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August 31, 2006

Mr. Robert J. Pellatt
Commission Secretary
British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Pellatt:

**RE: British Columbia Utilities Commission (BCUC)
British Columbia Hydro and Power Authority (BC Hydro)
F2006 Open Call for Power
Report on the Call for Tenders (CFT) Process**

Enclosed is BC Hydro's F2006 Open Call for Power Report on the CFT process conducted by BC Hydro.

Pursuant to Section 71 of the *Utilities Commission Act* the F2006 Electricity Purchase Agreements will be filed with the BCUC, in confidence, on Tuesday, September 5, 2006.

Yours sincerely,



Joanna Sofield
Chief Regulatory Officer

c. 2005 Resource Expenditure and Acquisition Plan Intervenors



F2006 OPEN CALL FOR POWER



REPORT ON THE F2006 CALL

FOR TENDER PROCESS

CONDUCTED BY BC HYDRO

AUGUST 31, 2006

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EXECUTIVE SUMMARY

BC Hydro's F2006 Open Call for Power (F2006 Call) was issued on December 8, 2005 and targeted to procure approximately 2,500 gigawatt hours per year (GWh/year) of firm electrical energy and associated non-firm energy from Large Projects (10 megawatt (MW) or more) plus approximately 200 GWh/year of electrical energy from Small Projects (less than 10 MW). On July 27, 2006, BC Hydro announced the results of the F2006 Call. This Report fulfils BC Hydro's commitment to address the evaluation process for the tenders received and the outcome of the F2006 Call, including call award volumes, cost-effectiveness and rate impact.

The F2006 Call was designed and implemented to be fair, transparent and competitive with the goal of a cost-effective result. Independent Power Producers (IPPs) and other stakeholders had several opportunities to provide input on the F2006 Call design and to provide comments pertaining to the draft Call for Tenders (CFT) and Electricity Purchase Agreement (EPA) documents. The major F2006 CFT terms and conditions, and mandatory requirements, were agreed to pursuant to a Negotiated Settlement (NS) in September 2005 which was approved by the British Columbia Utilities Commission (BCUC). BC Hydro subsequently met all of the F2006 Call-related NS commitments.

Evaluation Process

On April 7, 2006 BC Hydro received 61 tenders from 37 bidders for 53 separate projects. Following the assessment review, 48 projects proceeded to the evaluation phase of the CFT. The bid prices for each tender were levelized to permit a direct comparison between projects regardless of the bid options selected by the bidder. Adjustments were then made to reflect green credits, hourly firm energy, greenhouse gas (GHG) obligations and interconnection/transmission costs in order to place all tenders on a level playing field. The resultant Adjusted Bid Prices (ABPs) were then used in the determination of optimal portfolios and the ultimate selection of projects for EPA awards. Non-price factors and the 50 per cent BC Clean Electricity target were considered during the evaluation process but did not alter the selection of cost-effective tenders.

Call Award Volumes and Prices

On July 27, 2006, BC Hydro announced the award of EPAs to 38 new IPP projects totalling 6,471 GWh/year of energy from Large Projects (including 5,725 GWh/year of firm energy) and 654 GWh/year of energy from Small Projects. The associated bid prices are as follows:

(\$/MWh Levelized)	Large Projects	Small Projects
Average Plant Gate Price	\$74.0	\$69.9
Average ABP	\$87.5	\$76.8
ABP Range	\$68.9 – 99.5	\$62.7 – 89.5

BC Hydro also awarded an EPA to Brilliant Expansion Power Corporation (BEPC), a subsidiary of Columbia Power Corporation (CPC), for the procurement of 226 GWh/year of firm energy from the Brilliant Expansion 2 Project. The ABP of this project is competitive with the prices of those Large Projects awarded EPAs in the F2006 Call.

Increased Award Volume

The target volume of 2,500 GWh/year of firm energy was based on the system supply-demand outlook in the fall of 2005. However, the F2006 Call award volume was increased to 5,725 GWh/year of firm energy for three principal reasons: (1) greater load-resource gap; (2) allowance for attrition/outages; and (3) increased technological diversity.

BC Hydro's most recent load forecast indicates that electricity demand in F2011/12 will be approximately 3,000 GWh/year higher than the load forecast used at the time the F2006 Call was issued. Additionally, based on past IPP experience, BC Hydro believes that it is prudent to provide a 25-40 per cent allowance for project attrition and delivery outages. The increased award volume also provides BC Hydro with the opportunity to expand the technological diversity of the portfolio and thereby reduce reliance on water resources. Even with the higher award volumes, there is still a supply shortfall of 1,300 GWh in F2011 based on the mid load forecast.

Cost-Effectiveness

BC Hydro relies on having designed and run a competitive CFT process as the primary support for its position that the F2006 Call awards are cost-effective. Several market price comparisons also indicate that the awards are cost-effective.

In the U.S. Pacific Northwest (PNW), Puget Sound Energy (PSE) is in the process of conducting a Request for Proposals (RFP) which indicates that bid prices in the last two years have increased by 40-70 per cent for most resource types. The F2006 Call awards are in the same price range as the prices bid into PSE's RFP. Aside from such acquisition processes, there is no liquidity in the long-term electricity market in the PNW and spot market prices are not good comparators to the fixed prices available through long-term EPAs. A comparison to acquisition processes in other Canadian jurisdictions indicates that the F2006 Call results are similar to recent awards in Ontario, Quebec and the Maritimes. Lastly, the levelized plant gate prices for

1 the F2006 Call awards are within the cost range of resource options provided in the 2006
2 Integrated Electricity Plan (IEP), typically being at the higher end of the range.

3 *Rate Impact*

4 It is expected that the rate impact of the F2006 Call award volumes net of any attrition/outages
5 would be approximately 8.1 per cent relative to BC Hydro's F2007 revenue requirement. The full
6 impact would not occur until F2012 and is expected to diminish over time. Given the magnitude
7 of BC Hydro's growing energy needs, acquiring new supply from any source (whether from IPPs
8 or the market) would likely have a material impact on future electricity rates.

9 *Alignment with 2002 BC Energy Plan*

10 The F2006 Call award supports the 2002 BC Energy Plan. In particular, the awards fulfil the
11 policy objectives of secure, reliable supply and providing more private sector opportunities. Also,
12 the F2006 Call adheres to the environmental policy action which established a voluntary goal of
13 acquiring 50 per cent of new supply from "BC Clean Electricity".

14 BC Hydro understands that the forthcoming updated BC Energy Plan will introduce a policy for
15 British Columbia (BC) to become electricity self-sufficient within the next decade. While the
16 F2006 Call awards were made for unrelated reasons, both the nature of the F2006 Call (BC-
17 based) and the volume of energy acquired are consistent with such a policy objective.

1. BACKGROUND

1.1. Background

The F2006 Call was issued on December 8, 2005 with the following procurement targets¹:

- Large Projects: a target of approximately 2,500 GWh/year of firm and associated non-firm electrical energy from projects having a plant capacity of 10 MW or more. The awards were to take into account BC Hydro's need for approximately 900 GWh/year of firm electrical energy in F2010 and approximately 1,600 further GWh/year of firm electrical energy in F2011; and
- Small Projects: a target of approximately 200 GWh/year of electrical energy from projects with a plant capacity of greater than 0.05 MW but less than 10 MW.

The F2006 Call was "open" meaning that all proven generation technologies, except nuclear technology, were eligible. Energy is to be delivered under EPAs with IPPs with terms ranging from 15 to 40 years from projects with a Commercial Operation Date (COD) targeted between October 1, 2007 and November 1, 2010 (both term and COD were selected by the bidder).

A request for approval of the need for the F2006 Call was included as part of the 2005 Resource Expenditure and Acquisition Plan (REAP) filed with the BCUC on March 7, 2005. On July 8, 2005 BC Hydro filed with the BCUC the Direct Testimony of Mary Hemmingsen² which included:

- The major proposed F2006 Call terms and conditions;
- Details concerning tender evaluation, methodology and mandatory requirements;
- Evidence of the nature and extent of First Nations and stakeholder engagement up to July 2005; and
- A review of comparable acquisition processes, including terms, conditions and mandatory requirements, from several jurisdictions in both Canada and the U.S.

NS discussions were held between BC Hydro and the 2005 REAP intervenors during September 20-22, 2005. The parties to the NS process unanimously agreed that the F2006 Call was justified in terms of BC Hydro's projected energy requirements and that BC Hydro should proceed as soon as possible with the F2006 Call as set out in the 2005 REAP with the modifications set out in Schedule A of the NS. The BCUC approved the NS on October 12,

¹ Based on BC Hydro's December 2004 Load Forecast as further described in Section 5 of this Report.

² 2005 REAP Exhibit B-11.

2005 pursuant to BCUC Order No. G-103-05. The BCUC did not provide any comments on the proposed terms and conditions of the F2006 Call as part of its approval. A copy of the NS is attached as Appendix A to this Report.

The NS contains a number of F2006 Call design and implementation commitments. BC Hydro has met all of these F2006 Call-related NS commitments. The CFT documents and the implementation of the F2006 Call also reflect the commitments in the Direct Testimony of Mary Hemmingsen as modified by the NS. Section 2 of this Report provides further detail concerning which of the NS commitments are F2006 Call design and implementation commitments, and where in the F2006 Call documents those commitments are addressed.

The Direct Testimony of Mary Hemmingsen and the NS also required BC Hydro to file a report addressing the F2006 Call evaluation process and outcome. This Report fulfils this BC Hydro commitment by addressing both the F2006 Call evaluation process and the outcome of the F2006 Call, including the increased F2006 Call award volume, the cost-effectiveness of the F2006 Call awards and the rate impact of the F2006 Call awards. As a result of the BCUC's approval of the NS, this Report will not revisit aspects of the F2006 Call addressed as part of the NS, including the use of a CFT process, the terms and conditions of the F2006 Call, the F2006 Call mandatory requirements, and the First Nations and stakeholder engagement process up to July 2005.

1.2. Report Outline

The following is a brief explanation of the sections covered in this Report:

- Section 2 includes a brief overview of the First Nations and stakeholder engagement process. The section focuses on the final (post-NS) design stage of that process and provides a summary of how the F2006 Call-related NS commitments were met;
- Section 3 provides a summary of F2006 Call implementation and an explanation of BC Hydro's governance and decision-making structure for the F2006 Call;
- Section 4 provides an overview of the evaluation of tenders, selection of optimal portfolios and F2006 Call award;
- Section 5 sets out the justification for the volume of energy awarded in the F2006 Call;
- Section 6 demonstrates the cost-effectiveness of the F2006 Call awards;
- Section 7 provides an estimate of the rate impact of the F2006 Call awards;

- 1 • Section 8 describes the alignment of the F2006 Call results with the 2002 BC Energy Plan³;
- 2 and
- 3 • Section 9 lists the EPAs awarded in the F2006 Call.

³ “Energy for Our Future: A Plan for BC”, available at the BC Ministry of Energy, Mines and Petroleum Resources website www.gov.bc.ca/empr/popt/energyplan.htm.

2. FIRST NATIONS & STAKEHOLDER ENGAGEMENT AND NS COMMITMENTS

2.1. First Nations and Stakeholder Engagement Process

The F2006 Call was designed through the spring and fall 2005 and included significant First Nations and stakeholder engagement. First Nations and stakeholders were given three opportunities to provide comment on the F2006 Call: 1) draft terms and conditions in the spring of 2005; 2) the NS process; and 3) final draft documents in the fall of 2005.

BC Hydro obtained approval from the BCUC to proceed with the F2006 Call through the NS. Subsequent to the NS, BC Hydro incorporated the NS-related modifications and released the final draft F2006 Call documents for comment on October 31, 2005. This constituted the third opportunity for First Nations, IPPs and other stakeholders to comment on the F2006 Call documents. Comments were due on November 14, 2005.

BC Hydro received approximately 250 comments from First Nations and stakeholders⁴ regarding the final F2006 Call draft documents. BC Hydro addressed approximately two-thirds of these comments by making a number of changes to the CFT and EPA terms and conditions. The majority of changes in the CFT were made to the tendering options. Other CFT changes pertained to regulatory matters and the determination of optimal portfolios. Changes to the Large Project EPA and Small Project EPA included the addition of an allowance to modify plant capacity after the EPA award and the expansion of recoverable costs. For only the Large Project EPA, changes focused on modifications to firm energy amounts, the calculation of liquidated damages (LDs) and the split bid provision. It should be noted that there were no substantive changes to the major F2006 Call terms and conditions that were discussed as part of the NS process. The final F2006 Call documents were issued on December 8, 2005.

Appendix B to this Report provides a table of key changes made to the final F2006 Call documents in response to stakeholder comments pertaining to the draft F2006 Call documents.

Table 1 provides a summary of the primary elements of the First Nations and stakeholder engagement conducted in the F2006 Call design stage between March 2005 and December 2005.

⁴ The comments were mainly from potential bidders with comments also provided by customer groups, service providers and First Nations.

1 **Table 1 - Summary of First Nations and Stakeholder Engagement for F2006 Call**

Date in 2005	Description
March 10	Preliminary procurement documents issued
March 14-21	Regional Information Sessions held in Prince George, Kamloops, Nanaimo and Vancouver
March 30	Supplier-focused Technical Workshop held in Vancouver
April 15	Over 1000 written comments received on preliminary F2006 Call documents
July 15	Draft F2006 Call documents released: <ul style="list-style-type: none"> • Process Procurement Description; • Schedule A: Tender Evaluation Criteria; • Schedule B: Electricity Purchase Agreement – Term Sheet Large Projects; • Schedule C: Electricity Purchase Agreement – Term Sheet Small Projects; and • Summary of Changes in the F2006 Call documents comparing March 10 vs July 15 versions.
September 20-22	NS conference held with 2005 REAP registered intervenors. Agreement reached on the major terms and conditions and mandatory requirements of the F2006 Call
October 12	The BCUC approved the NS
October 31	Final F2006 Call draft documents released
November 14	Written comments received
December 8	F2006 Call issued

2 **2.2. F2006 Call NS Commitments**

3 BC Hydro has met all of the F2006 Call-related NS commitments. Table 2 provides a list of the
4 NS commitments related to F2006 Call design and implementation, and where in the F2006 Call
5 documentation those commitments are addressed.

Table 2 - F2006 Call NS Commitments

F2006 Call Design and Implementation of NS Commitments	Location in F2006 Call Document
COD – The F2006 Call will allow for a COD of between October 1, 2007 and November 1, 2010, with no “grace period” after November 1, 2010.	Refer to the CFT, section 11, page 10, attached as Appendix C to this Report, which provides that the “Guaranteed COD must be the first day of any month from October 1, 2007 to November 1, 2010”.
LDs for Delivery Obligation – BC Hydro commits to allow greater tolerances on hourly and monthly firm deliveries before LDs apply. Specifically, BC Hydro is to include a provision for a 10 per cent buffer (LDs are applied to deliveries under 90 per cent of contracted firm energy) on hourly and monthly firm deliveries before LDs are applicable. This was to include planned and unplanned outages.	Refer to the Large Project EPA, section 12.2, page 20, attached as Appendix D to this Report.
Compliance with GHG Regulations – Seller must comply with all applicable laws and all permits during the term of the EPA, including any requirements imposed by government agencies, relating to GHG emissions from the successful bidder’s plant.	Refer to the Large Project EPA, section 6.8, page 11; and to the Small Project EPA, section 6.9, pages 9-10, attached as Appendix E to this Report.
Firm Imports – Projects must be located within British Columbia and capable of connection to the integrated system.	This mandatory requirement was accepted by all NS participants for purposes of the F2006 Call design. Refer to the CFT, section 15.2, page 29 under the titles “Project Location”.
Discount of Tier 1 Power – BC Hydro proposes an \$8/megawatt hour discount for non-firm Tier 1.	This price discount was accepted by all NS participants for purposes of the F2006 Call design. Refer to Appendix 3 of the Large Project EPA, section 1.1 “Discount Amount”, page 48.
Pre-Qualification Requirements and Project Risk Assessment – BC Hydro proposes that the F2006 Call consist of one tender stage, there will be no preliminary or separate pre-qualification stage for bidders or projects. The mandatory requirements and evaluation criteria will be set out in the finalized CFT documents. For clarity, the mandatory requirements and evaluation criteria will include the specific thresholds by project type that BC Hydro will use in its project risk assessment. These factors include those listed in Exhibit A to the Direct Testimony of Mary Hemmingsen at page 9, as well as progress in the environmental assessment process if applicable, First Nations and community support, and wind and water availability data. In conducting a project risk assessment, BC Hydro will, among other things, take into account whether a bidder proposes to offset its GHG emissions to the applicable Province of British Columbia standard, or in the absence of such a standard, to a combined cycle gas turbine level, as evidenced in its GHG mitigation plan.	Refer to the CFT, section 15.1, pages 28-29; section 15.2 (“Mandatory Requirements”), pages 29-30; section 15.3, (“Risk Assessment”), pages 30-32; and the “Thresholds” set out in the Project Submission Instructions attached as Appendix F to this Report.
Bridging – Bridging is the use of alternative resources to bridge a bidder’s commitments prior to COD. The F2006 Call is not to permit bridging.	All NS participants agreed that the complexity and project risk assessment issues associated with permitting bridging would delay or jeopardize the F2006 Call. Bridging was not permitted.

1 The NS also committed BC Hydro to “publish on its website after EPA award the bid prices of all
2 successful and unsuccessful tenders. The intention is to provide sufficient information to allow
3 stakeholders to understand the outcome of the F2006 Call evaluation and basis of the awards;
4 however, the specifics of how bid prices will be disclosed requires further input from IPPs and
5 stakeholders”. Such input was obtained on August 9, 2006 by way of a price disclosure meeting
6 between BC Hydro and the 2005 REAP intervenors. Section 4 of this Report provides the bid
7 prices of successful and unsuccessful bidders, and describes how BC Hydro arrived at the
8 optimal F2006 Call portfolios.

9 Finally, the NS contained a commitment with respect to the F2006 Call target. The F2006 Call
10 was to target approximately 2,400 GWh/year of firm energy⁵ (and associated non-firm energy)
11 from Large Projects, and approximately 200 GWh/year of energy from Small Projects. The
12 awards were to take into account BC Hydro’s then identified need for approximately 800
13 GWh/year of firm energy in F2010 and approximately 1,600 further GWh/year of firm energy in
14 F2011. BC Hydro ultimately awarded EPAs for a volume of energy larger than these targets.
15 Section 5 addresses why BC Hydro chose to award EPAs for a volume of energy larger than the
16 NS targets.

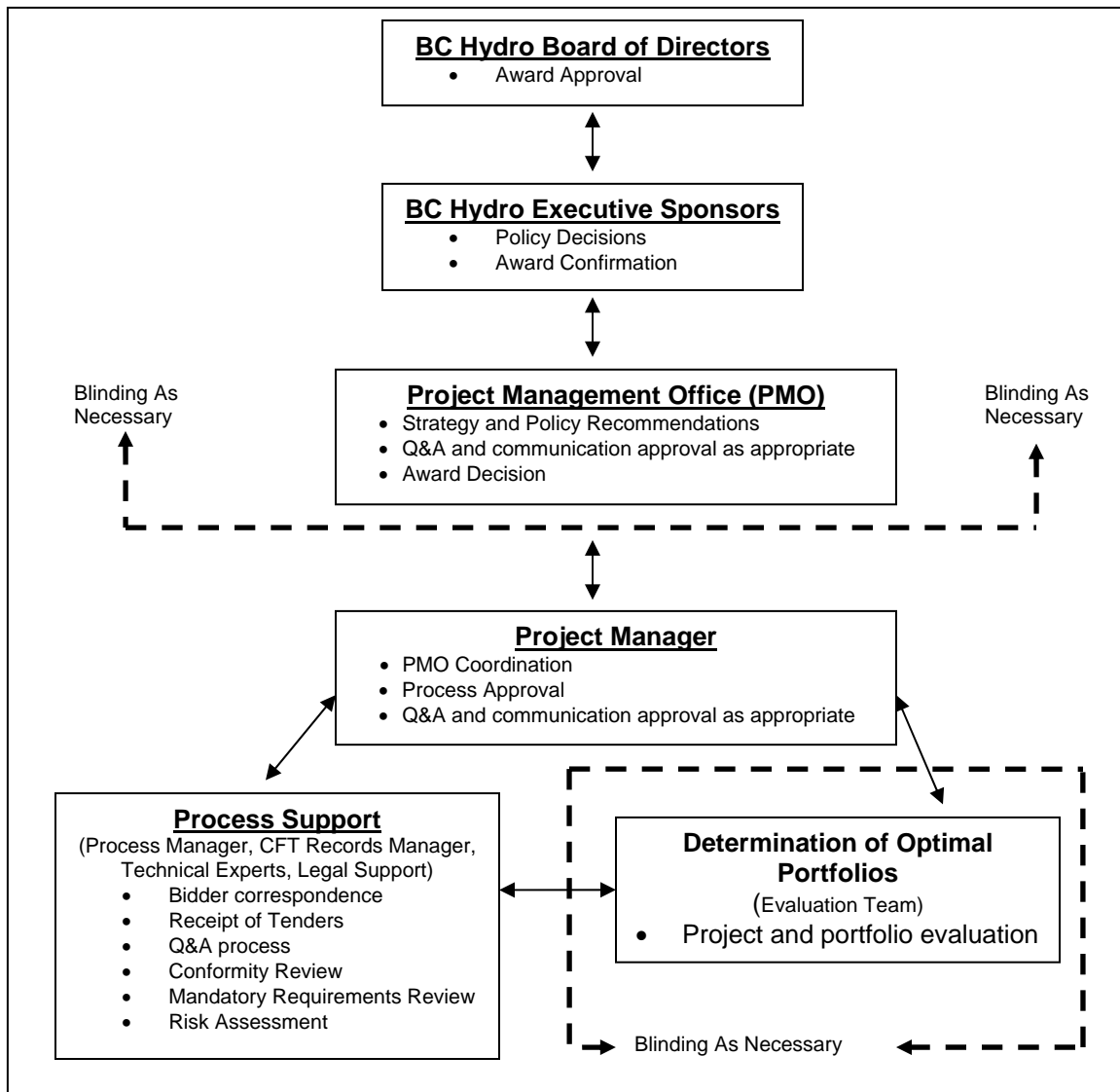
⁵ Target was subsequently modified to 2,500 GWh/year for Large Projects, section 1 of the CFT.

