Highland Valley;
 - (viii) Huckleberry;
 - (ix) Line Creek;
 - (x) Mount Milligan;
 - (xi) Mount Polley;
 - (xii) New Afton; and
 - (xiii) Red Chris.
- (e) “**Application Period**” means, in respect of an Applicable Mine, the period that begins on the date the Supplement begins to apply to the Mining Customer in respect of the Applicable Mine, and ends on the Closing Date or such earlier date on which the MCPP Agreement for the Mining Customer is terminated pursuant to section 3.2;
- (f) “**Billing Month**” means a month in which BC Hydro issues a bill to a Mining Customer for electricity service respecting an Applicable Mine;
- (g) “**Billing Period**” means a Mining Customer’s billing period determined pursuant to the Electricity Supply Agreement for electricity service respecting an Applicable Mine;
- (h) “**Closing Date**” means the date that is five years after the date this Supplement comes into effect;
- (i) “**Commission**” means the British Columbia Utilities Commission;

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- (j) **“Direction”** means the Direction to the British Columbia Utilities Commission Respecting Mining Customers issued by the Lieutenant Governor in Council pursuant to section 3 of the *Act* and dated effective February 29, 2016;
- (k) **“Electricity Supply Agreement”** means the Electricity Supply Agreement (Electric Tariff Supplement No. 5) between a Mining Customer and BC Hydro for the supply of electricity to an Applicable Mine of the Mining Customer;
- (l) **“Eligible Customer”** means a customer of BC Hydro who, immediately before the Direction comes into force, was receiving electricity service from BC Hydro respecting an Applicable Mine;
- (m) **“Fixed Interest Rate”** means a nominal annual interest rate of 11.3866 per cent;
- (n) **“Floating Interest Rate”** means a nominal annual interest rate calculated as follows:
- Floating Interest Rate = $(12 \times [(1+i)^{1/12} - 1]) \times 100$
- Where:
- (i) **“i”** means the sum of Prime + 5 per cent; and
- (ii) **“Prime”** has the meaning given to that term in section 1.1(s);
- (o) **“MCPP Agreement”** means the Mining Customer Payment Plan Agreement attached as Appendix 1 to this Supplement;
- (p) **“Mining Customer”** means an Eligible Customer whose request referred to in section 2.1(a)(i) has been accepted and to whom this Supplement applies;
- (q) **“Mining Customer Payment Plan”** means the Mining Customer Payment Plan offered by BC Hydro to Eligible Customers pursuant to this Supplement;

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- (r) **“Party”** means either BC Hydro or a Mining Customer and **“Parties”** means both BC Hydro and the Mining Customer;
- (s) **“Prime”** means the published per annum prime lending rate on loans denominated in Canadian Dollars made in Canada charged by the principal banker of BC Hydro as at the date the interest is calculated in accordance with section 2.6;
- (t) **“Rate Schedule 1823”** means Rate Schedule 1823 – Transmission Service – Stepped Rate, as amended, supplemented or replaced from time to time;
- (u) **“Service Price”** means, in relation to a Mining Customer, the amount that would have been payable by the Mining Customer in accordance with the first two years of bills that would have been issued to the Mining Customer under Rate Schedule 1823 for electricity service respecting an Applicable Mine, but for the application of this Supplement, while the Supplement applies to the Mining Customer;
- (v) **“Settlement Price Period”** means, in relation to a Mining Customer, a period that
- (i) begins 30 days before the day referred to in paragraph 1.1(v)(ii)(A) or (B), as applicable; and
 - (ii) ends on a day that is either:
 - A. The 15th day of the month that immediately precedes the Billing Month, if BC Hydro issues the bill on or before the 15th day of the Billing Month; or
 - B. The 15th day of the Billing Month, if BC Hydro issues the bill after that day;

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- (w) **“Supplement”** means this supplement and includes the form of MCPP Agreement attached as Appendix 1; and
- (x) **“Term”** has the meaning given to that term in section 3.1.

1.2 Appendices

Appendix 1 – form of Mining Customer Payment Plan Agreement attached to this Supplement is incorporated into and forms part of this Supplement.

1.3 Interpretation

In this Supplement, except where otherwise expressly provided or the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa, “or” is not exclusive, “including” is not limiting, whether or not non-limiting language (such as “without limitation”) is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person’s successors and assigns but, if applicable, only if the succession or assignment is permitted under this Supplement;
- (b) The inclusion of headings in this Supplement is for convenience only and shall not affect the construction or interpretation of this Supplement;
- (c) Any reference to a specific Section, subsection or other subdivision is to the designated Section, subsection or other subdivision of this Supplement, unless the context otherwise requires; and
- (d) All monetary amounts referred to in this Supplement are stated and shall be paid in Canadian currency.