3. F2006 CALL IMPLEMENTATION AND ASSESSMENT PROCESSES

The F2006 Call was implemented with the goal of creating a clear and competitive process. This was accomplished by using standard tendering practices and a management framework to ensure that the process was implemented in accordance with the CFT requirements. The management framework and pre-tender implementation process are described in Section 3.1 and Section 3.2 respectively. Section 3.3 provides a review of the F2006 Call assessment process. The quantitative bid price adjustment and determination of optimal portfolios are explained in Section 4 of this Report.

3.1. Management Framework

BC Hydro developed a management framework to administer, manage and execute the F2006 Call. This management framework was designed to ensure that the F2006 Call was executed in a manner consistent with the CFT requirements. This management framework provided a clear assignment of the F2006 Call mandate, rules, duties and responsibilities, to those persons involved in the various phases of the process. A summary of responsibilities, relationships, reporting and process flow structures is illustrated in Figure 1.

Figure 1 - Overview of F2006 Call Process Management Framework

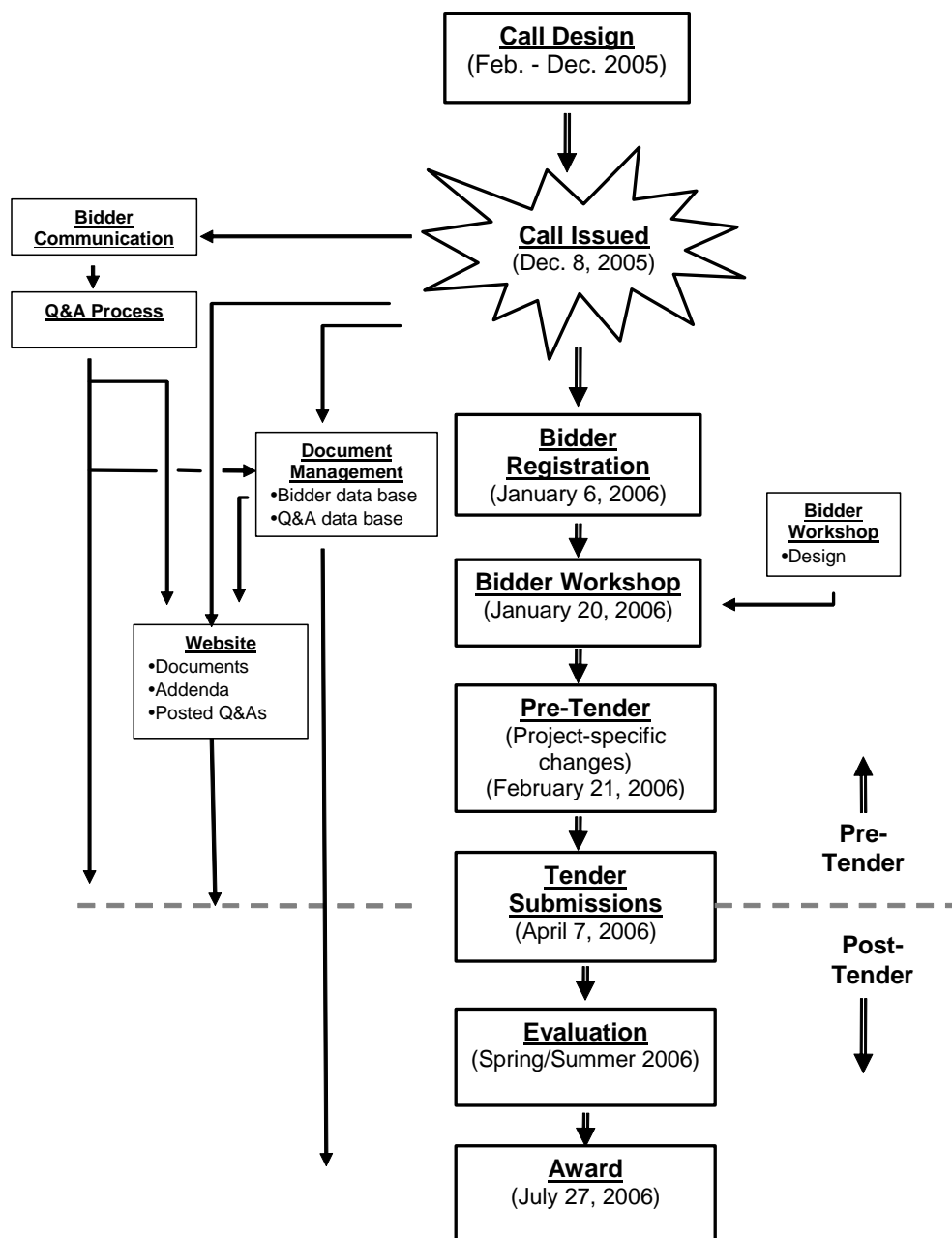
2 The above defined structure for the governance of the F2006 Call was further supported by two
 3 additional elements:

- 4 • Protocol barriers were established to ensure access to bidder information was restricted
 5 (blinded) as required to eliminate the potential for undue influence of pricing or other
 6 factors in certain tender evaluation decisions.
- 7 • All staff, consultants and PMO members involved in reviewing tenders were required to
 8 sign Declaration of Material Interests and Employee Confidentiality Acknowledgements
 9 (where applicable) acknowledging any material interest that team members had with
 10 respect to bidders and that the information submitted by bidders to BC Hydro (including
 11 evaluations and recommendations) is confidential.

1 **3.2. F2006 Call Implementation**

2 Figure 2 below summarizes the implementation of the F2006 Call, including the dates on which
3 each phase occurred.

Figure 2 - Implementation Flow Diagram - F2006 Call



3.2.1. Pre-Tender Phase

The Pre-Tender phase consisted of the principal steps outlined in Figure 2.

Forty-eight bidders registered for the F2006 Call by the registration date of January 6, 2006. These bidders represented 81 projects with a combined capacity of approximately 2,800 MW (330 MW Small Projects, 2,470 MW Large Projects) with an estimated 12,000 GWh/year of total energy for Large Projects and 1,500 GWh/year of total energy for Small Projects. On January 20, 2006, two bidder workshops (one for Small Projects and one for Large Projects) were held. There were 65 and 89 attendees for the Small and Large Project workshops respectively.

To ensure that bidders had equal access to relevant information with respect to the CFT process, CFT communications were limited to formal pathways between BC Hydro's CFT Records Manager and the Bidder Contact Person. These included:

- Questions and Answers (Q&As): Registered bidders could submit written questions to BC Hydro (as per section 9 of the CFT) any time up to March 8, 2006 for clarification of any instruction, term or condition contained in the CFT. One hundred and fifteen Q&As were posted on BC Hydro's website (<http://www.bchydro.com/f2006call>). Between issuance of the F2006 Call and tender closing time, BC Hydro received in total more than 380 emails from bidders. These emails included various bidder's electronic submissions required as part of the F2006 Call process (e.g. submission of Bidder Registration Form, Pre-Tender Submission, responses on BC Hydro's clarifications) and bidder's inquiries of an administrative nature.
- Notes to Bidders: BC Hydro issued 14 "Notes to Bidders". These notes were issued electronically to all Bidder Contact Persons when there was pertinent information to communicate with respect to administrative or procedural changes or reminders of key dates or actions.
- Addenda: Five addenda were issued and are available on BC Hydro's website. These addenda dealt with amendments to the CFT and EPAs including providing clarifications on the CFT process, e.g. changes in respect to interconnection matters, etc.
- CFT Telephone Contact: As per section 6 of the CFT, bidders registered in the F2006 Call were provided with a BC Hydro telephone contact number, which was intended to be used only to clarify administrative requirements to the CFT which could not otherwise be addressed through the Q&A process. Thirty-one enquiries were received on the CFT

1 telephone contact line. BC Hydro responded to all enquiries either by incorporating them
2 in the formal Q&A process and/or including resulting clarifications in the Addenda.

3 **3.2.2. Post-Tender Phase**

4 BC Hydro received 61 tenders from 37 bidders for 53 projects on April 7, 2006 representing
5 approximately 1,800 MW and approximately 6,500 GWh/year of firm energy. Both Large and
6 Small Projects were submitted representing five technologies: hydro, waste heat, wind, biomass
7 and coal resources.

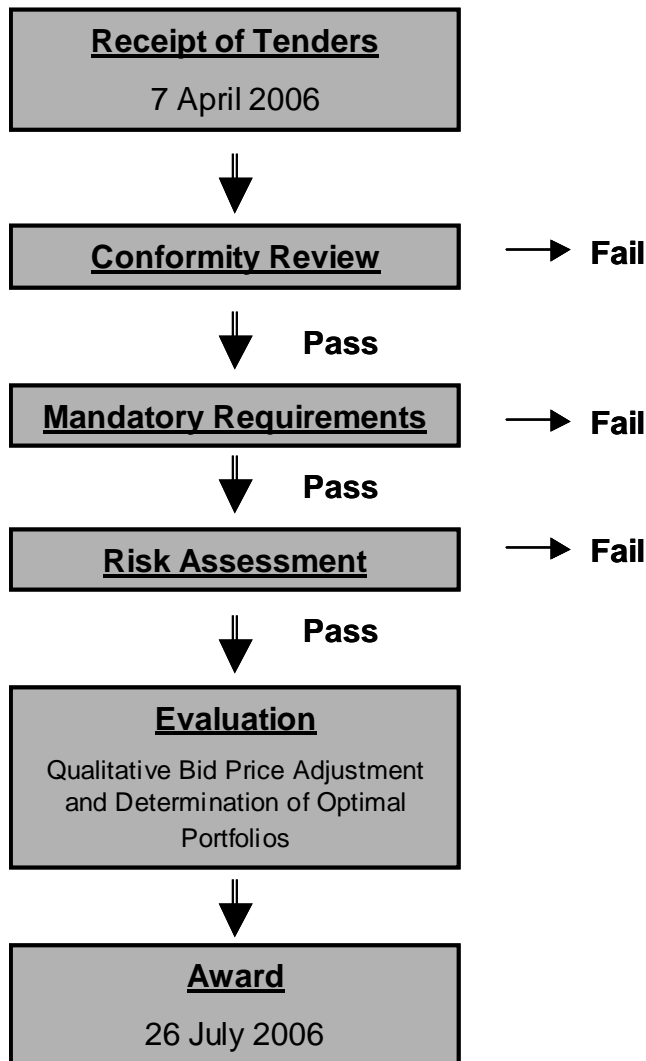
8 Following receipt of tenders and completion of a conformity review, BC Hydro conducted a
9 tender assessment and evaluation of conforming tenders, which consisted of:

- 10 1. Mandatory requirements review;
- 11 2. Risk assessment;
- 12 3. Quantitative bid price adjustment; and
- 13 4. Determination of optimal portfolios.

14 This Post-Tender process is outlined in Figure 3 and was implemented in accordance with the
15 CFT⁶ and related addenda.

⁶ Consistent with the four stage process outlined in the Direct Testimony of Mary Hemmingsen at pages 29-30 as modified by the NS.

Figure 3 - F2006 Open Call for Power – Post-Tender Stage



Details of the assessment are provided below. The evaluation of the tenders to conduct the quantitative bid price adjustment and determine the optimal portfolios is explained in Section 4 of this Report.

3.3. Tender Assessment

The methodology by which tenders were assessed and evaluated was available to bidders in the CFT issued as part of the F2006 Call on December 8, 2005. In addition, the bidder workshops held on January 20, 2006 provided further details and an opportunity for bidders to ask questions on the implementation of the F2006 Call and the assessment and evaluation of tenders. This enabled bidders to determine, at an early stage, whether or not they wished to participate.

1 In the conformity, mandatory requirements and risk assessment review, tenders were assessed
2 on a “pass/fail” basis against the criteria laid out in the CFT. In the final portfolio assembly
3 process, the remaining tenders were evaluated on their competitive merits against the other
4 remaining tenders.

5 As noted above, a blinding protocol was established to eliminate the potential for undue
6 influence of pricing or other factors in certain stages of the tender evaluation process. Further,
7 the PMO ensured the consistent application of the CFT rules and principles and developed final
8 recommendations to BC Hydro’s senior management and Board of Directors.

9 Stage 1 - Conformity Review

10 BC Hydro assessed tender submissions to determine whether they conformed to the
11 requirements set out in section 14 of the CFT. BC Hydro’s conformity review was consistent
12 with the rules laid out in the CFT, applicable law and good tendering practice. During the
13 conformity review, two projects were rejected from further consideration.

14 Stage 2 - Mandatory Requirements Review

15 BC Hydro assessed all conforming tenders to determine compliance with the mandatory
16 requirements outlined in section 15.2 of the CFT, including project location, project size and
17 generation technology. All conforming tenders met the mandatory requirements.

18 Stage 3 - Risk Assessment

19 For those tenders that complied with the mandatory requirements, BC Hydro undertook a risk
20 assessment as set out in section 15.3 of the CFT. The risk assessment assessed a number of
21 aspects about the bidder and their project(s) to assess the likelihood that the project would be
22 technically and legally capable to perform substantially in accordance with the EPA and that the
23 project would achieve COD, and any required network upgrades would be in service by the
24 tendered COD.

25 The scope of the risk assessment was available in advance to bidders in the Project Submission
26 Instructions (issued on December 8, 2005 in conjunction with the CFT and all other related
27 documents, attached as Appendix F to this Report). These instructions described thresholds
28 with respect to each aspect of the assessment to assist bidders in determining the nature and
29 extent of the requirements. This allowed bidders to assess, before submitting a tender, whether
30 their projects were developed sufficiently to pass the risk assessment.

- 1 Three projects failed the risk assessment and 48 passed on to the evaluation phase.
- 2 Stage 4 –Evaluation
- 3 Tenders that passed the above three assessment stages were then subject to the quantitative
- 4 bid price adjustment following which the optimal portfolios were assembled. This evaluation
- 5 process is explained in detail in Section 4 of this Report.

4. EVALUATION OF TENDERS

As discussed in the previous section, conforming tenders that complied with the mandatory requirements and that passed the risk assessment were then evaluated in accordance with the methodology described in sections 15.4 and 15.5 of the CFT and related addenda⁷. This evaluation consisted of first, computing the adjusted bid price (ABP), and second, conducting the portfolio selection. The ABPs are for evaluation purposes only and do not affect the prices paid to the successful bidders.

4.1. Computing the Adjusted Bid Price

The CFT permitted bidders to select a number of different options when tendering their bid prices and as a result, a rigorous process was required to compare one bid price against another. To compare tenders with these different characteristics, the first step in computing the ABP of each tender was to levelize the tendered bid prices which permitted a direct comparison between bid prices regardless of the options selected by the bidder.

4.1.1. Step One – Levelizing the Bid Prices

To obtain a levelized bid price, BC Hydro completed a two step calculation for each tender. BC Hydro determined the present value (PV) of the cash flow for each tender, based on the bidder's selected options⁸ and then divided by the PV of energy flow to be delivered over the term of the EPA. Assumptions used in the PV calculations include a Consumer Price Index (CPI) escalator of 2 per cent, a nominal discount rate of 8 per cent and a January 1, 2006 reference point. Section 15.4 of the CFT provided bidders with the January 1, 2006 reference point assumption that BC Hydro planned to use in the price levelization calculation.

Table 3 provides the levelized plant gate bid price for all the tendered Large and Small Projects which passed the conformity review, mandatory requirements and risk assessment processes described in Section 3 of this Report.

⁷ Consistent with the Direct Testimony of Mary Hemmingsen at pages 31, as modified by the NS.

⁸ Bidder options included percentage of bid price escalated at CPI, term, two-part term pricing and COD.

1

Table 3 - Levelized Bid Prices for the Large and Small Projects

\$/MWh	Levelized Bid Price – Plant Gate	
	Large Projects	Small Projects
Projects awarded an EPA	59.7	55.8
	66.7	59.8
	68.3	62.6
	68.8	62.6
	69.0	66.0
	71.0	66.3
	71.2	66.5
	72.3	66.5
	74.0	67.0
	75.2	68.5
	76.3	69.3
	77.3	69.4
	82.2	69.4
	84.4	71.7
	90.7	71.8
	95.1	73.2
	--	73.9
	--	74.8
	--	77.2
	--	78.0
	--	84.5
	--	85.6
Projects not awarded an EPA	81.3	77.0
	86.2	77.3
	90.6	80.1
	--	91.8
	--	95.4
	--	120.2

2

4.1.2. Step Two – Making the Bid Price Adjustments

3 After the tendered bid prices were levelized, the second step in computing the ABP for each
4 tender is to adjust the levelized bid price to account for differences in product characteristics
5 resulting from the bidder's chosen tender options, interconnection requirements and project
6 location relative to the Lower Mainland. Under the awarded EPAs for Large Projects,
7 adjustments included Green Credit, Hourly Firm Credit, GHG, Cost of Incremental Firm
8 Transmission (CIFT), Network Upgrade costs borne by BC Hydro and energy losses. Small
9 Projects received similar adjustments with the exception of Hourly Firm Credit which is not

1 applicable to Small Projects. These adjusters are laid out in section 15.4 of the CFT and were
2 provided to the bidders prior to the submission of the bids⁹. The adjusters are explained below:

3 **Green Credit**¹⁰: For a project that could achieve EcoLogo certification and that elected to
4 transfer its green attributes to BC Hydro, an evaluation adjuster of up to \$3.00/MWh (based on
5 the percentage of energy eligible for EcoLogo certification relative to the total energy generated
6 by the project) was deducted from the levelized bid price.

7 **Hourly Firm**¹¹: For a project that elected to tender an hourly firm energy profile, an evaluation
8 adjuster of \$3.00/MWh was deducted from the levelized bid price.

9 **GHG**¹²: For a project that opted to transfer to BC Hydro all or part of its obligation to purchase
10 GHG offsets or similar compliance units, the levelized bid price was increased by an amount
11 determined from the GHG adjustment table provided in the CFT, based on the tendered
12 guaranteed GHG intensity.

13 **CIFT**¹³: The CIFT adjustment was based on the “Bulk Transmission System Cost of
14 Incremental Firm Transmission for the NITS 2004 Facilities Study Supplemental Information
15 Posting - 2009 Stage (Revised March 29, 2006)” prepared by British Columbia Transmission
16 Corporation (BCTC) and posted on its website on March 30, 2006. To calculate the CIFT
17 adjustment for each project, the average cost (\$/MW-year) of the two scenarios shown in the
18 study for each region was used as the CIFT cost for that region and converted into a \$/MWh
19 adjustment that was added to the levelized bid price of that project, as applicable.

20 **Network Upgrades**: The network upgrades adjustment was based on the upgrades applicable
21 to a project for which BC Hydro would bear the cost as set out in the Preliminary Interconnection
22 Study for that project and the applicable upgrades as determined based on the “Transmission
23 System Transfer Capability Limits – Upgrade Options & Costs Estimates” reports dated March
24 24, 2006. Separate reports were prepared for the four regions within BC – Vancouver Island,
25 Southern Interior, Northern Interior and Lower Mainland. The applicable upgrade amounts were
26 converted into a \$/MWh adjustment that was added to the levelized bid price.

⁹ Similar to the adjusters described in Exhibit B of the Direct Testimony of Mary Hemmingsen.

¹⁰ This is the same Green Credit adjuster described in the Direct Testimony of Mary Hemmingsen at page 3 and Exhibit B.

¹¹ This is the same Hourly Firm adjuster described in the Direct Testimony of Mary Hemmingsen.

¹² The GHG adjustment table used in the F2006 Call is very similar to the “preliminary adjustment table” found in Exhibit B of the Direct Testimony of Mary Hemmingsen.

¹³ The three adjusters associated with interconnection and transmission were described in a more general fashion in Exhibit B of the Direct Testimony of Mary Hemmingsen, given that the specific figures for CIFT, network upgrades and losses were not known until subsequent studies were conducted by BCTC.

Losses: BC Hydro requested BCTC to conduct studies to determine the losses associated with delivering the energy from each project location to the Lower Mainland. These losses were converted into a \$/MWh adjustment that was added to the levelized bid price.

Table 4 shows calculated ABPs on a stand-alone basis¹⁴ for all tendered Large and Small Projects which passed the conformity review, mandatory requirements and risk assessment processes described in Section 3 of this Report.

Table 4 - ABPs for Large and Small Projects

\$/MWh	ABP (Levelized)	
	Large Projects	Small Projects
Projects awarded an EPA	68.9	62.7
	75.0	70.0
	75.3	70.0
	75.5	70.5
	78.4	70.5
	80.5	70.7
	80.7	71.7
	85.8	74.1
	88.6	74.2
	92.7	75.3
	93.7	76.3
	93.8	76.4
	95.1	77.1
	95.3	78.4
	95.6	79.9
	99.5	80.5
	--	80.9
	--	81.8
	--	86.3
	--	88.1
	--	88.2
	--	89.5
Projects not awarded an EPA	107.5	92.8
	115.2	93.1
	117.6	93.2
	--	101.3
	--	119.0
	--	139.1

¹⁴ Stand-alone basis means the ABP of each tender calculated as if it was the only project being added to the Transmission or Distribution systems.

1 There were additional special conditions that needed to be considered when calculating the
2 ABPs for the tenders including:

- 3 • Bidders who submitted co-dependent tenders; or
- 4 • Clusters¹⁵ of two or more tenders passing through Distribution or Transmission cut-planes
5 where there was limited transfer capability to accommodate the combined capacity of such
6 clusters.

7 In those special cases, it was necessary to compute a blended ABP for each co-dependent
8 tender, and for each cut-plane cluster of tenders (including combinations thereof as necessary).

9 Lastly, to assist in the refinement of ABPs, BC Hydro engaged BCTC and BC Hydro Distribution
10 Planning to undertake certain studies referenced in the CFT¹⁶ including energy loss studies for
11 each tender. Other studies investigated were:

- 12 • The impact of downsizing the size of an existing IPP contract upon the interconnection
13 cost estimates of two Small Project tenders from the F2006 Call where the
14 interconnection costs for those projects were previously estimated assuming the original
15 size for that existing IPP.
- 16 • The cost of upgrading three distribution cut-planes, each of which involved two or more
17 Distribution-connected projects proposing to interconnect into the same Distribution
18 feeder.
- 19 • The combined energy losses of the two Large Projects with the highest ABP, to see if
20 the combined energy losses were significantly greater than the sum of the individual
21 stand-alone estimates for the energy losses.

22 The results of these other studies were used to further refine the ABP of those projects affected.

23 **4.2. Portfolio Selection**

24 After the ABPs were computed, the ABPs of the tenders for the Large Projects were ranked
25 from lowest to highest. It was also necessary to treat the bidder declarations of alternate,

¹⁵ Clusters refer to groups of two or more tenders that are related to each other for evaluation purposes. For example, two projects may need to pass their power through a common cut-plane to transmit their power to the load centre. Although there may be sufficient transfer capability to accommodate each project individually, an upgrade may be required to accommodate the transmission of power from both projects. In such a case, the cluster of two projects would be assigned the cost of the upgrade for evaluation purposes, whereas there would be no additional assignment of upgrade costs when the projects are considered on a standalone basis. A cut-plane refers to a transmission pathway on the area transmission system that has limited transfer capability.

¹⁶ Sections 12.1, 12.2 and 12.3 of the CFT.

1 mutually exclusive or co-dependent tenders, and the cut-plane clusters of tenders (including any
2 combinations thereof) identified by BC Hydro, as mutually exclusive to certain other tenders and
3 cut-plane clusters of tenders, during the portfolio assembly phase of the evaluation. Only one
4 project was not eligible to receive an EPA because it was mutually exclusive to another
5 successful project.

6 **4.2.1. Large Projects**

7 For portfolio selection of the Large Projects, BC Hydro identified two additional conditions it
8 wanted to meet: (1) the target of 900 GWh/year of energy coming online on or before November
9 1, 2009 set out in section 1 of the CFT; and (2) the 50 per cent BC Clean Electricity target set
10 out in section 11 and 15.5 of the CFT¹⁷. Both of these targets were met without having to resort
11 to any modifications to the project ranking based on ABP.

12 As the above conditions were not constraints, the only issue was how much firm energy¹⁸ to
13 acquire. During the ranking of the projects, BC Hydro identified two projects that if both were
14 selected, could have the potential for higher energy losses. As noted above, BCTC completed a
15 special study for these projects and the impact of the results on the combined ABP was
16 negligible. Given the characteristics of the supply price curve at the margin, BC Hydro was
17 satisfied that there were no significant portfolio effects¹⁹ on the location adjustments that would
18 have changed the award. Therefore it was determined that it was not necessary to send a short-
19 list of portfolios to BCTC for further study.

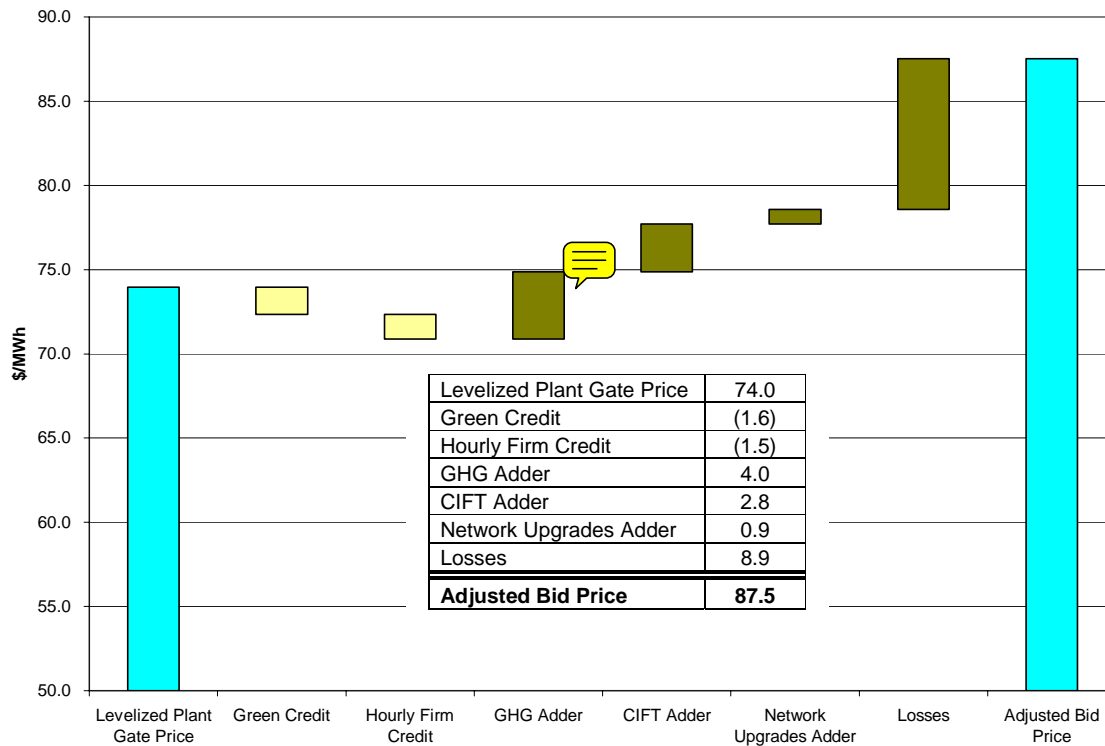
20 Figure 4 presents graphically the levelized bid prices, adjustments made and the average ABP
21 on a weighted-average basis for the Large Project portfolio.

¹⁷ Consistent with the BC Clean Electricity target describe in the Direct Testimony of Mary Hemmingsen at page 18.

¹⁸ As set out in the Direct Testimony of Mary Hemmingsen, for purposes of the F2006 Call “firm energy” is defined to represent a volume of energy, with a contractually assured delivery, that an IPP must commit to providing over a specified period.

¹⁹ Portfolio effects refer to situations where the sum of the individual impacts of individual tenders is not the same as the impact when considered as a group. For example, the energy losses of two or more projects that share a common transmission line or lines are not likely to be equal to the sum of the individual energy losses of the projects when considered on a standalone basis.

1

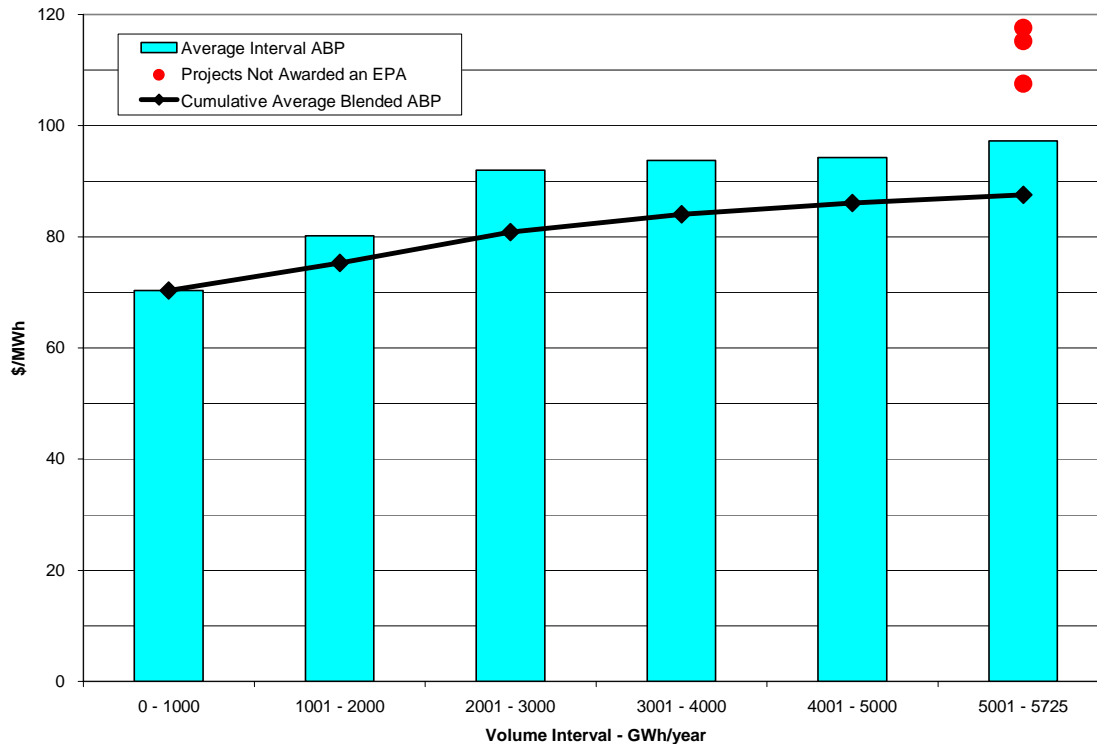
Figure 4 - Large Project Portfolio Blended ABP Components (\$/MWh)

2 Figure 6 shows the supply curve of the ABP of the projects selected for the Large Project
 3 portfolio²⁰. In the figure, the columns represent the average ABP of all firm energy tendered in
 4 intervals of 1,000 GWh/year. The curve in the figure represents the cumulative blended ABP up
 5 to the GWh/year indicated. The dots above the last interval represent the ABP of the three
 6 Large Projects not awarded an EPA. Based on the Large Projects awarded an EPA, the
 7 average ABP of the Large Projects portfolio is \$87.5/MWh.

²⁰ Attrition and outage factors have not been applied to the energy.

1

Figure 5 - Large Project Adjusted Bid Price Supply Curve (\$/MWh)



2

4.2.2. Small Projects

3 After the optimum Large Project portfolio was determined, the process was repeated for the
 4 Small Projects. Subsequent to determining that there were no inter-dependency issues between
 5 the two project streams, it again became apparent that the 50 per cent BC Clean Electricity
 6 target was not a constraining factor as this target was met on a cumulative basis as the
 7 cumulative plant capacity exceeded the target volume of 50 MW. Again, because it was not
 8 necessary to make any pricing trade-offs for this target constraint at the margin, it was not
 9 necessary to construct more than one portfolio. The only issue was how much energy to acquire
 10 from the Small Projects.

11 Using the fact that non-firm energy was priced at a levelized \$8/MWh discount²¹ relative to firm
 12 energy, and recognizing that the energy from the Small Project stream is contractually non-firm,
 13 BC Hydro set the maximum ABP awarded in the Small Project stream at \$8/MWh less than the
 14 maximum ABP awarded in the Large Project stream. Also, as BC Hydro was satisfied that there
 15 were no significant portfolio effects arising from the location adjustments that would have

changed the ABPs and hence the ranking of the marginal projects, it was not necessary to send a short-list of portfolios to BCTC for further study.

Figure 6 presents graphically the levelized bid prices, adjustments made and the ABP on a weighted-average basis for the Small Project portfolio.

Figure 6 - Small Project Portfolio Blended ABP Components (\$/MWh)

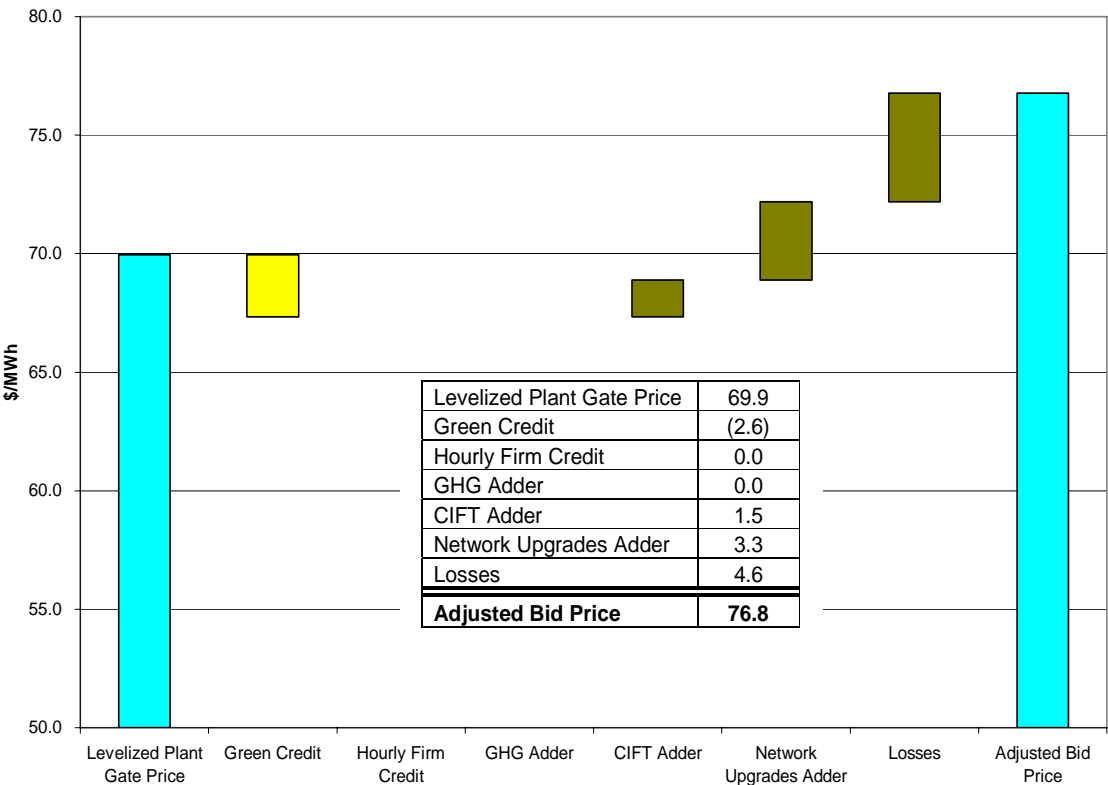
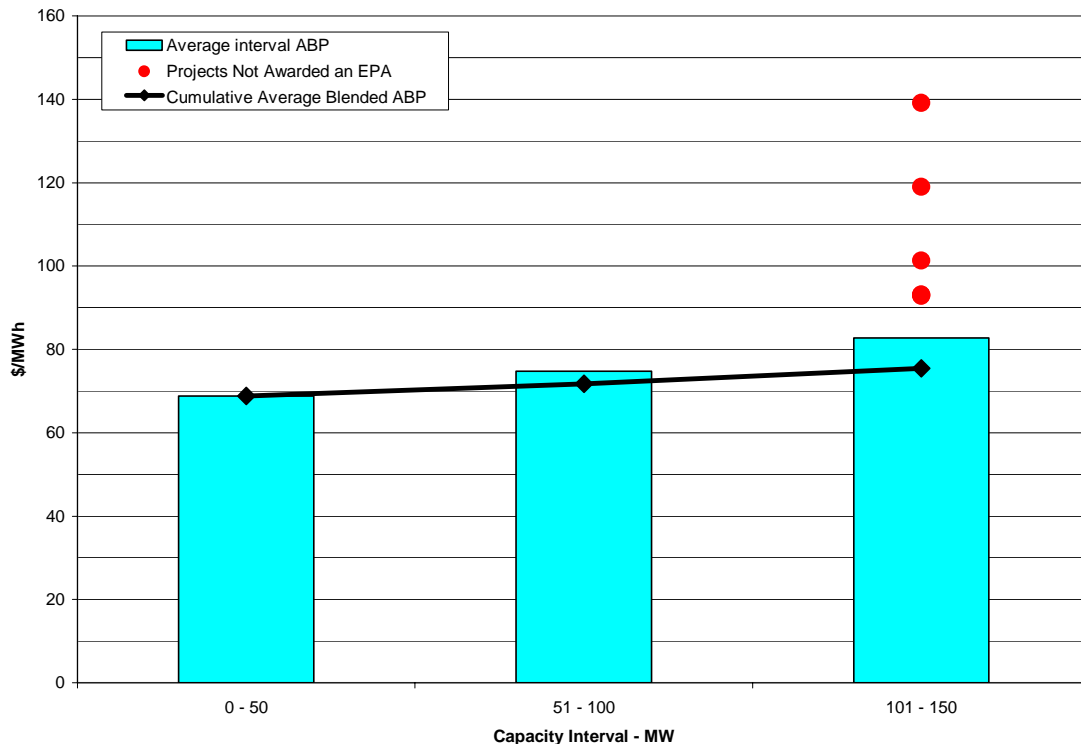


Figure 7 graphically demonstrates the supply curve of the ABP of the projects selected for the Small Project portfolio²². In the figure, the columns represent the average ABP of all firm energy tendered in intervals of 50 MW. The curve in the figure represents the cumulative blended ABP up to the MW indicated. The dots above the last interval represent the ABP of the six Small Projects not awarded an EPA.

²¹ As set out in Table 2 in Section 2 of this Report, this price discount was accepted by all NS participants. See Appendix 3 of the Large Project EPA, section 1.1.

²² Attrition and outage factors have not been applied to the energy.

Figure 7 - Small Project ABP Supply Curve (\$/MWh)



Based on the Small Projects awarded an EPA, the average ABP of the Small Projects portfolio is \$76.8/MW.

4.3. Application of Non-Price Factors

It was not necessary to apply any non-price factors in the evaluation process for the Large Projects or the Small Projects, which may have required selecting a higher-priced tender over a lower-priced tender. There were no tenders with lower ABPs that were not awarded EPAs than the tender with the highest-ABP that was awarded an EPA.

4.4. Brilliant Expansion 2 Project

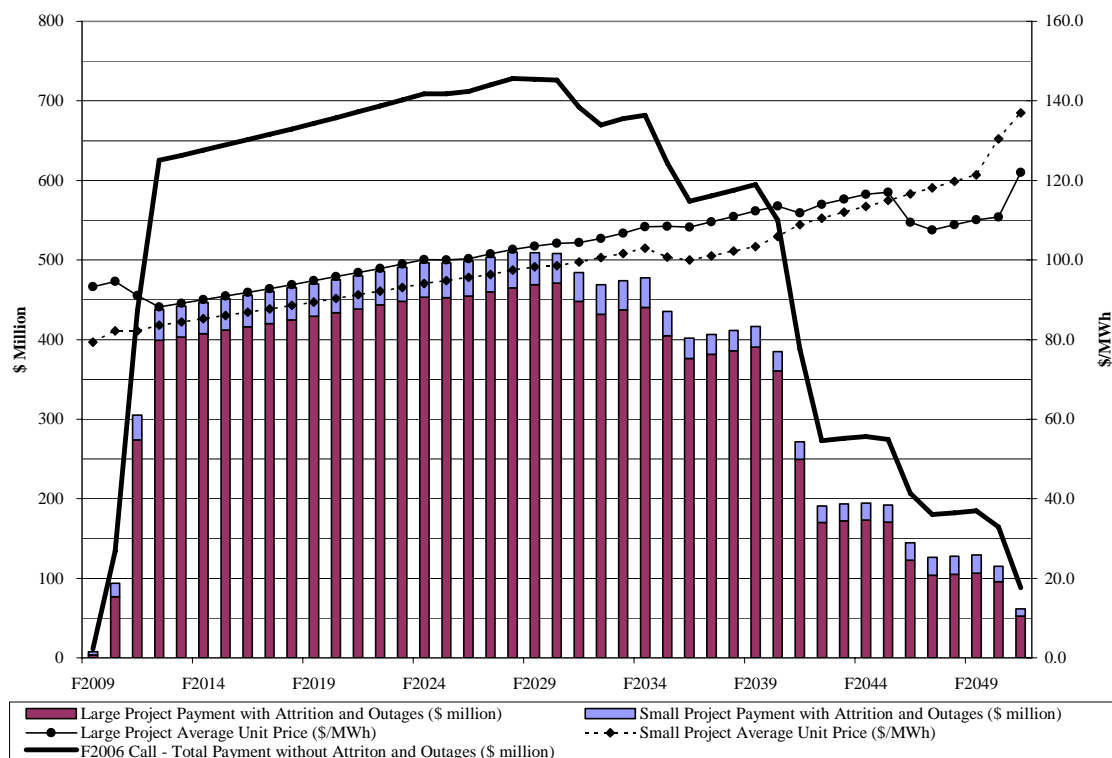
CPC and its subsidiary BEPC are exempt from Section 71 of the *Utilities Commission Act* pursuant to Minister's Order M-22-0001 (M 337) dated October 3, 2000. A copy of M 337 is attached as Appendix G to this Report. Accordingly, the following is provided for information purposes only.

In a parallel tender process, BEPC was invited to submit an offer to sell to BC Hydro the “Entitlement Energy”²³ from the Brilliant Expansion 2 Project not already under contract to BC Hydro.²⁴ The offer submitted by BEPC in response to the invitation was evaluated in a manner consistent with that of the Large Project tenders, including the calculation of the ABP for the Entitlement Energy offered. Since the ABP of the offer was competitive relative to the ABPs of the projects awarded contracts in the Large Project portfolio, BC Hydro determined it would be cost-effective to award an EPA to BEPC.

4.5. Nominal Expected Annual Payments to IPPs

Table 5 and Figure 8 show the expected payments, energy deliveries and unit energy costs for energy delivered to BC Hydro for each year for the Large and Small Project portfolios and for the total purchased energy with a factor of 30 per cent attrition and outages. BC Hydro's estimated attrition and outage factor is explained in Section 5 of this Report and Appendix H.

Figure 8 - Nominal Expected Annual Energy Payments to IPPs²⁵



²³ Refer to the Canal Plant Agreement (CPA) and the CPA Sub-Agreement available on the BCUC website.

²⁴ BC Hydro has an EPA for part of the “entitlement energy” associated with the Brilliant Expansion Project resulting from the 2003 Green Power Generation Call.

²⁵ The solid black line is the F2006 Call total potential payments without attrition or outages.