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1.4 Obligations Supplemental

- (a) BC Hydro's and a Mining Customer's obligations under this Supplement are supplemental to their respective obligations under the Electricity Supply Agreement.
- (b) Except as specifically supplemented by this Supplement, the Electricity Supply Agreement of a Mining Customer shall continue in full force and effect and, in particular, shall govern billing and payment for electricity service supplied by BC Hydro respecting an Applicable Mine. Nothing in this Supplement shall release a Mining Customer from liability for payment of any amounts owing pursuant to the Electricity Supply Agreement.

2.0 MINING CUSTOMER PAYMENT PLAN**2.1 Application to Participate in the Mining Customer Payment Plan**

- (a) As a condition of participating in the Mining Customer Payment Plan in respect of an Applicable Mine:
- (i) An Eligible Customer shall make a request to BC Hydro that this Supplement apply respecting amounts that will be payable by the Mining Customer to BC Hydro for electricity service provided for the operation of an Applicable Mine by completing, executing and delivering to BC Hydro an agreement in the form attached as Appendix 1;
- (ii) The Applicable Mine must be, on the date of the request, a producing mine; and
- (iii) The Eligible Customer must have no overdue bills with BC Hydro on the date of the request;

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- (b) BC Hydro shall, as soon as practicable after receipt of a request referred to in paragraph 2.1(a)(i), if the Eligible Customer meets the requirements for participation in the Mining Customer Payment Plan, accept the request and notify the Eligible Customer of the date on which the Application Period begins.

2.2 Payment of Adjusted Amount

Subject to section 2.4, the Mining Customer shall pay on account of each bill issued by BC Hydro during the Application Period, an adjusted amount for electricity service respecting an Applicable Mine (the “**Adjusted Amount**”), in Canadian dollars, calculated by BC Hydro as follows:

$$\text{Adjusted Amount} = \text{SA} + (\text{SA} \times \text{AP})$$

Where:

- (a) “**SA**” means the amount that would have been payable by the Mining Customer under Rate Schedule 1823 on account of that bill but for the application of this Supplement;
- (b) “**AP**” means the applicable of the following:
- (i) $[(\text{settlement price} - 3.40) \times 208]/100$ if the Applicable Mine of the Mining Customer is a copper mine; and
 - (ii) $[(\text{settlement price} - 134) \times 5]/100$ if the Applicable Mine of the Mining Customer is a coal mine;

Where:

- A. The settlement price calculated for a Mining Customer who operates a copper mine is the average of the daily settlement prices per metric

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tonne of copper, as reported by the London Metal Exchange, for the most recent Settlement Price Period, converted into the average of the daily settlement prices per pound of copper, by using a metric tonne to pound ratio of 1:2204.62, and converted into Canadian currency by using the average Bank of Canada daily exchange rate over that same period; and

- B. The settlement price calculated for a Mining Customer who operates a coal mine is the average of the daily settlement prices per metric tonne of Hard Coking Coal (Premium Low Vol) FOB Australia, as reported by Platts (Coal Trader International), for the most recent Settlement Price Period, converted into Canadian currency by using the average Bank of Canada daily exchange rate over that same period;

Provided that:

- (iii) If an AP is calculated to be more than 0.75, the Adjusted Amount for that bill shall be calculated using an AP of 0.75; and
- (iv) If an AP is calculated to be less than -0.75, the Adjusted Amount for that bill shall be calculated using an AP of -0.75.

2.3 Deferral of Payment

Where an Adjusted Amount calculated in accordance with section 2.2 is less than the amount that would have been payable by the Mining Customer under Rate Schedule 1823, but for the application of this Supplement, the Mining Customer's payment of the difference between the Adjusted Amount and the amount that would have been payable by the Mining Customer under Rate Schedule 1823, but for the application of this Supplement, shall be deferred in accordance with this Supplement

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and such difference shall be added to the Account Balance in accordance with section 1.1(a) upon BC Hydro issuing the bill in respect of such Adjusted Amount.