Table 5 - Nominal Expected Annual Energy Payments to IPPs

Fiscal Year	F2006 Call – Large Projects (including attrition and outages)			F2006 Call – Small Projects (including attrition and outages)			F2006 Call (including attrition and outages)		
	Payment (\$ mm)	Energy GWh/year	Unit Price (\$/MWh)	Payment (\$ mm)	Energy GWh/year	Unit Price (\$/MWh)	Payment (\$ mm)	Energy GWh/year	Unit Price (\$/MWh)
F2007	0	0	0.0	0	0	0.0	0	0	0.0
F2008	0	0	0.0	0	0	0.0	0	0	0.0
F2009	3	37	93.3	4	56	79.3	8	93	84.8
F2010	77	815	94.6	17	204	82.1	94	1,019	92.1
F2011	274	3,012	91.0	31	378	82.2	305	3,389	90.0
F2012	399	4,529	88.2	38	458	83.6	438	4,987	87.8
F2013	403	4,529	89.1	39	458	84.4	442	4,987	88.7
F2014	408	4,529	90.0	39	458	85.2	447	4,987	89.5
F2015	412	4,529	90.9	39	458	86.0	451	4,987	90.5
F2016	416	4,529	91.8	40	458	86.9	456	4,987	91.4
F2017	420	4,529	92.8	40	458	87.7	460	4,987	92.3
F2018	425	4,529	93.8	41	458	88.6	465	4,987	93.3
F2019	429	4,529	94.8	41	458	89.4	470	4,987	94.3
F2020	434	4,529	95.8	41	458	90.3	475	4,987	95.3
F2021	439	4,529	96.8	42	458	91.2	480	4,987	96.3
F2022	443	4,529	97.9	42	458	92.2	486	4,987	97.4
F2023	448	4,529	99.0	43	458	93.1	491	4,987	98.4
F2024	453	4,529	100.1	43	458	94.1	496	4,987	99.5
F2025	453	4,529	100.0	43	458	94.8	496	4,987	99.5
F2026	455	4,529	100.4	44	458	95.7	498	4,987	99.9
F2027	460	4,529	101.5	44	458	96.4	504	4,987	101.0
F2028	465	4,529	102.7	45	458	97.4	510	4,987	102.2
F2029	469	4,529	103.5	40	409	98.3	509	4,939	103.1
F2030	471	4,520	104.2	37	378	98.6	508	4,898	103.8
F2031	448	4,289	104.4	36	365	99.5	484	4,654	104.0
F2032	432	4,098	105.4	37	365	100.6	469	4,463	105.0
F2033	437	4,098	106.7	37	365	101.7	474	4,463	106.3
F2034	441	4,067	108.3	37	358	103.0	477	4,424	107.9
F2035	405	3,733	108.5	30	301	100.8	435	4,034	107.9
F2036	377	3,479	108.2	25	252	100.1	402	3,731	107.7
F2037	381	3,479	109.6	25	249	101.0	406	3,728	109.0
F2038	386	3,479	110.9	25	249	102.2	411	3,728	110.3
F2039	391	3,479	112.3	26	249	103.4	416	3,728	111.7
F2040	361	3,176	113.6	24	228	106.0	385	3,404	113.1
F2041	249	2,231	111.8	22	200	108.9	271	2,431	111.5
F2042	170	1,492	114.0	21	190	110.5	191	1,682	113.6
F2043	172	1,492	115.3	21	190	112.0	193	1,682	114.9
F2044	173	1,487	116.5	22	190	113.5	195	1,676	116.1
F2045	170	1,457	117.0	22	190	115.0	192	1,646	116.8
F2046	123	1,121	109.5	22	190	116.6	145	1,311	110.5
F2047	104	965	107.6	22	190	118.2	126	1,155	109.3
F2048	105	965	108.9	23	190	119.8	128	1,155	110.6
F2049	106	965	110.1	23	190	121.4	129	1,155	112.0
F2050	96	863	110.8	20	150	130.4	115	1,013	113.7
F2051	53	431	122.0	9	67	137.02	62	498	124.0

5. CALL AWARD VOLUME

As set out in section 1 of the CFT, the F2006 Call targeted an award volume of approximately:

- 2,500 GWh/year of firm electrical energy and associated non-firm electrical energy from Large projects; and
- 200 GWh/year (based on a portfolio of approximately 50 MW of aggregate plant capacity at a 50 per cent capacity factor) of electrical energy from Small Projects.

On July 27, 2006, BC Hydro announced the award of EPAs to 38 new IPP projects totalling 6,471 GWh/year of energy from Large Projects and 654 GWh/year of energy from Small Projects. In addition, 226 GWh/year of energy is to be purchased from BECP. A breakdown of the award volumes is set out in Table 6.

Table 6 - Breakdown of Award Volumes

	Firm Electrical Energy (GWh/year)	Non-firm Electrical Energy (GWh/year)	Total Electrical Energy (GWh/year)
Large Projects	5,725	746	6,471
Small Projects	0	654	654
Subtotal	5,725	1,400	7,125
Brilliant Expansion 2 Project	226	0	226
Total	5,951	1,400	7,351

This section sets out the reasons why BC Hydro awarded EPAs for a volume of energy larger than the NS targets. There are three principal reasons for the increased award volume, namely: (1) a greater load/resource gap; (2) allowance for attrition and outages; and (3) increased technological diversity.

5.1. The Increased Load/Resource Gap

BC Hydro revisited the load/resource balance outlook when determining the F2006 Call award volume. To interpret the outlook, it is essential to consider the change in BC Hydro's load forecast. The F2006 Call target award volumes agreed to in the NS were the result of the fall 2005 load/resource balance which in turn was based on the December 2004 Load Forecast. The awards were to take into account BC Hydro's forecast need for approximately 800 GWh/year of firm electrical energy in F2010 and approximately 1,600 further GWh/year of firm electrical energy in F2011.

The recommended award volume for the F2006 Call is higher than the original targeted award volumes due to an increase in BC Hydro's load forecast. Since the F2006 Call was issued, BC Hydro has produced the December 2005 Load Forecast and the February 2006 Load Forecast Update.

Table 7 below provides the change in each of the high, mid, and low load forecast between the December 2004 Load Forecast and the February 2006 Load Forecast Update (net of Demand Side Management (DSM) – Energy Efficiency 2 (EE2) and Load Displacement 2 (LD2)). The numbers are provided on an integrated system, gross requirements basis. In all cases the forecasted load has increased²⁶.

A comparison of the December 2004 Load Forecast and the February 2006 Load Forecast Update shows for the mid load forecast, expected increases in annual energy demand of approximately 1,771 GWh/year in F2007, increasing to 2,701 GWh/year in F2010 and 2,713 GWh/year in F2011.

Table 7 - Increase in Load Forecast from Dec. 2004 to Feb. 2006

Year	High (GWh)	Mid (GWh)	Low (GWh)
F2007	1,640	1,771	1,857
F2008	1,940	2,193	2,421
F2009	1,831	2,205	2,532
F2010	2,243	2,701	3,146
F2011	2,133	2,713	3,232
F2012	2,724	3,340	3,945

At the time of determining the appropriate F2006 Call award volume, the load-resource balance based on the February 2006 Load Forecast Update indicated a need for approximately 3,500 GWh/year of firm electrical energy in F2010 and an additional 1,900 GWh/year (cumulatively 5,400 GWh/year) of firm electrical energy in F2011. To meet this growing need, BC Hydro awarded a volume of 5,725 GWh/year of firm electrical energy to be delivered on or before November 1, 2010 from Large Projects. Table 8 highlights the change in required firm energy from fall of 2005 to the February 2006 Load Forecast Update for F2010 and F2011.

²⁶ For the fiscal years in Table 7, the change in the high load forecast is less than the change in the low load forecast.

Table 8 - Change in Required Firm Energy

(GWh/year)	Required Firm Energy – Fall 2005	Required Firm Energy – February 2006
F2010	800	3500
F2011	1600	1900
Total	2400	5400

5.2. Adjustment to the F2006 Call Volume for Attrition and Outages

BC Hydro considered potential F2006 Call supply attrition and outages when determining the appropriate award volume.

Attrition relates to the possibility that some of the awarded EPAs will not proceed. The CFT process and resulting EPAs were designed to minimize attrition through security requirements, termination requirements and the F2006 Call risk assessment evaluation process. However, BC Hydro did not design the F2006 Call requirements to be so stringent as to limit potentially good technologies or bidders from participating. Within a well designed call some attrition is expected given the uncertainties and risks in developing power projects.

BC Hydro analyzed historical attrition experience, new attrition risks and development uncertainties when estimating future delivery of F2006 Call energy. As a result, BC Hydro estimates that a range of 20-30 per cent attrition to the delivery of F2006 Call energy is reasonable.

Outages relate to the impact of planned and unplanned outages on the firm energy in the F2006 Call. The firm energy was tendered recognizing no allowance for planned and unplanned outages²⁷. As well, LDs for firm energy delivery include a provision of a 10 per cent buffer on hourly and monthly delivery to allow for planned and unplanned outages. Based on historical data on availability rates of certain technologies and the EPA and CFT provisions, the estimated outage rate (planned and unplanned) for the F2006 Call is in the range of 5-10 per cent.

The combined range for attrition and outages is estimated to be from 25-40 per cent. The award volume was chosen considering the impact this estimated range would have on the future supply. Please refer to Appendix H for further information on how these ranges were estimated.

Table 9 includes the award volumes for the F2006 Call without BECP's Brilliant Expansion 2 Project, decreased by the combined range of attrition and outages.

²⁷ For energy delivery planning, the scheduling of planned outages is governed by section 6.4 of the Large Project EPA (attached as Appendix D to this Report).

Table 9 - Award Volume Energy Decreased by the Range of Attrition and Outages

(GWh/year)	Award Volume	Allowance for Attrition/Outages at 25-40%	Award Volume net of allowance for attrition/outages
Firm Energy	5,725	1,431 – 2,290	4,294 – 3,435
Non-firm Energy	1,400	350 – 560	1,050 – 840

For the purposes of the updated load/resource balance outlook in Figure 9, a factor of 30 per cent for attrition and outages was applied to the energy supply from the F2006 Call. At a factor of 30 per cent, the firm energy for the F2006 Call is approximately 4,000 GWh/year.

5.3. Technological Diversity

The increased award volume expands the technological diversity of the portfolio of projects. The award volume comprises projects from all areas of the province and encompasses five resource types (biomass, coal/biomass, waste heat, water and wind). Table 10 identifies the portion of total energy coming from each technology type:

Table 10 - Total Energy by Resource Type

Resource Type	Total Energy (GWh/year)	Percentage of Total Energy Awarded
Water	2,854	40%
Wind	979	14
Biomass	1,185	17
Coal/Biomass	2,032	28
Waste Heat	75	1
Total	7,125	100%

Technological diversity in project numbers and energy reduces BC Hydro's reliance on predominantly one resource - water. A predominantly hydroelectric system exposes BC Hydro to fuel availability risk because of the annual and seasonal variation in hydrology due to changes in rain and snow pack conditions. At this award volume, BC Hydro selected a mix of technologies at cost-effective prices.

5.4. 2006 System Energy Supply – Demand Outlook

This section provides the system energy demand outlook including the results of the F2006 Call. Specifically, Figure 9 and Table 11 indicate that there will be a firm energy deficit of 1,300 GWh for F2011 based on the following assumptions:

- 1 • February 2006 Load Forecast Update net of DSM (EE2 and LD2);
- 2 • the firm energy supply from the F2006 Call including a factor of 30 per cent for attrition
- 3 and outages;
- 4 • BEPC's Brilliant Expansion 2 Project firm energy supply (embedded in the Figure 9 and
- 5 Table 11 in the F2006 Call firm energy);
- 6 • Firm energy resulting from the Revelstoke Unit 5 capacity addition; and
- 7 • Firm energy supply resulting from the extension and amendment of the Alcan Inc. Long-
- 8 Term Electricity Purchase Agreement (addressed in the amended Long-Term
- 9 Acquisition Plan filed in the 2006 IEP proceeding).

10 By adjusting only the F2006 Call volume of 5,725 GWh/year of firm energy supply to reflect the
11 combined estimated attrition and outages range of 25 per cent to 40 per cent, the system
12 energy demand outlook deficit in F2011 could range from 1,100 to 1,700 GWh.

Figure 9 - 2006 System Energy Supply – Demand Outlook

2006 System Energy Supply - Demand Outlook: including February 2006 Load Forecast Update, Alcan, and Expected EPAs from 2006 Call (based on Firm Energy)

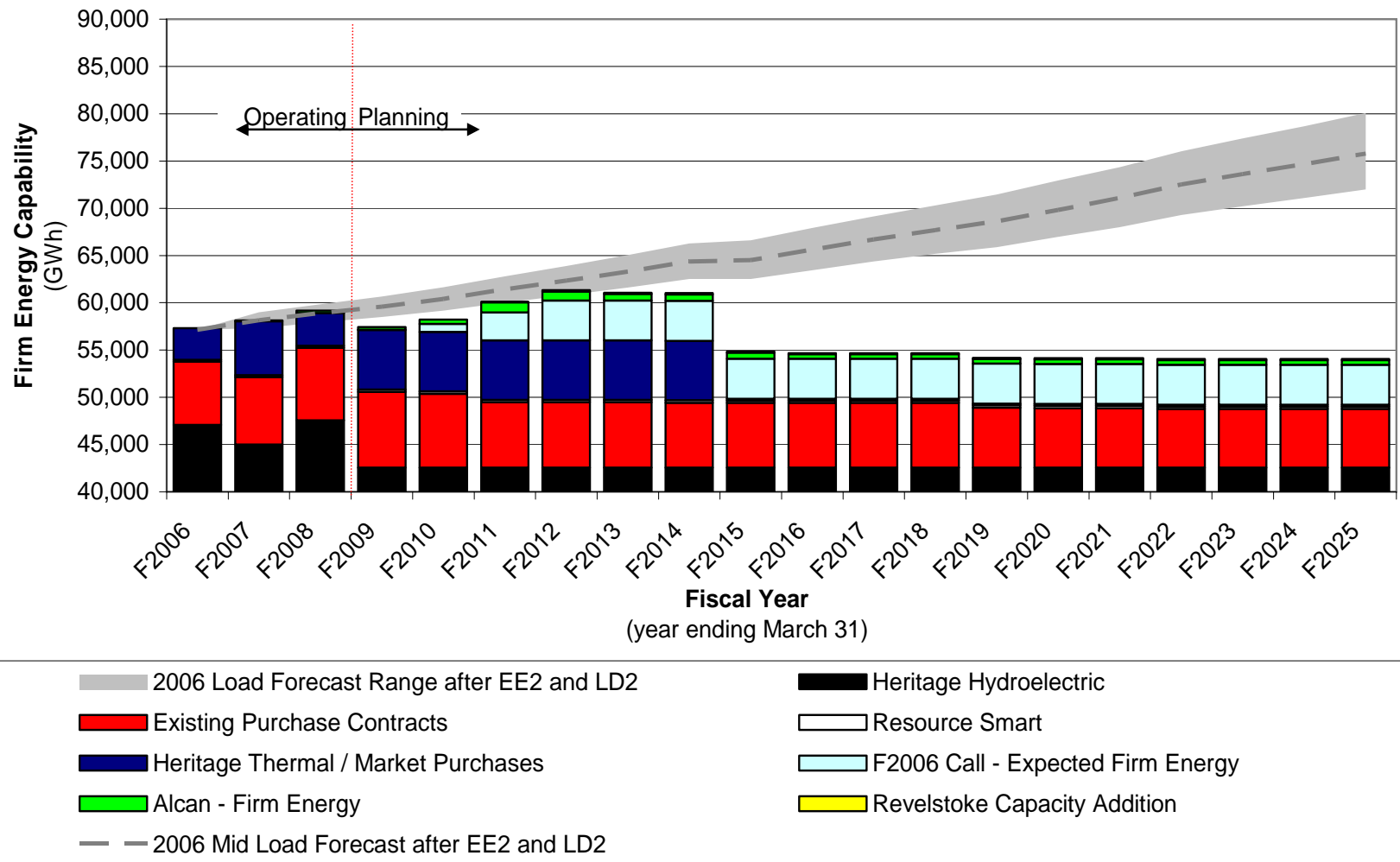


Table 11 - 2006 System Energy Supply – Demand Outlook

(including February 2006 Load Forecast update, Alcan, and expected EPAs from F2006 Call (based on Firm Energy))

2006 System Energy Supply - Demand Outlook: including February 2006 Load Forecast Update, Alcan, and Expected EPAs from 2006 Call (based on Firm Energy)

Existing and Committed Resources				Operating/Planning																	
GWh	F2006	F2007	F2008	F2009	F2010	F2011	F2012	F2013	F2014	F2015	F2016	F2017	F2018	F2019	F2020	F2021	F2022	F2023	F2024	F2025	
Demand - Integrated System Total Gross Requirements																					
2006 High Load Forecast before DSM (a)	57,100	60,200	61,400	62,600	63,900	65,300	66,500	67,800	69,100	69,300	70,600	71,900	73,100	74,200	75,800	77,000	78,400	79,700	81,000	82,400	
2006 Mid Load Forecast before DSM (b)	57,100	59,400	60,500	61,500	62,700	63,900	65,000	66,100	67,100	67,200	68,300	69,400	70,500	71,400	72,700	73,800	74,900	76,000	77,000	78,100	
2006 Low Load Forecast before DSM (c)	57,100	58,500	59,500	60,400	61,400	62,500	63,500	64,400	65,300	65,200	66,100	67,100	68,000	68,700	69,800	70,700	71,600	72,500	73,400	74,300	
Existing and Committed Supply																					
Heritage Hydroelectric	47,100	45,000	47,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	42,600	
Heritage Thermal / Market Purchases	3,300	5,700	3,400	6,300	6,300	6,300	6,300	6,300	6,300	200	200	200	200	200	200	200	200	200	200	200	
Resource Smart	200	200	200	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	
Existing Purchase Contracts	6,700	7,200	7,700	8,000	7,800	6,900	6,900	6,900	6,900	6,800	6,800	6,800	6,800	6,300	6,300	6,300	6,200	6,200	6,200	6,200	
Total Supply (d)	57,300	58,100	58,900	57,100	56,900	56,000	56,000	56,000	56,000	49,800	49,800	49,800	49,800	49,300	49,300	49,300	49,200	49,200	49,200	49,200	
2006 High Load Forecast Surplus / Deficit (d - a)	200	-2,200	-2,500	-5,500	-7,000	-9,300	-10,500	-11,800	-13,100	-19,500	-20,700	-22,000	-23,200	-24,900	-26,500	-27,700	-29,200	-30,500	-31,800	-33,200	
2006 Mid Load Forecast Surplus / Deficit (d - b)	200	-1,300	-1,600	-4,400	-5,700	-7,900	-9,000	-10,100	-11,200	-17,400	-18,500	-19,600	-20,600	-22,100	-23,400	-24,500	-25,700	-26,700	-27,800	-28,900	
2006 Low Load Forecast Surplus / Deficit (d - c)	200	-500	-600	-3,300	-4,500	-6,500	-7,500	-8,400	-9,300	-15,400	-16,300	-17,300	-18,100	-19,400	-20,500	-21,400	-22,400	-23,300	-24,200	-25,100	
Demand Side Management																					
Energy Efficiency 2 and Load Displacement	0	1,200	1,600	1,900	2,200	2,500	2,700	2,800	2,800	2,700	2,700	2,700	2,800	2,800	2,800	2,700	2,400	2,400	2,400	2,400	
Sub-total (e)	0	1,200	1,600	1,900	2,200	2,500	2,700	2,800	2,800	2,700	2,700	2,700	2,800	2,800	2,800	2,700	2,400	2,400	2,400	2,400	
Proposed New Supply																					
F2006 Call - Expected Firm Energy	0	0	0	0	800	3,000	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	
Revelstoke Capacity Addition	0	0	0	0	0	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	
Alcan - Firm Energy	0	100	300	300	500	1,100	1,000	700	700	600	500	500	500	500	500	500	500	500	500	500	
Sub-total (f)	0	100	300	300	1,300	4,100	5,300	5,100	5,100	5,000	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	4,800	
Total Supply (d + e + f)	57,300	59,400	60,800	59,300	60,500	62,500	64,000	63,800	63,800	57,600	57,400	57,400	57,400	57,000	57,000	56,800	56,400	56,400	56,400	56,400	
2006 High Load Forecast Surplus / Deficit (d + e + f - a)	200	-900	-700	-3,300	-3,400	-2,700	-2,600	-4,000	-5,300	-11,800	-13,200	-14,500	-15,600	-17,300	-18,800	-20,200	-22,000	-23,300	-24,600	-26,000	
2006 Mid Load Forecast Surplus / Deficit (d + e + f - b)	200	0	300	-2,200	-2,200	-1,300	-1,000	-2,300	-3,300	-9,700	-11,000	-12,000	-13,000	-14,400	-15,700	-17,000	-18,500	-19,600	-20,600	-21,700	
2006 Low Load Forecast Surplus / Deficit (d + e + f - c)	200	800	1,200	-1,100	-900	100	500	-500	-1,500	-7,700	-8,800	-9,700	-10,500	-11,700	-12,900	-13,900	-15,200	-16,200	-17,100	-17,900	

Figure 10 and Table 12 further illustrate the need for the increased award volume. Using the February 2006 Load Forecast Update for need and the same inputs as above but varying the volumes from the F2006 Call, the figure shows the anticipated surplus or deficit in supply for the fiscal years 2011 through 2014. At an acquisition volume of 2,500 GWh/year of firm energy (the solid line) and the award volume of firm energy factored by the 30 per cent estimate of attrition and outages, BC Hydro would be in a supply deficit for all fiscal years. At the F2006 Call award volume of firm energy without attrition and outages (top dotted line), BC Hydro would be in a surplus in F2011 and F2012 but in a deficit for the remaining fiscal years.

Figure 10 - Surplus Deficit Chart

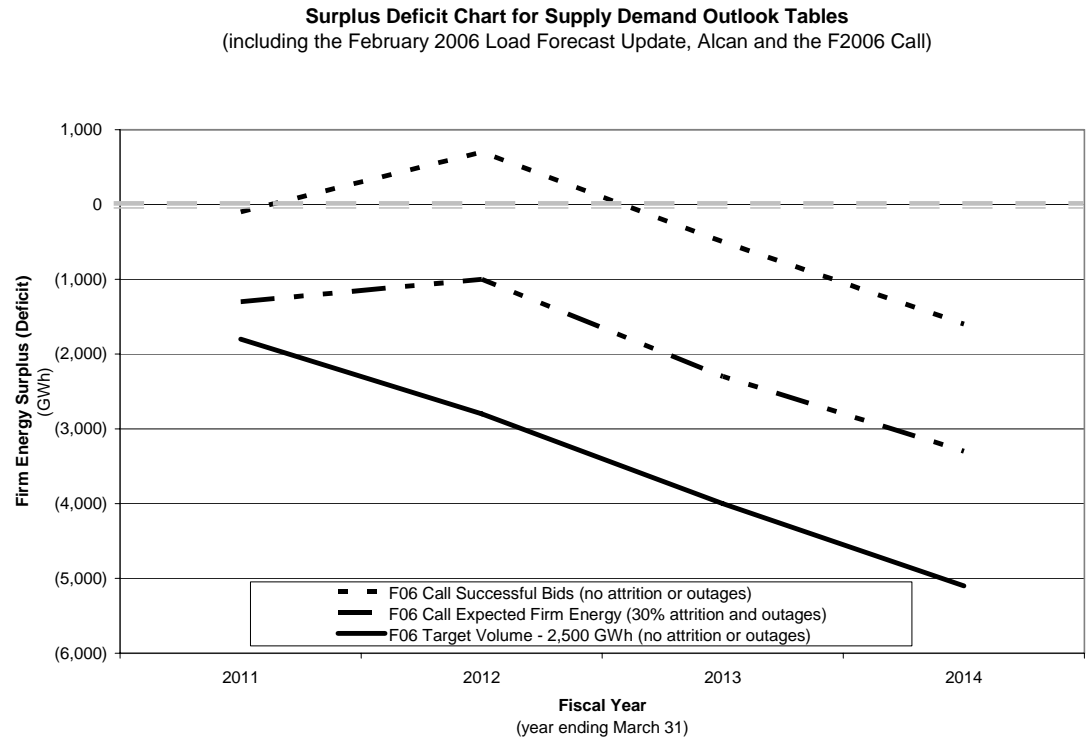


Table 12 - Surplus/Deficits from Load/Demand Balance

Fiscal Year	F06 Target Volume - 2,500 GWh (no attrition or outages)			F06 Call Successful Bids (no attrition or outages)			F06 Call Expected Firm Energy (30% attrition and outages)		
	Low	Mid	High	Low	Mid	High	Low	Mid	High
2011	-400	-1,800	-3,200	1,300	-100	-1,500	100	-1,300	-2,700
2012	-1,200	-2,800	-4,300	2,200	700	-800	500	-1,000	-2,600
2013	-2,300	-4,000	-5,700	1,200	-500	-2,300	-500	-2,300	-4,000
2014	-3,200	-5,100	-7,000	200	-1,600	-3,500	-1,500	-3,300	-5,300

2 Considering these load/resource balance outlooks, BC Hydro concluded that awarding
3 additional volumes in the F2006 Call was prudent. However, even though there is an anticipated
4 deficit in F2011, BC Hydro concluded that awarding EPAs to all projects would not be prudent.
5 The projects which passed the conformity review, mandatory requirements and risk assessment
6 processes but were unsuccessful were not cost-effective.

7 If the combined factor of 30 per cent for attrition and outages proves to be an over estimation, it
8 is still prudent to acquire the recommended award volumes because it is preferable to have
9 some surplus at a cost-effective fixed price than to be subject to the risk of acquisitions from the
10 market. This issue is explored in greater detail in Section 6.

6. COST-EFFECTIVENESS

In the BCUC's decision concerning the Vancouver Island Transmission Reinforcement project²⁸ (VITR Decision), the BCUC stated that the task is "not to select the least cost project, but to select the most cost-effective project".

The BCUC applied the cost-effectiveness test to EPAs in its decision concerning the Vancouver Island Generation Project²⁹ (the VIGP Decision). In the VIGP Decision, the BCUC distinguished between "cost-effectiveness" and "least cost", stating that cost-effectiveness includes consideration of project characteristics such as reliability, safety, dispatchability, timing and location, as well as cost or price in the case of an EPA. In the VITR Decision, the scope of project characteristics encompassed by a "cost-effective decision" was expanded to include attributes such as schedule (key risks associated with project completion), financing and other project arrangements, rate impacts of competing projects, and "socio-economic and other non-financial impacts" such as community impacts, environmental effects and First Nation impacts, may also be relevant (VITR Decision, pages 15, 34 and 36).

BC Hydro employs the "cost-effective" standard for all supply acquisitions given that it is a more comprehensive benchmark that incorporates least cost but also reflects risk and a broader range of non-quantitative characteristics such as those listed above.

The projects selected in the F2006 Call provide BC Hydro with a diverse source of new supply beginning in 2009. These projects provide many socio-economic, environmental and other non-financial benefits that cannot be directly accounted for under a least-cost decision framework, but which may be taken into account in a cost-effectiveness analysis. Some of the attributes and characteristics that contribute to the cost-effectiveness of the selected projects include:

Risks

- The awarded EPAs, net of attrition and outages, substantially reduce but do not eliminate the load/resource gap in F2011.

²⁸ See VITR Decision, page 15, and Order C-4-06, July 7, 2006. Both the VITR Decision and the accompanying Order are available on the BCUC website at www.bcuc.com.

²⁹ VIGP Decision, page 77, and Order No. G-55-03, available at www.bcuc.com.

- The awarded supply is provided under long-term fixed price contracts, thereby mitigating exposure to electricity and natural gas market risks and uncertainties as there would be with market purchases.
- There is no exposure to transmission constraints and jurisdictional risk outside of BC.
- The selected projects represent a diverse set of resources including wind, hydro, waste heat, biomass and coal from across the Province, thus helping to mitigate the fuel availability risk in a predominantly hydro-based system stemming from annual and seasonal variation in hydrology due to changes in rain and snow pack conditions.
- The projects are at various stages in the permitting process, thereby providing reduced exposure to development risk.

Reliability

- The awarded supply represents a large quantity of firm energy from a diverse portfolio of resources.

Socio-Economic

- Many of the projects are community based which provides socio-economic benefits to a diverse cross-section of BC.

Comparing these attributes on a one-to-one basis is difficult and as a result alternative approaches are taken to explore the cost-effectiveness of BC Hydro's selected portfolios.

Section 6.1 examines the competitive nature of the F2006 Call process. The F2006 Call awards were the outcome of a competitive CFT process which yielded a cost-effective result. Section 6.2 sets out the following additional cost-effectiveness analysis:

1. Review of the pricing information for electricity calls proposed in a neighbouring jurisdiction, PNW;
2. Compare the F2006 Call product to the products that can be obtained from the spot market, and compare the F2006 Call prices to BC Hydro's price forecasts;
3. Review the pricing information of long-term energy contracts awarded to suppliers in other Canadian jurisdictions; and
4. Compared the F2006 Call prices to the resource costs shown in the 2006 IEP.

6.1. Nature of the CFT Process in Obtaining a Cost-Effective Result

It was recognized by the BCUC at page 13 of its decision concerning the Call for Tenders for Capacity on Vancouver Island³⁰ (the VICFT Decision), “once a competitive market-based process has been undertaken and firm commitments from bidders have been obtained, a competitive process should, in most circumstances, be accepted as persuasive evidence of the cost-effectiveness of the resultant successful bid”. The BCUC made the same comment in its decision concerning BC Hydro’s F05/F06 Revenue Requirement Application decision³¹: “In most circumstances, the competitive process should be sufficient to establish that the awarded contract was the most cost-effective”.

BC Hydro relies on the competitive CFT process as the primary support for its position that the F2006 Call awards are cost-effective. The following demonstrates that the F2006 Call was a competitive, fair and transparent process:

1. *Open Call* - BC Hydro adopted an “open” call, meaning that all proven technologies, except nuclear, were eligible to participate. An “open” call encourages competition amongst all sources of supply capable of meeting the mandatory requirements and providing cost-effective energy.

2. *F2006 Call Terms, Conditions and Mandatory Requirement Review* - In designing the F2006 Call around a CFT process, BC Hydro sought First Nations, stakeholder and bidder input to ensure that the terms would not unduly discourage bidder participation while at the same time providing adequate assurance to BC Hydro and its ratepayers regarding delivery commitments. Bidders, customer groups and other stakeholders were provided with three opportunities to comment on the proposed terms and conditions for the F2006 Call (see Section 2 of this Report). Further, BC Hydro completed a review of other acquisition processes, including CFT and EPA terms and conditions, from various jurisdictions in both Canada and the United States. That review confirmed that the F2006 Call major terms, conditions and mandatory requirements are in general alignment with industry expectations. The major terms, conditions and mandatory requirements were reviewed and unanimously approved by all 2005 REAP intervenors and the BCUC as part of the NS.

³⁰ VICFT Reasons for Decision to Order No. E-1-05, 9 March 2002, available at the BCUC website, www.bcuc.com.

³¹ Page 119 of the F05/F06 RRA Decision, 29 October 2004, available at the BCUC website.

1 3. *Tender Options* – The F2006 Call provided bidders with a range of tendering options to
2 enable bidders to build on the strengths of their projects and thereby deliver cost-effective
3 projects while preserving comparability of tenders for evaluation purposes. Some of the key
4 bidder options included:

- 5 • Split Bids – Large Project bidders had the option to tender all or part of their projects to
6 BC Hydro. By allowing split bids for larger projects, the F2006 Call facilitated larger
7 projects producing energy in excess of that which would be purchased by BC Hydro
8 pursuant to the F2006 Call, thereby increasing the pool of potential bidders and
9 competitive tenders.
- 10 • Term Flexibility – Bidders were permitted to select an EPA term of 15, 20, 25, 30, 35 and
11 40 years. Allowing bidders greater flexibility should have encouraged more bidders to
12 participate in the F2006 Call.
- 13 • COD Flexibility – Bidders were permitted to bid a guaranteed COD between October 1,
14 2007 and November 1, 2010.

15 There were additional terms and conditions to facilitate a larger pool of bidders and more
16 competitive pricing, such as caps on liability, the hourly firm option and the possibility of
17 assigning to BC Hydro green attributes for a credit.

18 4. *Bidder Participation* – The level of bidder participation in the F2006 Call demonstrated a high
19 willingness of IPPs to participate in the F2006 Call. This was reflected by:

- 20 • The registration of 48 bidders representing 81 projects with a combined capacity of
21 2,800 MW resulting in 12,000 GWh/year of firm energy from Large Projects and 1,500
22 GWh/year of energy from Small Projects (based on a capacity factor of 50 per cent);
- 23 • The receipt of 61 tenders (including alternates) from 37 different bidders which
24 constituted legally binding firm commitments to BC Hydro. The receipt of bids for 53
25 different projects indicates a robust level of interest in the process and is more than is
26 often received in comparable acquisition processes.

27 Table 13 provides the number of projects, capacity (MW) and total energy (GWh) for key
28 phases in the F2006 Call implementation.

1

Table 13 - Results at Key Phases of F2006 Call Implementation

	Large Projects	Small Projects	Total F2006 Call
Pre-Tender Phase - Registration			
Projects	34	47	81
Capacity (MW)	2,470	330	2,800
Total Energy (GWh/year)	12,000+	1,500	13,500+
Tender Submission			
Number of Bids	24	37	61
Projects	20	33	53
Capacity (MW)	1,591	221	1,812
Total Energy (GWh/year)	7,184	989	8,173
Post-Tender Phase - Award			
Projects	16	22	38
Capacity (MW)	1,289	150	1,439
Total Energy (GWh/year)	6,471	654	7,125

2 **6.2. Further Cost-Effective Analysis**

3 A summary of the levelized plant gate bid prices and ABP in the Large and Small Project
 4 portfolios for the F2006 Call is provided in Section 4 of this Report. For certain comparisons, the
 5 ABPs provide the best basis for comparison with other benchmarks where the comparator
 6 includes the cost of delivery to the Lower Mainland load centre (for example, short-term market
 7 prices) and adjustments such as the amount of green or firm energy. At other times, the
 8 levelized plant gate bid prices provide the best basis for comparison where the comparator is
 9 the quoted price of a product irrespective of location or special characteristics.

10 **6.2.1. Market Price Comparisons**

11 There are some general comparisons to activities in other markets that can provide useful
 12 context with respect to the F2006 Call, in addition to the competitive nature of the F2006 Call
 13 process.

14 In general, the generating resources that back long-term contracts are the same or similar for all
 15 utilities. Therefore, prices for the generators and turbines for any one technology will be similar
 16 across jurisdictions.

Each jurisdiction will have its unique characteristics and unique needs. Results of acquisition processes for new long-term supply provide useful context, within bounds, when considering the results of the F2006 Call.

BC Hydro is interconnected to markets in the region identified as the Western Electric Coordinating Council, and most directly to the market region in the PNW. The PNW market operates in the same trading region and is impacted by the same or similar general characteristics. Activities in other markets in Canada also provide useful comparisons. However, differences in the characteristics of each jurisdiction make comparisons somewhat less useful than those within the PNW.

a) Comparable Processes in PNW

Market prices for firm long-term contracts are most useful as a comparison to the projects awarded EPAs in the F2006 Call. One such process currently underway is a RFP being conducted by PSE in Washington state.

PSE received proposals for asset-backed contracts (wind, natural gas, coal and hydro) as well as market purchases (PPAs). Figure 11 shows the results of two separate RFP processes conducted by PSE, one concluded in 2004 and the other entering into the negotiation phase in mid-2006. The prices received by PSE for the current RFP are consistent with the results of the F2006 Call.

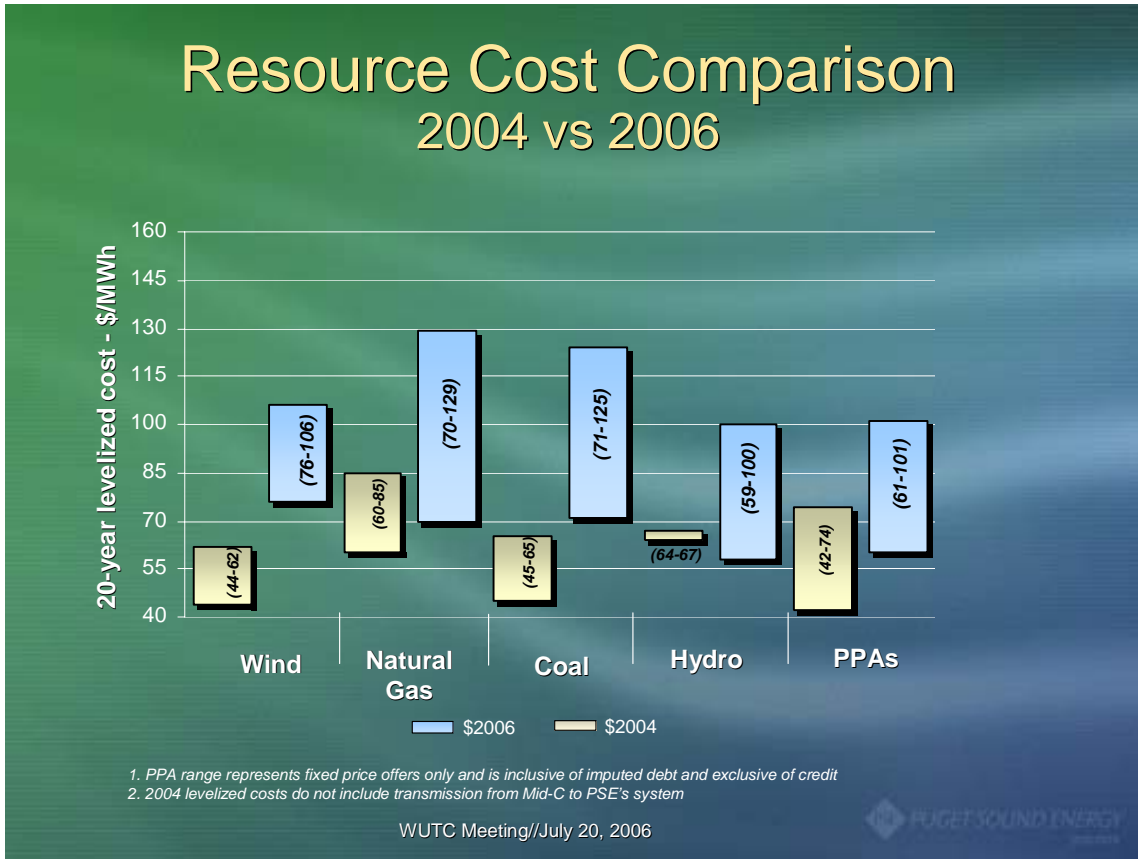
In a news release dated August 22, 2006, PSE identified that it is targeting to acquire 1,100 MW of long-term power supply from the current RFP process. The following excerpts are taken from PSE's news release regarding the selection of 7 projects to increase power supplies by 25 per cent to meet customers' growing needs:

"We believe these resources can help us meet the rising energy demands of our customers at the best prices," said Eric Markell, PSE's senior vice president of Energy Resources. "What's more, several of them give us the opportunity to further increase the amount of sustainable electricity we provide to our customers."

Markell said the proposals PSE received clearly demonstrate that power costs have risen significantly across the region over the past few years. Nevertheless, he added, the seven projects chosen for further due diligence and possible contract-signing appear to PSE and its customers the lowest reasonable cost within today's volatile energy market.

1

Figure 11 - PSE Resource Cost Comparison (2004 RFP vs. 2006 RFP)



2 Table 14 below illustrates that the bid prices received in BC Hydro's F2006 Call are clearly in
 3 line with PSE's recent experience:

4 **Table 14 - Bid Price Comparison for PSE's 2006 RFP vs. BC Hydro's F2006 Call**

Levelized Plant Gate Prices	PSE – 2006 RFP		BC Hydro – F2006 Call (Cdn.\$/MWh)
	US\$/MWh	Cdn.\$/MWh*	
Wind	76 – 106	84 – 118	71 – 91
Natural Gas	70 – 129	78 – 143	n/a
Coal	71 – 125	79 – 139	67 – 82
Hydro	59 – 100	66 – 111	56 – 95
PPAs	61 – 101	68 – 112	n/a

* Assuming a Canada/US exchange rate of \$0.90

5 It is noteworthy that PSE is experiencing inflationary pressures similar to those being
 6 experienced in BC with respect to new long-term assets. As shown in Figure 11, the bid price

range received by PSE has increased by 40-70 per cent across all resource types (except hydro which is 20-25 per cent higher) between the 2004 RFP and the 2006 RFP.

Other than from such acquisition processes, there is little to no ongoing liquidity in the PNW for acquiring long-term contracts for firm electricity supply. Absent such processes, prices can only be discovered through bilateral negotiations.

There is also little liquidity for medium term (3 to 5 years) contracts in the PNW. Independently, any current information that might be available with respect to such contracts would not provide much useful information as it would generally cover contract terms (currently out through 2009) that do not overlap with the terms of the EPAs from the F2006 Call.

b) Spot Market Price in the PNW

Spot markets in the PNW, notably the Mid C market, provide price discovery with respect to real time pricing of electricity traded in the region. Such markets are valuable to BC Hydro and Powerex in maximizing the value of BC Hydro's assets. Commitments in such markets can be considered relatively firm in the day-ahead markets but the price of electricity is subject to volatility and physical availability can not be assured. Generally, spot markets cannot be relied upon as a reliable comparator to electricity obtained via long-term EPAs.

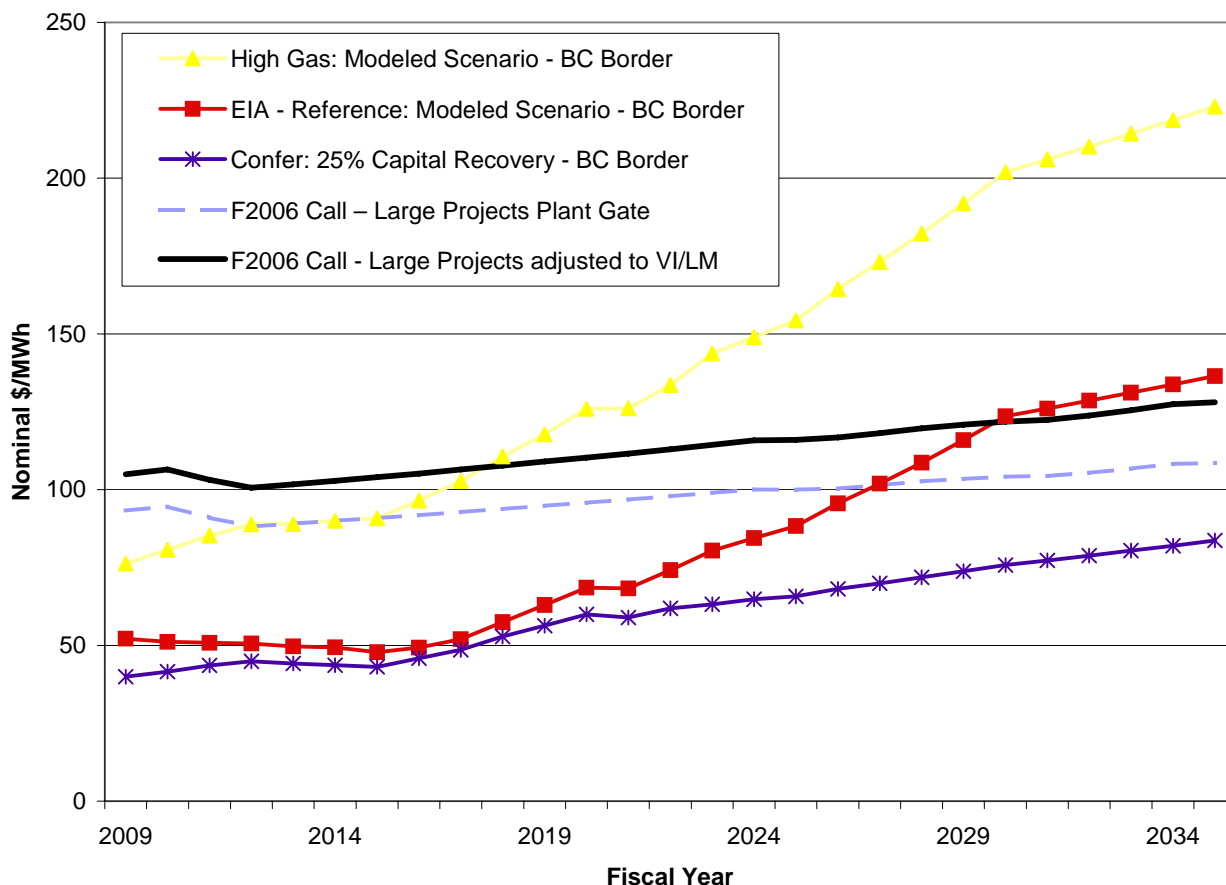
BC Hydro develops an electricity price forecast using a range of natural gas scenarios as provided by external sources. Figure 12 compares the adjusted plant gate prices³² for the Large Projects in the F2006 Call relative to BC Hydro's March 2006 Electricity Price Forecast³³ over a 25-year term commencing in 2009. As can be seen from Figure 12, under both the High Gas and the EIA Reference³⁴ electricity price model scenarios, the F2006 Call adjusted prices for the Large portfolio at the beginning of the term are higher than the price forecast. The F2006 Call costs are lower than these electricity price forecasts before the end of the term.