2.4 Maximum Account Balance

- (a) If the Mining Customer's Account Balance, once adjusted to subtract amounts representing interest, is, on the date BC Hydro issues a bill to the Mining Customer, equal to 75 per cent of the Service Price, the Mining Customer shall pay:
- (i) The amounts required under Rate Schedule 1823 instead of the Adjusted Amounts if the AP calculated in accordance with section 2.2 is less than zero; or
 - (ii) The Adjusted Amount if the AP calculated in accordance with section 2.2 is zero or more.
- (b) If the AP calculated in accordance with section 2.2 is less than zero and the Mining Customer's Account Balance, once adjusted to subtract amounts representing interest, would be, on the date BC Hydro issues a bill to the Mining Customer, less than 75 per cent of the Service Price, and deferral of payments pursuant to this Supplement would result in the Mining Customer's Account Balance, once adjusted to subtract amounts representing interest, exceeding 75 per cent of the Service Price, the Mining Customer shall pay an amount calculated in accordance with section 2.4(a)(i) less the amount that, upon adding such amount to the Account Balance, will result in the Account Balance, once adjusted to subtract amounts representing interest, equaling 75 per cent of the Service Price and payment of such deducted amount shall be deferred in accordance with this

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Supplement and such deducted amount shall be added to the Account Balance in accordance with section 1.1(a) upon BC Hydro issuing the bill.

- (c) If the Mining Customer's Account Balance is, on the date BC Hydro issues a bill to the Mining Customer, equal to zero, the Mining Customer shall pay the amounts required under Rate Schedule 1823 instead of the Adjusted Amounts if the AP calculated in accordance with section 2.2 is zero or more.

2.5 Additional Amount

The Mining Customer may, on account of the Account Balance, pay any amount in addition to an Adjusted Amount at any time without notice, interest or penalty and all such amounts paid in excess of the Adjusted Amount shall be reflected in the Account Balance as of the date the payment was made.

2.6 Interest

- (a) Interest, calculated and compounded monthly, not in advance both before and after demand, default and judgment, shall accrue on the daily Account Balance, based on the number of days elapsed in a 365-day year, at the applicable of the following annualized interest rates:
- (i) The Floating Interest Rate if the Mining Customer is operating a mine referred to in subparagraphs 1.1(d)(i) to 1.1(d)(vii) and 1.1(d)(ix) to 1.1(d)(xiii); or
 - (ii) The Fixed Interest Rate if the Mining Customer is operating the mine referred to in subparagraph 1.1(d)(viii);

and such interest shall be added to the Account Balance on the last day of each Billing Period and bear interest at the same rate.

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- (b) The Mining Customer acknowledges that Prime was 2.7 per cent per annum on the date this Supplement came into effect. A certificate of a Managing Director of the principal banker of BC Hydro, which on the date this Supplement came into effect is the Bank of Montreal, shall be conclusive evidence as to the rate of Prime in effect from time to time.

2.7 Final Payment

On or before the Closing Date, the Mining Customer shall pay the Account Balance. If unpaid by the Closing Date and unless BC Hydro and the Mining Customer agree in writing that payment of the Account Balance will be made over a period specified in the agreement, the Account Balance shall become overdue pursuant to the Electricity Supply Agreement, except that the interest rates specified in section 2.6 shall continue to apply.

2.8 Taxes and Levies

Amounts calculated under this Supplement do not include the Goods and Services Tax, the Provincial Sales Tax and any other tax or levy which BC Hydro may be lawfully authorized or required to collect from the Mining Customer.

3.0 TERM OF MCPP AGREEMENT

3.1 Term of MCPP Agreement

The term of an MCPP Agreement (the “**Term**”) in respect of an Applicable Mine commences on the date the Application Period commences and continues until the Closing Date unless terminated earlier pursuant to and in accordance with section 3.2.

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3.2 Termination

- (a) An MCPP Agreement may be terminated in the following events:
- (i) Immediately by the Mining Customer upon request to BC Hydro if at the time of the request the Account Balance is zero;
 - (ii) Immediately by BC Hydro, if at any time during the Application Period the Mining Customer sells, transfers or assigns all or substantially all of its interest in the Applicable Mine, at which time all unpaid amounts, including the Account Balance, shall become due and payable pursuant to the Electricity Supply Agreement and shall continue to accrue interest at the rate specified in section 2.6;
 - (iii) Immediately by BC Hydro if at any time during the Application Period the Mining Customer commits an act of bankruptcy, becomes insolvent, proposes a compromise or arrangement to its creditors generally, has any petition for a receiving order in bankruptcy filed against it, makes a voluntary assignment in bankruptcy and/or fails to make any payment required under the Electricity Supply Agreement as supplemented by this Supplement, and all amounts owing by the Mining Customer to BC Hydro, including the Account Balance, shall, immediately upon such notice being given, become due and payable pursuant to the Electricity Supply Agreement and shall continue to accrue interest at the rate specified in section 2.6; and
 - (iv) Immediately by BC Hydro upon any person or group of persons acting in concert acquiring, in a single transaction or a series of transactions during the Application Period, more than 50 per cent of the issued and outstanding shares in the capital of the Mining Customer resulting in a change of control of the Mining Customer, at which time all unpaid amounts, including the

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Account Balance, shall become due and payable pursuant to the Electricity Supply Agreement and shall continue to accrue interest at the rate specified in section 2.6.