³² Adjusted plant gate prices are calculated by taking nominal bid prices and adding the transmission-related adjusters described in Section 4.1 of the Report to arrive at delivered prices in the Lower Mainland.

³³ Three of BC Hydro's price forecast scenarios are presented here as they represent the range of prices that could be expected from the market.

³⁴ The EIA reference scenario is the EIA forecast published by the US Department of Energy.

1 **Figure 12 - F2006 Call Annual Adjusted Gate Price vs. Price Forecast Scenarios**



2 **c) Comparison with Canadian Jurisdictions**

3 There are some limited jurisdictional comparisons available that can provide some context to
 4 the awards made through F2006 Call. Table 15 below presents pricing information for some of
 5 the long-term energy contracts awarded to IPPs in other Provinces in recent years.

6 The results, in terms of prices, are similar to those received in the F2006 Call. The published
 7 prices of the various calls are meant to be indicative and may not be directly comparable to the
 8 results of the F2006 Call due to differences in product, contract terms and conditions as well as
 9 the objectives of the purchasing party.

Table 15 - Recent Acquisition Activity in Other Jurisdictions

Province	Buyer	Call	Date of Issue	Eligible Technologies	Published Price for Winning	# of Contracts
Ontario	Ontario Power Authority	Standard Offer Program for Small Generators Connected to a Distribution System (not yet issued)	2006	Wind, solar, renewable biomass, bio-gas, bio-fuel, landfill gas or water (10 MW or less)	Base price of \$110.0 per MWh (COD dollars) ^{1,*}	N/A
Ontario	Ontario Power Authority	Renewable Energy Supply II	2005	Wind, solar, renewable biomass, bio-gas, bio-fuel, landfill gas or water	\$86.4 per MWh (COD dollars) ¹	9 (975.35 MW signed in 2005)
Prince Edward Island	Maritime Electric	N/A	2005	Wind	\$77.5 per MWh minimum (COD dollars) ^{4, ***}	2 (40 MW signed in 2006)
Quebec	Hydro Quebec	A/O 2004-02 – 350 MW from co-generation	2004	Co-generation	\$74 per MWh (levelized 2007 dollars) ^{3, **}	1 (8.1 MW signed 2005)
Nova Scotia	Nova Scotia Power	2004 Renewable	2004	All Renewables	Set offer of \$68/MWh ⁵	17 (28MW)
Quebec	Hydro Quebec	A/O 2003-01 – 100 MW from biomass	2003	Biomass	\$67 per MWh (levelized 2007 dollars) ^{2, **}	2 (39.4 MW signed in 2004)
Quebec	Hydro Quebec	A/O 2003-02 – 1,000 MW from wind	2003	Wind	\$78 per MWh (levelized 2007 dollars) ^{2, **}	9 (990 MW signed in 2004)

Source:

1. Joint Report to the Minister of Energy: Recommendations on a Standard Offer Program for Small Generators Connected to a Distribution System, Ontario Power Authority, March 17, 2006
2. Hydro Quebec Distribution's Application for Approval of the Proposed 2005-2014 Supply Plan to Regie de l'Energie, File R-3550-2004, Hydro Quebec, May 25, 2005
3. Hydro Quebec Filing Demonstration Que Le Contrat Retenue Comporte Le Prix Le Plus Bas Pour La Quantite D'Electricite et Les Conditions Demandeées, En Tenant Compte Du Cout De Transport Applicable, File R-3593-2005, Hydro Quebec, December 21, 2005
4. Application and Evidence of Maritime Electric Company Limited to Prince Edward Island Regulatory and Appeals Commission, Maritime Electric Company Limited, January 31, 2006
5. NPSI website: http://www.nspower.ca/environment/green_power/renewable_energy_solicitation/ augmented by personal communication with Nova Scotia Power Inc., August 17, 2006.

Notes:

* Price based on average contract price of awarded Renewable Energy Supply II contracts and adjusted for energy losses and lost economies of scale for smaller projects. Additional performance incentive of \$35.2 per MWh (Cdn. dollars) provided to projects offering control of output and a price of \$420 per MWh for solar photovoltaic projects.

** Prices are inclusive of energy losses and transmission costs.

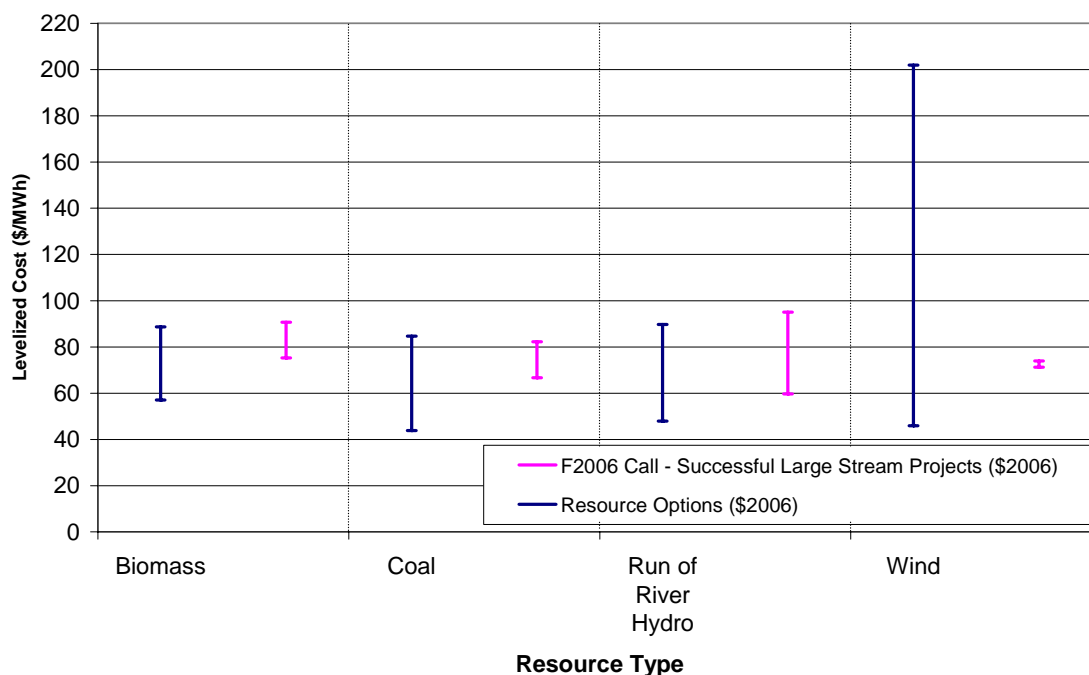
*** The minimum price is set by the Renewable Energy Act which was passed in the fall of 2005. The minimum purchase price is the price a utility must pay for energy from wind projects until the utility meets the requirement to provide 15 per cent of its electrical energy from renewable sources.

6.2.2. F2006 Call Prices Compared to Resource Option Costs in 2006 IEP

Another cost-effectiveness test for the bid prices received in the F2006 Call is to compare them to the resource options data contained in the 2006 IEP. In the 2006 IEP, unit energy costs are provided for various resource types³⁵. The range of costs shown considers a combination of capital cost sensitivities, different gas price scenarios and different GHG offset cost scenarios.

Figure 13 below compares the plant gate bid price ranges for the awarded Large Projects relative to the 2006 IEP cost data for the resource options. The levelized bid prices in the F2006 Call tend toward the higher end of the cost range shown in the 2006 IEP for most of the resource types. The plant gate prices for the wind projects which were successful in the F2006 Call are closer to the lower end of the range shown; however, if the Vancouver Island and North Coast projects in the resource options data are removed, the awarded bid prices are near the upper end of the range for the Peace Region wind projects.

Figure 13 - Comparison of Resource Price Ranges, 2006 IEP vs. F2006 Call Results



³⁵ See section 5.4 of the 2006 IEP (2005 ROR Summary), particularly Table 5-2 which provides a Unit Energy Cost summary of the various resource types.

7. RATE IMPACT

A rate impact analysis demonstrates the relative effect of an acquisition decision, whether the effect is as compared to current revenue requirements or to the cost of another supply alternative. With respect to the rate impact of the F2006 Call, this section presents the relative rate impact as: (1) the impact in the initial years of the EPAs as compared to BC Hydro's F2007 revenue requirement; and (2) the relative impact as compared to a range of prices of alternative supply sources.

7.1. Initial Rate Impact

The forecast expenditures for the term of the EPAs that are being entered into as a result of the F2006 Call are presented in Table 5 of Section 4 of this Report. F2012 is the first full year of electricity deliveries for the awarded EPAs. In this year, the average cost of supply from the EPAs at the plant gate, measured in F2007 dollars, is \$79.5/MWh³⁶. On a comparable basis, BC Hydro's current average electricity cost, as filed in the F07/08 RRA, is \$33.1/MWh³⁷.

Based on the delivery volumes, as presented in Table 5 and the price difference described in the previous paragraph, the first year rate impact, measured from a base of BC Hydro's F2007 revenue requirement of \$2,865 million³⁸, is 8.1 per cent.

There are no further rate increases expected due to the F2006 Call EPAs and, in fact, the effect of the initial rate impact of 8.1 per cent diminishes over time as a combination of: (1) the cost of the electricity purchased through the EPAs declines relative to inflation; (2) BC Hydro's domestic load grows; and (3) BC Hydro's overall revenue requirements increases.

7.2. Rate Impact Relative to Alternate Electricity Supply Prices

New electricity supply prices will be different than the prices of BC Hydro's current electricity supply cost. BC Hydro's current supply cost is based on resources that have been constructed or acquired in the past and are relatively low cost as compared to any new supply sources.

³⁶ Table 5, unit price for F2012 deflated to F2007.

³⁷ Based on the F07/F08 RRA, Appendix C, the current average electricity supply cost is the sum of (the cost for Heritage Generation from Schedule 3.2, Page 8 of \$1,270.8 million plus the cost of non-Heritage electricity from Schedule 4.0, Page 13 of \$665.7 million), divided by (the volumes from Schedule 3.2, Page 13 of 49,000 GWh+9451 GWh).

³⁸ F07/F08 RRA, Page 1-8, Line 1.

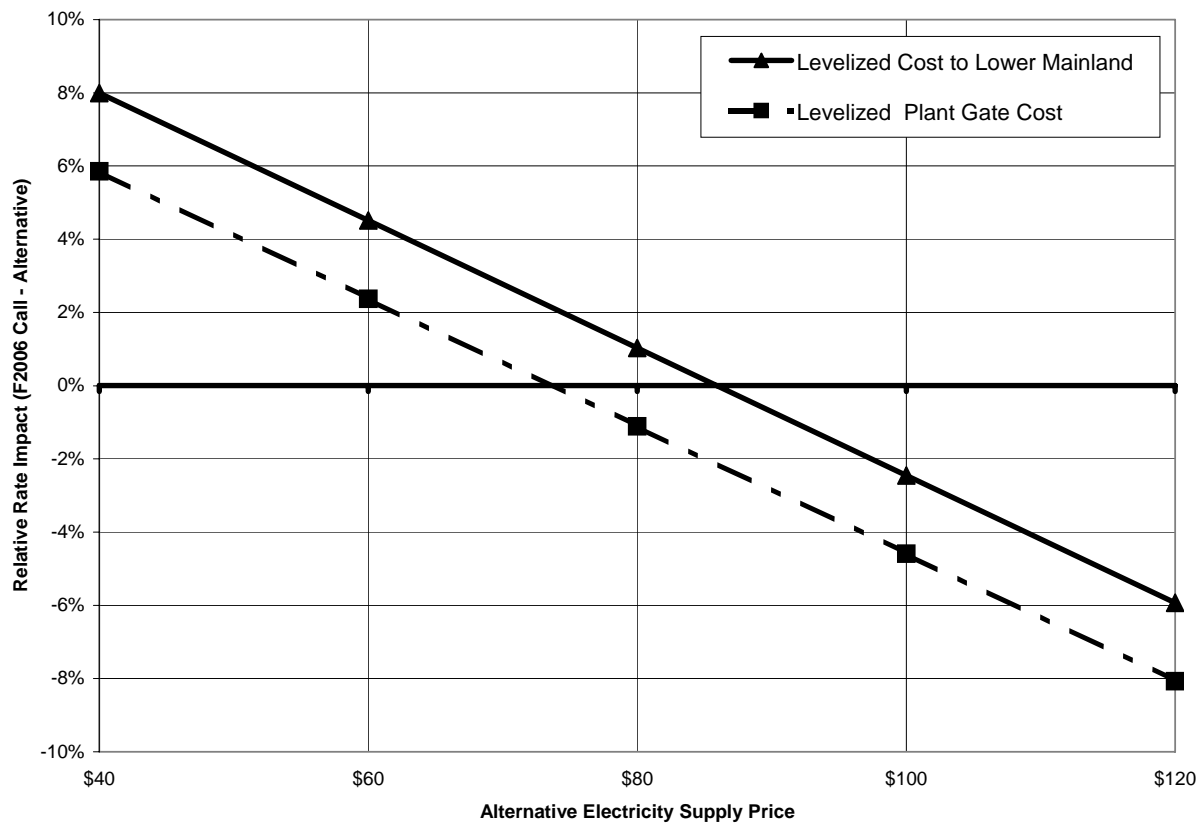
1 BC Hydro's domestic load is growing and, as a result, the load/resource gap is increasing.
2 Absent the new supply from the F2006 Call, BC Hydro would have to acquire the electricity from
3 alternative sources. The cost of electricity from such alternative sources would also have an
4 impact on rates. Because of this, it is instructive to measure the relative rate impact of the
5 F2006 Call as compared to the cost of electricity if such electricity were acquired from an
6 alternative source of supply.

7 Energy acquired in the F2006 Call will be under contract long into the future, some as far as to
8 F2051. Forecasts of electricity prices through the full periods of the EPAs, whether based on
9 long term contracts, plant cost forecasts or market prices will vary significantly. Therefore, for
10 the purposes of this analysis, the relative rate impact of the F2006 Call is being compared to a
11 range of prices not tied to any forecast.

12 Figure 14 illustrates the relative rate impact comparing alternative costs of electricity supply
13 against the levelized cost of the electricity from the F2006 Call. The comparison is based on the
14 levelized cost of the F2006 Call³⁹ measured at the plant gate (\$73.6/MWh) and delivered to the
15 Lower Mainland (\$85.9/MWh). As in Section 7.1 above, the F2007 revenue requirement is the
16 underlying base for the calculation.

³⁹ The levelized costs of the F2006 Call are the weighted average costs of the large and small project stream as presented in Figure 4 and Figure 6 respectively. The levelized price to the Lower Mainland includes the transmission-related adjustment factors presented in the two figures.

Figure 14 - Relative Rate Impact of the of the F2006 Call as Compared to the Price of Alternative Sources of Supply



As a reference, if the energy acquired through the F2006 Call were compared against a supply alternative that had a price of \$80/MWh for substantially similar service, and such product was delivered to the Lower Mainland, the relative rate impact of the F2006 Call would be + 1 per cent (the rate impact of the F2006 Call would be 1 per cent greater than the rate impact of the supply alternative).

Alternatively, if the same supply alternative were situated away from the Lower Mainland, it may be more appropriate to compare it to the levelized plant gate cost, which would indicate that the relative rate impact of the F2006 Call would be approximately 1 per cent less than the supply alternative.

7.3. Conclusion

The cost of electricity delivered under the EPAs is fixed and declines in real terms over the terms of the contracts. This allows BC Hydro some certainty and stability regarding the price and volume into the future.

The costs of acquiring new electricity supply, whether it be from IPPs or the market, are expected to be higher than BC Hydro's current average cost of supply. At any increased cost, supplying the magnitude of future energy needs would have a material impact on BC Hydro's costs. This is expected to put upward pressure on electricity rates regardless of the source.

8. ALIGNMENT WITH BC ENERGY PLAN

The F2006 Call award supports the 2002 BC Energy Plan, and in particular:

- Secure, reliable supply – The 2002 BC Energy Plan (pages 6, 18 and 19) concludes that unless domestic energy sources are developed, British Columbians could find themselves increasingly dependent on imports at wholesale spot market prices and therefore vulnerable to price swings.
- More private sector opportunities – Pursuant to Policy Action #13, the private sector is to develop new electricity generation, with BC Hydro restricted to efficiency improvements and capacity upgrades at existing facilities.
- Environmental responsibility – Policy Action #20 establishes a voluntary goal for electricity distributors to acquire 50 per cent of new supply from “BC Clean Electricity” over the next ten years.

BC Hydro notes that the Provincial Government is currently developing an updated Energy Plan, which will, amongst other things, address electricity self-sufficiency. BC Hydro understands that the Provincial Government plans to introduce policy consistent with the February 14, 2006 Speech from the Throne, which announced the intention for BC to become electricity self-sufficient within the decade ahead.

While the F2006 Call awards were made for the reasons laid out in Section 5 of this Report and not to specifically address the increase in supply requirements that may be needed under a policy of electricity self-sufficiency, both the nature of the F2006 Call (BC-based) and the volume of energy acquired are consistent with such a policy objective.

The first two 2002 BC Energy Plan cornerstones noted above have been addressed elsewhere in this Report, particularly in Section 6. Accordingly, the following section examines how the F2006 Call results assist BC Hydro in meeting the 2002 BC Energy Plan’s 50 per cent BC Clean Electricity target.

8.1. BC Clean Electricity Target

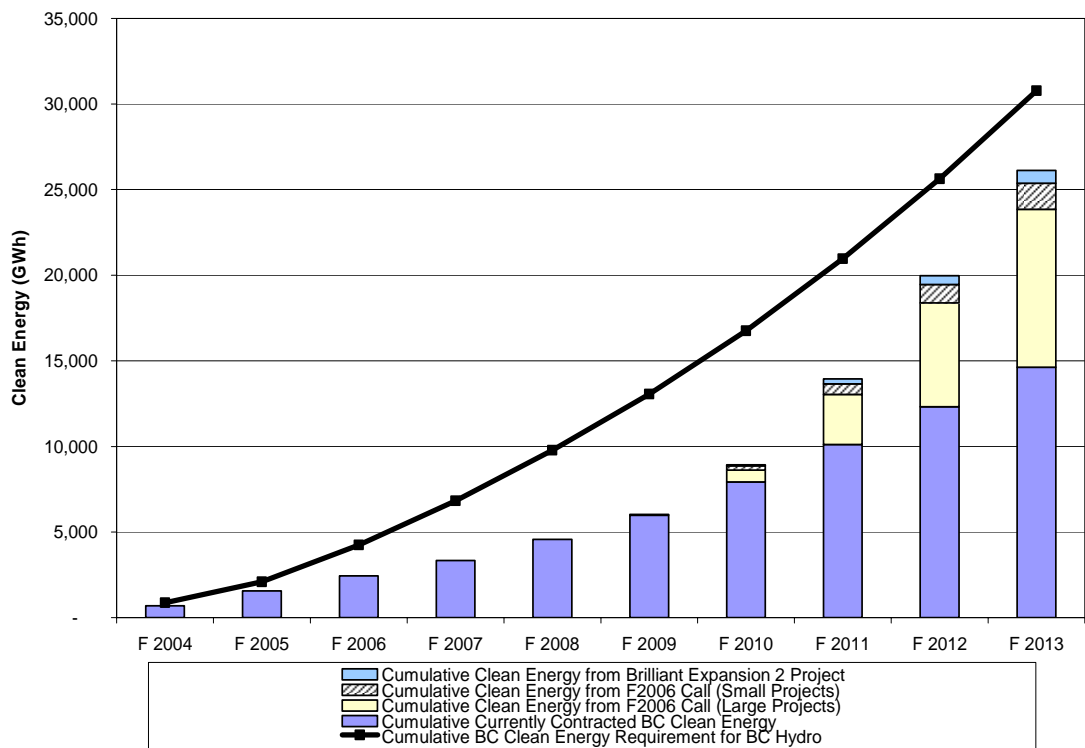
As a result of the increase in forecast load and existing IPP supply attrition, the forecast amount of supply required to meet the 2002 BC Energy Plan target of acquiring at least 50 per cent of new power supply from BC Clean Electricity resources by F2013 has increased. Since the NS

process in the fall 2005, the cumulative forecast BC Clean Electricity energy supply requirements to F2013 have increased by approximately 10,000 GWh.

The F2006 Call presents a cost-effective opportunity to ensure that BC Hydro meets the 2002 BC Energy Plan target commitment since approximately 73 per cent of the F2006 Call total energy award volume comprises BC Clean Electricity.

Figure 15 shows the cumulative BC Clean Electricity requirements to F2013 compared to the forecast BC Clean Electricity supply including energy from the F2006 Call (with an assumed attrition/outage rate of 30 per cent) and BEPC's Brilliant Expansion 2 Project. If all of the BC Clean Electricity supply is delivered on time, BC Hydro will have a deficit of up to 4,700 GWh of BC Clean Electricity in F2013. This deficit may be partly offset by the 2007 call, as BC Hydro is anticipating that approximately 500 GWh of firm energy from this call will be on-line in F2013.

Figure 15 - Cumulative BC Clean Energy Requirements vs. Forecast Supply



9. ELECTRICITY PURCHASE AGREEMENTS AWARDED

Table 16 below summarizes the projects that were awarded EPAs under the F2006 Call. Appendices D and E of this Report contain the standard form EPA for Large and Small Projects respectively.