4.0 DISPUTE RESOLUTION

4.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Supplement (“**Dispute**”), then a Party may give to the other Party a notice (“**Dispute Notice**”) specifying the Dispute and requiring its resolution under this section 4.0. All Disputes shall be resolved in accordance with the provisions of this section 4.0, provided however, that either Party may apply to a court of competent jurisdiction for any interim relief by way of restraining order, injunction or other equitable remedy.

4.2 Contract Representatives to Seek Resolution

If a Dispute Notice is given to a Party, each Party shall appoint a contract representative within five business days of a Party notifying the other Party of a Dispute and cause its contract representative to negotiate in good faith to attain a resolution of the Dispute.

4.3 Referral to Senior Executives

If a Dispute is not resolved within five business days of the Dispute being referred to the contract representatives, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through arbitration in accordance with section 4.4. Each Party shall appoint a senior executive to undertake such informal process within 10 business days of a Party notifying the other Party of a Dispute and the Parties shall use commercially

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reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

4.4 Referral to Arbitration

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives (or either party fails to timely appoint a contract representative or senior executive pursuant to sections 4.2 and 4.3), then either Party may submit the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia). The following rules shall apply to arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree to an arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator;
- (b) The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any of the above in any manner;
- (c) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator; specifically, the arbitrator shall be instructed to impose time limits on the arbitration process such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (d) The arbitrator shall determine the Dispute in accordance with the laws of the Province of British Columbia and applicable Canadian federal law; and

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- (e) The Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs.

4.5 Arbitration Decisions

The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards of the *Commercial Arbitration Act* (British Columbia) or the rules set out in section 4.4. The final decision of the arbitrator shall also be filed with the Commission.

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APPENDIX 1
MINING CUSTOMER PAYMENT PLAN AGREEMENT

THIS ELECTRICITY SUPPLY AGREEMENT made as of
the ____ day of _____, 20__
for _____.

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,
having its head office at 333 Dunsmuir Street,
Vancouver, British Columbia V6B 5R3
(herein called "**BC Hydro**")

OF THE FIRST PART

AND:

having an office in British Columbia at

(herein called the "**Customer**")

OF THE SECOND PART

WITNESSES THAT the parties declare and agree as follows:

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1.0 INTERPRETATION

1.1 Capitalized Terms

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in the Supplement.

2.0 APPLICABLE MINE

- (a) The Customer is an Eligible Customer and operates the following Applicable Mine: the _____ mine (the "**Mine**");
- (b) On the date this Agreement has been executed by the Customer and delivered to BC Hydro, the Mine is producing:
- Coal; or
- Copper.

3.0 REQUEST FOR PARTICIPATION

The Customer hereby requests participation as a Mining Customer in the Mining Customer Payment Plan and agrees that the terms of the Electricity Supply Agreement between the Parties dated as of the ____ day of _____, ____ shall be amended by the addition of the Supplement and that the Electricity Supply Agreement, as supplemented by the Supplement shall apply to the supply of electricity service from BC Hydro to the Mine during the Application Period.

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4.0 APPLICATION PERIOD

The Supplement shall begin to apply to the Customer, and the Application Period shall commence on the ____ day of _____, 201__
[to be completed by BC Hydro].

5.0 TERM OF AGREEMENT

The term of this Agreement commences on the date the Application Period commences and continues until the Closing Date unless terminated earlier pursuant to and in accordance with section 3.2 of the Supplement.

6.0 MISCELLANEOUS

6.1 Successors and Assigns

- (a) The Customer shall not transfer or assign, in whole or in part, its interest in this Agreement.
- (b) This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors.

6.2 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

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6.3 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

6.4 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the Direction and the *Utilities Commission Act*.

6.5 Governing Law

This Agreement and all terms and conditions contained in it shall be governed and construed in accordance with the laws of the Province of British Columbia.

6.6 Notices

All notices, consents, requests or demands that either Party may be required or may desire to give to the other Party under this Agreement 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 or by facsimile copier, and is deemed to be given when received if delivered by prepaid mail at the address that each Party has given notice of under the Electricity Supply Agreement.

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6.7 Counterpart Execution

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

6.8 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery, but that Party shall promptly also deliver in person to the other Party an originally executed copy of this Agreement.

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IN WITNESS WHEREOF the duly authorized representative of each party has executed this Agreement. [If the Customer is a joint venture or partnership then this Agreement shall be executed by all joint venturers or partners and all declarations and agreements of the Customer shall be deemed to be joint and several].

BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY

Per:

_____)
[CUSTOMER])
 _____)
 Authorized Signatory)
 _____)
 _____)
 _____)
 Authorized Signatory

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