Table 16 - Electricity Purchase Agreements Awarded

#	Bidder Name	Project Name	Nearby City	Energy Source	Plant Capacity [MW]	Total Energy [GWh/y]
<i>Large Projects</i>						
1	Plutonic Power Corporation	East Toba and Montrose Hydroelectric Project	Powell River	Water	196	702
2	AESWapiti Energy Corporation	AESWapiti Energy Corporation	Tumbler Ridge	Coal / Biomass	184	1,612
3	Dokie Wind Energy Inc.	Dokie Wind Project	Chetwynd	Wind	180	536
4	Bear Mountain Wind Limited Partnership	Bear Mountain Wind Park	Dawson Creek	Wind	120	371
5	3986314 Canada Inc.	Canada -Glacier/Howser/East Project	Nelson	Water	90.5	341
6	Green Island Energy Ltd.	Gold River Power Project	Gold River	Biomass	90	745
7	Kwalsa Energy Limited Partnership	Kwalsa Energy Project	Mission	Water	85.9	384
8	Anyox Hydro Electric Corp.	Anyox and Kitsault River Hydroelectric Projects	Alice Arm	Water	56.5	242
9	Compliance Power Corporation	Princeton Power Project	Princeton	Coal / Biomass	56	421
10	Upper Stave Energy Limited Partnership	Upper Stave Energy Project	Mission	Water	54.7	264
11	Mackenzie Green Energy Inc.	Mackenzie Green Energy Centre	Mackenzie	Biomass / Other	50	441
12	Kwoiek Creek Resources Limited Partnership	Kwoiek Creek Hydroelectric Project	Lytton	Water	49.9	147
13	Mount Hays Wind Farm Limited Partnership	Mount Hays Wind Farm	Prince Rupert	Wind	25.2	72
14	Canadian Hydro Developers, Inc.	Bone Creek Hydro Project	Kamloops	Water	20	81
15	Songhees Creek Hydro Inc.	Songhees Creek Hydro Project	Port Hardy	Water	15	61
16	Plutonic Power Corporation	Rainy River Hydroelectric Project	Gibson	Water	15	51
<i>Small Projects</i>						
17	Hydromax Energy Ltd.	Lower Clowhom	Sechelt	Water	9.99	48
18	Hydromax Energy Ltd.	Upper Clowhom	Sechelt	Water	9.99	45

#	Bidder Name	Project Name	Nearby City	Energy Source	Plant Capacity [MW]	Total Energy [GWh/y]
19	Highwater Power Corporation (formerly Global Cogenix Industrial Corporation)	Kookipi Creek Hydroelectric Project	Boston Bar	Water	9.99	39
20	Cogenix Power Corporation	Log Creek Hydroelectric Project	Boston Bar	Water	9.99	38
21	Canadian Hydro Developers, Inc.	Clemina Creek Hydro Project	Kamloops	Water	9.95	31
22	KMC Energy Corp.	Tamihi Creek Hydro Project	Chilliwack	Water	9.9	52
23	Valisa Energy Incorporated	Serpentine Creek Hydro Project	Blue River	Water	9.6	29
24	Synex Energy Resources Ltd.	Victoria Lake Hydroelectric Project	Port Alice	Water	9.5	39
25	Second Reality Effects Inc.	Fries Creek Project	Squamish	Water	9	41
26	Renewable Power Corp.	Tyson Creek Hydro Project	Sechelt	Water	7.5	48
27	Hupacasath First Nation	Corrigan Creek Micro Hydroelectric Project (formerly Franklin River Hydro Project)	Port Alberni	Water	6.65	19
28	Axiom Power Inc.	Clint Creek Hydro Project	Woss	Water	6	27
29	EnPower Green Energy Generation Inc.	Savona ERG Project	Savona	Waste Heat	5.89	41
30	EnPower Green Energy Generation Inc.	150 Mile House ERG Project	150 Mile House	Waste Heat	5.89	34
31	Maroon Creek Hydro Partnership	Maroon Creek Hydro Project	Terrace	Water	5	25
32	Spuzzum Creek Power Corp.	Sakwi Creek Run of River Project	Agassiz	Water	5	21
33	Canadian Hydro Developers, Inc.	English Creek Hydro Project	Revelstoke	Water	5	19
34	Synex Energy Resources Ltd.	Barr Creek Hydroelectric Project	Tahsis	Water	4	15
35	Raging River Power & Mining Inc.	Raging River 2	Port Alice	Water	4	13
36	Synex Energy Resources Ltd.	McKelvie Creek Hydroelectric Project	Tahsis	Water	3.4	14
37	Advanced Energy Systems Ltd.	Cranberry Creek Power Project	Revelstoke	Water	3	11
38	District of Lake Country	Eldorado Reservoir	Kelowna	Water	0.8	4
Subtotal					1,439	7,125
39	Brilliant Expansion Power Corporation	Brilliant Expansion 2 Project	Castlegar	Water	120	226
Total					1,559	7,351

1 Post-Award Attrition

2 Successful bidders were required to execute the EPAs and return them to BC Hydro with the
3 stipulated performance security by August 28, 2006. All 38 bidders and BEPC returned the
4 executed EPAs by the prescribed deadline. BC Hydro is in the process completing its due
5 diligence on the performance security returned along with the EPAs. BC Hydro will re-issue this
6 page to advise of the results on Tuesday, September 5, 2006, which is the date on which BC
7 Hydro will file the executed F2006 Call EPAs with the BCUC on a confidential basis.



ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
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Log No. 9355

VIA E-MAIL

regulatory.group@bchydro.com

October 12, 2005

Mr. Tony Morris
Acting Chief Regulatory Officer
British Columbia Hydro and Power Authority
17th Floor, 333 Dunsmuir Street
Vancouver, B.C. V6B 5R3

Dear Mr. Morris:

Re: British Columbia Hydro and Power Authority
Resource Expenditure Acquisition Plan and Fiscal 2006 Open Call for Energy

Further to your March 7, 2005 filing of the Resource Expenditure Acquisition Plan and the Negotiated Settlement that took place, we enclose Commission Order No. G-103-05 and the Negotiated Settlement document attached as Appendix 1 of the Order.

Yours truly,

Original signed by:

Robert J. Pellatt

RJP/cms
Enclosure(s)
cc: Registered Intervenors/Interested Parties

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-103-05

TELEPHONE: (604) 660-4700
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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**British Columbia Hydro and Power Authority
Resource Expenditure and Acquisition Plan and Fiscal 2006 Open Call for Energy**

BEFORE: R.H. Hobbs, Chair
L.A. Boychuk, Commissioner
P.E. Vivian, Commissioner
October 5, 2005

O R D E R

WHEREAS:

- A. On March 7, 2005, British Columbia Hydro and Power Authority ("BC Hydro") filed its Resource Expenditure and Acquisition Plan ("REAP") pursuant to Subsection 45(6.1) of the Utilities Commission Act; and
- B. The REAP includes a plan of capital expenditures for Fiscal 2006 ("F2006") and F2007; a forecast of expenditures for the acquisition of energy pursuant to existing electricity purchase agreements for F2006 through F2009; and a plan of how BC Hydro intends to reduce the demand for energy purchased from BC Hydro by its customers and a forecast of expenditures for that purpose for F2006 and F2007. The REAP also includes a plan of how BC Hydro intends to meet the demand for energy by acquiring energy from other persons through a proposed "open call" to the private sector in F2006 ("F2006 Call"); and
- C. By letter dated March 14, 2005, the Commission requested comments on the process for the review of REAP; and
- D. By letter dated March 29, 2005, BC Hydro said that it would submit "Supplemental F2006 Call Evidence" on May 17, 2005; and

**BRITISH COLUMBIA
UTILITIES COMMISSION****ORDER
NUMBER G-103-05**

- E. As stated in Letter No. L-28-05 dated April 7, 2005, the Commission concluded that the review of the REAP should include both an oral hearing and a written hearing process, and that the scope of the oral hearing process would be determined following the filing of BC Hydro's Supplemental F2006 Call Evidence. The Commission also established a Regulatory Timetable that included a Pre-Hearing Conference ("PHC") to be held on June 2, 2005; and
- F. By letter dated May 20, 2005, BC Hydro amended the proposed date for filing its F2006 Call Evidence to June 15, 2005; and
- G. By Letter No. L-33-05 dated May 26, 2005, the Commission stated that it would hear submissions regarding issues for the oral hearing process at the PHC, which it re-scheduled for July 12, 2005, and that it expected that issues not included in the scope of the oral hearing process would be addressed by way of written submissions; and
- H. By letter dated June 17, 2005, BC Hydro advised the Commission that it was exercising its right to terminate the Energy Purchase Agreement related to the Duke Point Project and therefore needed to reconsider the evidence it had planned to file in support of the F2006 Call. BC Hydro stated that it expected to be able to advise the Commission on the status of its F2006 Call in advance of the PHC scheduled for July 12, 2005; and
- I. In a letter dated July 7, 2005, BC Hydro advised that it intended to file its Supplemental F2006 Call Evidence the following day, and requested an amended timetable allowing for information requests and responses on the Supplemental F2006 Call Evidence and re-scheduling the PHC until a date in August; and
- J. BC Hydro filed its Supplemental F2006 Call Evidence on July 8, 2005; and
- K. By Letter No. L-51-05 dated July 8, 2005, the Commission re-scheduled the PHC to August 17, 2005; and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-103-05

3

- L. All participants at the PHC who took a position with respect to whether or not a negotiated settlement process (“NSP”) should be included in the Regulatory Timetable strongly supported an NSP; and
- M. By letter L-69-05 dated August 22, 2005, the Commission established a Regulatory Timetable that included an NSP regarding the entire 2005 REAP, including the F2006 Call, commencing on September 20, 2005. The Regulatory Timetable also established a second PHC to be held on October 5, 2005; and
- N. The Negotiated Settlement discussions were held on September 20, 21 and 22, 2005 and a proposed Negotiated Settlement was supported by BC Hydro and Intervenors who participated in the discussions; and
- O. The Negotiated Settlement and letters of comment from NSP participants were circulated to the Commission Panel and all Intervenors on October 4, 2005. Non-participants were requested to provide any comments on the Negotiated Settlement to the Commission at the PHC scheduled for October 5, 2005; and
- P. The only NSP non-participant who commented on the Negotiated Settlement at the PHC supported the Negotiated Settlement; and
- Q. The Commission has reviewed the Negotiated Settlement, including the letters of support filed by participants in the NSP and the comments offered in support of the settlement at the PHC, and considers that approval of the Negotiated Settlement is in the public interest.

NOW THEREFORE the Commission approves the Negotiated Settlement attached as Appendix 1 to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of October 2005.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

~~CONFIDENTIAL~~**NEGOTIATED SETTLEMENT****British Columbia Hydro and Power Authority
2005 Resource Expenditure and Acquisition Plan Application**

On 7 March 2005 British Columbia Hydro and Power Authority (BC Hydro) filed its 2005 Resource Expenditure and Acquisition Plan application (the 2005 REAP) pursuant to Section 45(6.1) of the *Utilities Commission Act* (Act) for the British Columbia Utilities Commission's (Commission) review and approval. The 2005 REAP includes planned expenditures on capital (Capital), existing Electricity Purchase Agreements (EPAs), and demand side management (DSM). The 2005 REAP also includes a plan to meet the demand for electricity by acquiring energy from other persons, and seeks Commission approval of an "open call" for energy to the private sector in fiscal 2006 (the F2006 Call).

On 8 July 2005 BC Hydro filed Supplemental F2006 Call Evidence that supplemented and amended the 2005 REAP, and addressed the nature of the proposed F2006 Call and the need for the F2006 Call. BC Hydro sought Commission approval of the need for the F2006 Call, and Commission comment on the proposed terms and conditions of the F2006 Call (Terms and Conditions).

A conference was held on 20, 21 and 22 September 2005 pursuant to the Commission's Negotiated Settlement Process to negotiate a settlement of the 2005 REAP. Participating in the settlement conference were representatives of the Joint Industry Electricity Steering Committee, BC Old Age Pensioners' Organization et al, Commercial Energy Consumers of BC, Independent Power Producers of British Columbia, BC Sustainable Energy Association & Sierra Club, Elk Valley Coal Corporation, the City of New Westminster, Terasen Gas, Cloudworks Energy Inc., Columbia Power Corporation, Geza Vamos, Green Island Energy Ltd., Epcor Power Development Corp., Sea Breeze Power Corp., Dokie Wind Energy, Western GeoPower Corp., Global Cogenix Industrial Corporation and Aeolis Wind Power Corp. and BC Hydro. Parties were assisted in reaching a settlement by Commission staff.

The parties discussed the 2005 REAP in two separate components: (i) the F2006 Call, and (ii) the Capital, existing EPAs and DSM expenditures. The parties were successful in reaching settlements on both components, and these settlements are attached as Schedule A – F2006 Call; and Schedule B – Capital, EPA and DSM Expenditures.

The parties unanimously agree that the F2006 Call is justified in terms of BC Hydro's projected energy requirements and that BC Hydro should proceed as soon as possible with the F2006 Call as set out in the 2005 REAP and evidence filed to date, with the modifications set out in Schedule A. In the interests of proceeding with the F2006 Call as soon as possible, the parties

further agree that the F2006 Call settlement in Schedule A is conditional on the Commission's approval of the F2006 Call size (Issue #1 in Schedule A), and receipt of Commission comments, if any, on the proposed Terms and Conditions of the F2006 Call on or before 27 October 2005, notwithstanding that the Commission may not have approved the Capital, EPA and DSM Expenditures settlement (Schedule B) by that time.

The parties acknowledge and agree that none of the provisions of the F2006 Call settlement (Schedule A) are severable, and that none of the provisions of the Capital, EPA and DSM Expenditures settlement (Schedule B) are severable. If the Commission does not accept Schedule A in its entirety, there is no agreement on the F2006 Call. If the Commission does not accept Schedule B in its entirety, there is no agreement on the Capital, EPA and DSM expenditures in the 2005 REAP. However, in the interests of proceeding with the F2006 Call as soon as possible the parties agree that the settlements in Schedule A and Schedule B are severable from each other.

BC Hydro confirms it will seek regulatory approval of the Long-Term Acquisition Plan (LTAP), to be included with the 2005 Integrated Electricity Plan (IEP), pursuant to Section 45(6.2) of the Act. Without prejudice to the parties' rights to make submissions on the scope of Commission oversight of the 2005 IEP, the evidence in the 2005 IEP that supports the LTAP will be subject to Commission review, and will reflect the following issues, amongst other things:

- later Commercial Operation Dates (COD) for large projects;
- the impact of greenhouse gas (GHG) regulation on resources, including GHG adders; and
- the use of imports for firm supply, and bridging.

BC Hydro and the participants agree to hold confidential the discussions held during the settlement conference unless agreed to by all participants and released publicly by Commission staff. Agreement to this negotiated settlement is on a without prejudice basis. Any position taken or statement made during discussions, by the participants or BC Hydro, will not be made public or restrict in any way, positions taken in future proceedings concerning other applications.

2005 REAP NEGOTIATED SETTLEMENT

SCHEDULE A – F2006 CALL

In its 2005 REAP Application BC Hydro has sought Commission approval of the need for the F2006 Call, and Commission comment on the proposed Terms and Conditions of the F2006 Call. Thus, this part of the Settlement Agreement addresses both the need for the F2006 Call and the Terms and Conditions discussed during the settlement process.

	Issue	Original Proposal	Settlement
1.	Call Size	Target minimum of 800 GWh/yr of firm electrical energy from large projects and associated non-firm electrical energy, and a target minimum of 200 GWh/yr of electrical energy from small projects (<10 MW).	The call will be for a target of approximately 2400 GWh/yr of firm electrical energy (and associated non-firm electrical energy) from large projects. The 200 GWh/yr of electrical energy target minimum for small projects (<10MW) is unchanged. The awards will take into account BC Hydro's need for approximately 800 GWh/yr of firm electrical energy in F2010 and approximately 1600 further GWh/yr of firm electrical energy in F2011.
2.	COD	The target COD is between 1 January 2008 and 1 October 2009, with a 6 month "grace period."	The call will allow for a COD between 1 October 2007 and 1 November 2010, with no "grace period" after 1 November 2010.
3.	Liquidated Damages (LDs) for Delivery Obligation	For monthly firm contracts, the successful bidder is required to deliver the tendered monthly firm energy amount in each month. All energy delivered in any given month (below any Split Bid Threshold Level) is measured against the tendered firm energy amount for that month. Shortfalls in monthly deliveries will be subject to mark-to-market LDs with a \$100/MWh cap. LDs are also capped at twice the performance security per year.	BC Hydro commits to allow greater tolerances on hourly and monthly firm deliveries before LDs will apply. Specifically, BC Hydro will include a provision for a 10% buffer (LDs are applied to deliveries under 90% of contracted firm electrical energy) on hourly and monthly firm deliveries before LDs are applicable. This will include planned and unplanned outages. For clarity, the LDs are only payable on the positive difference between Mid-C and the adjusted bid price (i.e., if the Mid-C price is less than the adjusted bid price there are no LDs). The LDs are capped at a Mid-C price of C\$100/MWh (escalated at CPI) less the adjusted bid price.
4.	Flow Throughs	The proposed EPA allows flow through of 50% of the costs associated with property tax rate changes.	By way of clarification, the baseline property tax rate is the rate at COD.
5.	Compliance with GHG Regulations	Seller to comply with all Canadian federal, provincial and local regulatory regimes for GHG emissions, regardless of whether or not the regimes are otherwise applicable to the successful bidder's plant, based on the timing of COD or any other date stipulated in applicable laws and regulations.	The Seller must comply with all applicable laws and all permits during the term of the EPA, including any requirements imposed by government agencies, relating to GHG emissions from the successful bidder's plant.

6.	Disclosure of Price Data	BC Hydro will publish on its website after EPA award the bid prices of all successful and unsuccessful tenders.	BC Hydro will publish on its website after EPA award the bid prices of all successful and unsuccessful tenders. The intention is to provide sufficient information to allow stakeholders to understand the outcome of the F2006 Call evaluation and basis of the awards; however, the specifics of how bid prices will be disclosed requires further input from independent power producers (IPPs) and stakeholders.
7.	Firm Imports	Projects must be located in British Columbia and capable of connection to the integrated system.	<p>BC Hydro believes this mandatory requirement is appropriate for the reasons set out in BC Hydro's response to JIESC IR 2.18.2:</p> <ul style="list-style-type: none"> • minimize jurisdictional risk over the term of the EPA; • minimize transmission risk over the EPA term; • alignment of F2006 Call with intent of the 2002 BC Energy Plan. The 2002 BC Energy Plan stresses that unless domestic energy sources are developed, British Columbians could find themselves increasingly dependent on imports and vulnerable to price swings. Policy Action No. 13 addresses this concern by providing that BC's IPPs are to develop new electricity generation in BC; • consistent with majority of Canadian jurisdictions; • BC Hydro is confident adequate volumes of cost-effective resources exist within BC and will be bid into the F2006 Call to ensure projected needs are met; • alignment with the desires of a majority of First Nations and stakeholder comments supporting BC development. <p>Addressing the issues described in this response would delay or jeopardize the F2006 Call. The use of imports will be among the range of resource options considered in the 2005 IEP.</p>
8.	Discount of Tier 1 Power	BC Hydro expected the discount to be the same for all successful bidders and the amount to be applied was expected to range from \$8/MWh to \$12/MWh.	BC Hydro has completed its analysis and now proposes an \$8/MWh discount for the non-firm Tier 1.

9.	Pre-Qualification Requirements and Project Risk Assessment	BC Hydro proposes that the call consist of one tender stage, there will be no preliminary or separate pre-qualification stage for bidders or projects. A single stage simplifies the process, shortens the period from issue of the Call for Tenders (CFT) to EPA award, reduces costs for BC Hydro and bidders, and is consistent with input from bidders in past calls. The mandatory requirements and evaluation criteria (including project risk assessment) are set out in the Supplemental Evidence and will be set out in the finalized CFT documents. This information allows bidders to determine whether they are likely to qualify.	<p>No change from Application.</p> <p>For clarity, the mandatory requirements and evaluation criteria set out in the final CFT documents will include the specific thresholds by project type that BC Hydro will use in its project risk assessment. These factors include those listed in Exhibit A to the Direct Testimony of Mary Hemmingsen at page 9, as well as progress in the environmental assessment process if applicable, First Nations and community support, and wind and water availability data.</p> <p>In conducting a project risk assessment, BC Hydro will, amongst other things, take into account whether a bidder proposes to offset its GHG emissions to the applicable Province of British Columbia standard, or, in the absence of such a standard, to a combined cycle gas turbine level, as evidenced in its GHG mitigation plan.</p>
10.	Bridging (use of alternative resources to bridge a bidder's commitments prior to COD)	Not permitted.	<p>No change from Application. The complexity and project risk assessment issues associated with permitting bridging at this late stage would delay or jeopardize the F2006 Call. BC Hydro will consider this concept during the development of future calls.</p>

2005 REAP NEGOTIATED SETTLEMENT

SCHEDULE B – CAPITAL, EPA AND DSM EXPENDITURES

Many parties feel they do not have enough information about certain projects identified in the 2005 REAP Application and, thus, take no position on the Capital, EPA and DSM expenditures in the 2005 REAP.

Therefore the parties agree that:

1. With the filing of the 2005 REAP, BC Hydro is in compliance with the requirements of Section 45(6.1) of the Act in relation to the level of development of the planning process underlying the 2005 REAP.
2. The Commission need not exercise its jurisdiction under Section 45(6.2)(b) or (c) of the Act respecting the 2005 REAP.
3. As part of BC Hydro's F2007 Revenue Requirements Application, BC Hydro will seek a Commission determination that its planned F2007 capital expenditures (F2007 Capital Plan) are in the interests of persons within British Columbia who receive, or may receive, service from BC Hydro. With respect to planned capital expenditures at Mica, GM Shrum, John Hart and Ruskin, BC Hydro will seek a Commission determination that total planned capital expenditures (i.e., beyond F2007) at each of those facilities are in the interests of persons within British Columbia who receive, or may receive, service from BC Hydro. In support of these components of the F2007 Capital Plan BC Hydro would provide the same level of detail and justification that a Certificate of Public Convenience and Necessity application would contain, commensurate with, among other things, the planned level of expenditure and the development status of the various projects at each facility.

To provide an early overview of what the supporting information would look like for capital programs at one of its major facilities, and how it is developed, BC Hydro will host a workshop as soon as practicable with respect to the asset plan of the GM Shrum facility.

4. BC Hydro is in the process of developing its 2005 IEP. BC Hydro will address, amongst other things, Site C, Burrard Thermal and DSM in its 2005 IEP and F2007 Revenue Requirements Application.
5. BC Hydro will address its First Nations expenditures in its F2007 Revenue Requirements Application.
6. Subject to confidentiality and security issues, BC Hydro will make available to any interested party the Annual Dam Safety Report and the Advisory Board Reports in respect of the Little Chief Slide, John Hart and Ruskin projects. As requested, BC Hydro will file with the Commission for information the Annual Dam Safety Report and the Advisory Board Reports in respect of the Little Chief Slide, John Hart and Ruskin projects.
7. BC Hydro will host a workshop for interested parties as soon as practicable with respect to its Aberfeldie project. At that workshop, BC Hydro will present its analysis and assumptions of the project and where practicable, compare it to the requirements of the F2006 Call.

8. BC Hydro will establish a public committee to provide advice and input into DSM (electricity conservation and efficiency) as soon as practicable and will reflect, as appropriate, such input and advice in the F2007 Revenue Requirements Application.
9. BC Hydro will conduct a thorough update of its 2002 Conservation Potential Review to assist in the identification of cost-effective demand side management potential.
10. BC Hydro confirms that it evaluates its own projects inclusive of grants in lieu and water rental charges in constant dollars.

**SUMMARY OF BC HYDRO RESPONSE
TO FIRST NATIONS AND STAKEHOLDER COMMENTS ON
DRAFT F2006 CFT AND RELATED DOCUMENTS**

December 2005

Introduction

BC Hydro received approximately 250 comments with respect to the final draft F2006 Call for Tenders (CFT) and related documents (including the draft Standard Form EPA for Small Projects and the draft Standard Form EPA for Large Projects) which were posted on BC Hydro's website on October 31, 2005. Comments were received from 30 individual parties comprised largely of IPPs, as well as some customer groups.

This document summarizes BC Hydro's response to the most significant or prominent issues addressed by First Nations and stakeholders in the final comment period ending on November 14, 2005. BC Hydro reviewed and considered all comments and the result of that review was reflected in the final form CFT and related documents.

BC Hydro received a number of comments with respect to issues that were the subject of significant consultation during the regulatory process for the 2005 REAP, including the Negotiated Settlement with respect to the F2006 Call. While BC Hydro considered all such comments and will take those comments into account in designing future procurement processes, those comments are not directly addressed in this Summary.

Summary of Key Changes Made - CFT

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
Scope of Invitation (section 1) - Provisions with respect to CPC Brilliant Expansion Project and electricity recalled by Alcan Inc. under the 1990 Long Term Electricity Purchase Agreement between Alcan Inc. and BC Hydro ("LTEPA").	Draft CFT did not expressly address these issues.	CPC was invited to submit a firm, priced offer in respect of the Brilliant Expansion Project under a form of agreement adapted to suit the unique circumstances of that project. Any contract awarded to CPC for that project will not affect the targets for procurement of energy under the F2006 Call. Energy recalled by Alcan Inc. under the LTEPA was not eligible to be tendered in the F2006 Call.
Tendered Options – Alternate Tenders (section 11)	Bidders may submit only one Tender for a Project except in the case of "Split Bids" where an alternate Tender was allowed. Intent was to simplify the CFT process.	All Bidders could submit one Tender and one Alternate Tender for each Project. Provided Bidders with greater flexibility.
Tendered Options – Co-Dependent Tenders (section 11)	Not permitted. Intent was to simplify CFT process.	Separate Tenders for two or more different Projects could be designated as "Co-dependent Tenders" with the result that BC Hydro can either accept all the Tenders so designated or none of the Tenders so designated. Provided Bidders with greater flexibility.
Tendered Options – Mutually Exclusive Tenders (section 11)	Not permitted. Intent was to simplify CFT process.	Separate Tenders for two or more different Projects could be designated as "Mutually Exclusive Tenders" with the result that BC Hydro can only accept one of the Tenders. Provided Bidders with greater flexibility.
Tendered Options – Multiple Generating Units (section 11)	Multiple generating units behind a single point of interconnection and delivery would be considered a single Project for the purposes of the CFT and any awarded EPA. Intent was to simplify Tender submission and evaluation process.	Multiple generating units behind a single point of interconnection and delivery could be considered as separate Projects and may be tendered under separate Tenders with BC Hydro's prior consent. Consent depends on the extent of common facilities for the generating units. Provided

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
		Bidders with greater flexibility.
Mini Projects	Separate Tendered Options and EPA terms and conditions for projects with a Plant Capacity of more than .05 MW and less than 1 MW	Deleted. All Projects with a Plant Capacity of between .05 MW to 10 MW subject to the CFT and EPA terms and conditions applicable to Small Projects. Simplifies CFT process and EPA administration. BC Hydro determined based on the F2006 CFT Preliminary Interconnection Study Applications filed with BC Hydro – Distribution Generator Interconnections that there were very few Mini Projects in the CFT process.
Tendered Options – Split Bids	Bidders tendering a Large Project with an Indirect Interconnection may not tender a Split Bid. Intent was to simplify CFT process and EPA administration.	Bidders tendering a Large Project with an Indirect Interconnection to the Distribution System could not tender a Split Bid. Bidders tendering a Large Project with an Indirect Interconnection to the Transmission System through a public utility could tender a Split Bid. Bidders tendering a Large Project with any other kind of Indirect Interconnection to the Transmission System could tender a Split Bid with the prior consent of BC Hydro. BC Hydro consent generally given where BC Hydro is satisfied that the proposed Split Bid scenario can be accommodated without adversely impacting materially the benefit of the EPA to BC Hydro. Foregoing represents an appropriate balance between providing Bidders with greater flexibility while ensuring that EPA terms are appropriate for a Split Bid scenario and not unduly complicating EPA administration.
Tendered Options – GHG Emission Offset Obligation	No minimum amount specified for the Bidder's tendered Guaranteed GHG Intensity.	Bidder's tendered Guaranteed GHG Intensity must be equal to or greater than 0.3 tonnes CO ₂ e/MWh per year. BC Hydro

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
		developed the Bid Price Adjustment Table for the GHG emission offset obligation on the assumption that there would be no requirement to purchase offsets for emissions below the level specified above and accordingly, the Table contains no Bid Price adjustment for emissions below that level. BC Hydro does not believe that it is appropriate to transfer any GHG risk to BC Hydro without a corresponding Bid Price adjustment.
Mandatory Requirements – No Current Contracts (section 15.2)	Bidder must have the right to terminate any third party contract with respect to the energy tendered to BC Hydro.	Provision expanded to include termination rights or recall. Any right of termination or recall under any third party contract must be exercised by notice given to the third party on or before the Tender Closing Time. Provided greater certainty to BC Hydro that the tendered energy will be available to BC Hydro subsequent to the Guaranteed COD or Target COD.
Determination of Optimal Portfolios (section 15.5)	In determining the optimal portfolios BC Hydro may consider and apply non-price criteria.	In determining the optimal portfolio, BC Hydro could consider and apply non-price criteria. However, section 15.5 was revised to state that the determination of the optimal portfolio will respect BC Hydro's strong preference for acquiring an electricity supply that is low cost and in quantities sufficient to meet its planned needs.
Regulatory Matters (section 16)	Submission of a Bidder Registration Form constituted an agreement by the Bidder that it would not oppose the filing of an Awarded EPA as an "energy supply contract" under section 71 of the <i>Utilities Commission Act</i> . Intent was to reduce the length and complexity of the regulatory process for the	Provision deleted.

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
	benefit of the successful IPPs and BC Hydro. Bidders who felt that BC Hydro had not applied the rules of the CFT have other avenues of recourse.	
No Lobbying (section 17.18)	Communications with BC Hydro, any consultant or advisor to BC Hydro or any member of the Government restricted.	Revised to clarify that the communications that are prohibited are those that are for the purpose of influencing the terms, or outcome, of the CFT.

Summary of Key Requested Changes Not Made – CFT

Requested Change	Rationale for Decision Not to Change
Incremental Supply – Modify CFT terms to allow Bidders to tender incremental energy from existing facilities where the incremental generation is not separately metered.	Anticipated considerable complexity to allocate generation between existing and incremental generation in the absence of separate metering. Will consider mechanisms for addressing this issue in future procurement processes.
Evaluation Process – Reduce the amount of discretion in the evaluation process.	Discretion allows BC Hydro to make the best business decision in the best interests of BC Hydro and its ratepayers rather than being forced to a particular result by the application of inflexible rules. Discretion in selection process is common in electricity and other procurement processes. “Threshold statements” have been provided in the Risk Assessment to provide Bidders with some guidance with respect to the type of information BC Hydro would expect to see in each category of the Project Submission.
Evaluation Process – Offer Validity A number of stakeholders commented that the time from the Tender Closing Time to the announcement of awards is too long.	BC Hydro determined that it is not possible to reduce this period. BC Hydro requires some time to conduct the Tender conformity, Mandatory Requirements, Risk Assessment and quantitative Bid Price adjustment phase of the assessment and evaluation process. A significant amount of time is then allowed for potential BCTC portfolio studies to assess the impact of potential portfolios on interconnection and transmission costs, infrastructure timing and energy losses. Therefore, BC Hydro requires sufficient time to review the results of the portfolio studies, make the final recommendations to BC Hydro's senior management and/or board of directors and to allow those parties to review the final recommendations and to make the final selection. Finally, the offer must remain valid for a sufficient period of time following announcement of the award to

Requested Change	Rationale for Decision Not to Change
	accommodate the EPA execution and delivery process.
Tender Options – Allow “Split Bids” for Small Projects	Increased contract drafting and administration complexity is not warranted given the terms of the Standard Form EPA for Small Projects under which BC Hydro purchases all project output at the Bid Price subject only to adjustment for time of delivery. BC Hydro expects that few bidders will want a Split Bid option in light of those terms.
Prior Contracts – Request that BC Hydro disclose any contracts with BC Hydro that are terminated prior to December 20, 2005 deadline.	It is not BC Hydro’s policy to make announcements regarding EPA terminations. BC Hydro is also subject to certain confidentiality obligations and obligations with respect to public announcements under existing EPAs.
Report on CFT Process – A number of stakeholders requested further clarity on the content of the report that will be filed as part of the section 71 process.	BC Hydro determined that it is appropriate to retain discretion with respect to the content of the report pending completion of the CFT process.
Independent Reviewer – Some stakeholders suggested that BC Hydro should engage an independent reviewer to oversee the Tender evaluation process.	Independent reviewers are not common in routine procurement processes. BC Hydro does not believe that the cost of engaging an independent reviewer is warranted for the F2006 Call process.
Privative Clause – Some stakeholders suggested that BC Hydro’s right to terminate the CFT process as to either or both Large Projects or Small Projects (CFT, section 15.5) is unfair.	A privative clause such as that in section 15.5 is included in virtually every procurement process in North America.
Interconnection Study Costs – A number of potential bidders expressed concern about the fact that they were encouraged to make early interconnection study applications and may now face additional fees in light of the requirement to refile those study applications.	The interconnection process has changed since the CFT process was in the design stage (see next item). BC Hydro intends to seek a report from BCTC and BC Hydro – Distribution Generator Interconnections to determine the extent to which Bidders are subject to additional study fees as a result of the change in process.
Interconnection Study Timing – Some potential bidders expressed concern that “in progress” preliminary interconnection studies would not be released until two weeks prior to the Tender Closing Time.	The interconnection process has changed since the CFT process was in the design stage. Under the new process, all preliminary interconnection studies for bidders in a competitive acquisition process are based on a common “base case” determined as of a common application date. Therefore, all studies that were in progress during the CFT design phase must be recommenced to reflect this common base case.
Interconnection Bid Price Adjustments – Allow bidders to pay for their Network Upgrade costs rather than receiving a Bid Price Adjustment	Network Upgrade costs are dependent on portfolio studies and therefore cannot be determined prior to the Tender Closing Time. If the Bidder pays the Network Upgrade costs, the Bidder will have to reflect the risk in the Bid Price whereas BC Hydro can assess the potential costs much more accurately across the potential portfolios during the evaluation process.

Summary of Key Changes Made – Large Project and Small Project EPAs

Changes common to both the Large Project EPA and the Small Project EPA that are described in the following Table are marked with an asterisk. Changes specific to only the Large Project EPA are unmarked.

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
Modification to Plant Capacity (section 4.2)*	Provision did not allow for a decrease in Plant Capacity after EPA award.	Seller can increase or decrease Plant Capacity by up to 10% provided the Seller complies with all the requirements in section 4.2.
Standard of Construction and Operation (section 6.3)*	No change to the specifications for the Seller's Plant as set out in the Seller's Plant Description without the Buyer's prior consent.	Consent is not required to change the equipment specifications or the key facilities description unless the change is likely to have an adverse effect on the Seller's ability to perform under the EPA.
Forced Outages (subsection 6.6(c))*	Seller required to use best efforts to remove or mitigate a Forced Outage	Seller can seek Buyer's consent to a lesser standard than "best efforts". Buyer cannot unreasonably withhold consent to such a request.
Sales of Test Energy to Third Parties (section 7.1)*	All Test Energy must be sold to BC Hydro.	Energy generated during COD tests may be sold to third parties.
Modification to Firm Energy Amount	Increase by 10% up to 30 days before COD. Decreases not permitted. Each month could only change by up to 10%.	10% increase or decrease permitted any time prior to the first anniversary of COD provided that the Seller complies with the requirements of section 7.2. No limit on the monthly changes provided that the annual total energy does not change by more than 10% and provided that the Seller complies with the limit on the Monthly Firm Energy Amounts for April to July.
COD Delay LDs (section 12.1)	COD delay LDs equal to 1/180 of Performance Security for each day of delay. Pre-COD Performance Security amount based on Plant Capacity. COD delay LDs payable by the 15 th day of the month.	COD delay LDs calculated based on 1/180 of post-COD Performance Security amount which is calculated by reference to the Firm Energy amount. The damage suffered by BC Hydro as a result of a COD delay is more accurately

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
		reflected by reference to the Firm Energy amount than the Plant Capacity. Payment date extended to the 30 th day of the month.
Shortfall LDs (section 12.2)	Calculated by reference to the Adjusted Bid Price	Calculated by reference to the Escalated Bid Price and Escalated Bid Price Adjustments (to account for the differences between energy traded at Mid-C and the energy sold under the EPA) and taking into account line losses
Enforcement of Performance Security (section 13.3)*	Buyer can enforce Performance Security upon Seller's failure to make specified payment.	Additional 15 days notice and cure period before Buyer can enforce Performance Security.
Buyer Termination Event (Appendix 1)		Clarification that a Buyer Termination Event does not include delivery shortfalls in respect of which the Seller has paid LDs, except where the delivery shortfall results from a Deliberate Breach
Development Costs (Appendix 1)*	Development Costs recoverable by the Seller in certain EPA termination scenarios limited to costs incurred after the Effective Date of the EPA	Recoverable costs expanded to include costs incurred after the date of issuance of the CFT.
Property Tax Flow Through (Appendix 3, section 4)*	Seller required to deliver "as built" drawings of the Seller's Plant	Requirement to deliver "as built" drawings deleted. Seller bears burden of demonstrating which improvements formed part of the Seller's Plant at COD.
Hourly Firm Projects – Planned Outages (Appendix 10, Part A, section 3)	No Planned Outages during Peak Demand Months	Buyer consent required for Planned Outages during Peak Demand Months. Buyer consent cannot be unreasonably withheld in certain circumstances. Where a Planned Outage is permitted during Peak Demand Months, total number of hours cannot exceed 180.
Projects that Receive Green	Projects that did not obtain, or	Bid Price is also restored if the

Term or Condition	BC Hydro's Original Position	BC Hydro's Revised Position and Rationale
Credit – Restoration of Price (Appendix 10, Part B, section 7A.9)*	lost EcoLogo certification resulting in a Bid Price reduction could only have the Bid Price restored on regaining EcoLogo certification.	Seller obtains an alternate certification at the request of the Buyer.
Split Bid Projects – Calculation of LDs under EPA, section 3.3	LDs for breach of the covenant of support calculated based on Plant Capacity.	LDs for breach of the covenant of support calculated based on the Split Bid Threshold Level.
Split Bid Projects – COD tests (Appendix 10, Part I, section 5)	COD tests based on Plant Capacity	COD tests based on highest Split Bid Threshold Level
Split Bid Projects – Calculation of Termination Payment (Appendix 10, Part I, section 13)	Termination payment payable by the Seller to the Buyer on termination by the Buyer in certain circumstances calculated based on Plant Capacity.	Termination payment in the payable by the Seller on termination by the Buyer in certain circumstances calculated based on the highest Split Bid Threshold Level

Summary of Key Requested Changes Not Made – EPAs

Requested Change	Rationale for Decision Not to Change
Regulatory Approval Period (section 3.1) – A number of stakeholders requested a change to the 120 day period for BCUC approval. Some stakeholders asked for a longer period. Others asked for a shorter period.	BC Hydro selected the 120 day period recognizing the requirement for bidders to have certainty as soon as possible regarding the status of their contractual commitments to BC Hydro while at the same time allowing BCUC sufficient time to conduct a review of the Awarded EPAs under section 71 of the Utilities Commission Act.
Regulatory Approval Period (section 3.1) – Some stakeholders requested an automatic COD extension if the regulatory approval period extends beyond a specified date.	Such an extension may not be required or appropriate for all projects. BC Hydro considers that the termination right in favour of either party if BCUC approval has not been obtained within 120 days sufficiently mitigates this risk for the Seller.
COD Test (section 5.2) – Some stakeholders suggested that the COD test is too stringent.	BC Hydro reviewed a number of EPAs from various jurisdictions for various technologies and is satisfied that the proposed COD test is not too stringent relative to similar tests in other jurisdictions.
Termination Rights pre-COD for Seller – (section 15.2) – Some stakeholders suggested that there should be greater opportunities for Sellers to terminate the EPA prior to COD and at a lower cost given project uncertainties such as permitting and financing.	BC Hydro is seeking to enter into contracts with IPPs that have projects that are sufficiently advanced to provide a reasonable degree of confidence that the project will proceed to COD. Allowing Sellers to terminate for failure to obtain financing or permitting without reasonable termination payments would detract from that

Requested Change	Rationale for Decision Not to Change
	objective. BC Hydro considers that this approach is fair to all bidders many of whom have invested significant funds in advancing their projects.
Planned Outages (section 6.4) – Remove requirement to use best efforts to coordinate Planned Outages with BCTC maintenance schedule.	Seller is deemed available and is paid for Firm Energy that could have been delivered during a BCTC maintenance period and should therefore be required to use that period to conduct plant maintenance to avoid a further outage for maintenance.
Force Majeure/EPA Term – Request to extend EPA term by period of all Force Majeure events during the EPA term.	Would add considerable uncertainty for the parties in determining whether there is or is not a contract in effect particularly given the length of the EPA term.
Plant Modifications (section 6.2) – Some bidders requested the removal of any restriction on additional generating capacity.	BC Hydro must have an opportunity to review the proposal for the additional generation to ensure that the impacts of the additional generation on deliveries and priorities under the existing EPA have been fully considered. For example, BC Hydro will want to ensure that appropriate metering arrangements are in place such that the additional generation can be metered separately from the generation committed under the existing EPA.

**BC HYDRO
F2006 OPEN CALL FOR POWER
CALL FOR TENDERS**

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1. INVITATION:

British Columbia Hydro and Power Authority (“BC Hydro”) invites sealed tenders for electrical energy supply. BC Hydro is targeting to procure in this Call:

- (a) approximately 2,500 GWh/year of firm electrical energy, of which approximately 900 GWh/year is available commencing on or before 1 November 2009, and approximately 1,600 GWh/year is available commencing on or before 1 November 2010, and associated non-firm electrical energy, from Projects, each having a Plant Capacity of 10 MW or more (“Large Projects”), built, owned and operated by independent power producers, and
- (b) approximately 200 GWh/year (based on a portfolio of approximately 50 MW of aggregate Plant Capacity at a 50% capacity factor) of electrical energy from Projects, each having a Plant Capacity of greater than 0.05 MW, but less than 10 MW (“Small Projects”), to be available on or before 1 November 2010, built, owned and operated by independent power producers.

Energy will be delivered under long-term electricity purchase agreements (“EPAs”). Each EPA will have a term of 15, 20, 25, 30, 35 or 40 years from the commercial operation date (“COD”). The term and COD will be tendered by Bidders.

Separate forms of EPA are prescribed for Large Projects and for Small Projects. The distinction between a Large Project and a Small Project is determined by Plant Capacity as tendered, whether all, or a part only, of Project output is tendered under this CFT and without regard to a limited right under the EPA to increase or decrease Plant Capacity after award.

This Call for Tenders (“CFT”) sets out a description of the Tender process. This includes the registration, Bidders’ Workshops, question and answer procedures, tendering options, Tender submission requirements, interconnection matters, Mandatory Requirements, Risk Assessment standards, Tender evaluation criteria, prescribed Tender, Tender Security and EPA forms, and other matters of importance to independent power producers intending to participate in this Call.

Some CFT terms are applicable only to Large Projects or to Small Projects. However, unless specifically noted, CFT terms are applicable to all Bidders and all Projects, whether Large Projects or Small Projects. References to the “EPA” include the EPA forms applicable to Large Projects and to Small Projects, unless one form only is specifically indicated.

Columbia Power Corporation (“CPC”), a Crown corporation owned by the Province of British Columbia, in joint venture with Columbia Basin Trust (together “CPC/CBT”), owns, directly or indirectly, the Brilliant Dam on the Kootenay River and related hydro-electric generating facilities, including an expansion of such facilities currently under construction, known as the “Brilliant Expansion Project”. CPC/CBT also hold expansion power generation rights related to the Waneta Dam, on the Pend’Oreille River, and are in the process of planning the development of generation facilities, known as the “Waneta Expansion Project”.

BC Hydro invited CPC to submit a firm, priced offer in respect of the Brilliant Expansion Project under a form of agreement to be adapted to suit the unique circumstances of that project and the underlying, existing agreements, including an existing electricity purchase agreement with BC Hydro for a portion of the output of the project. No invitation was issued at this time in respect of the Waneta Expansion Project. The invitation in respect of the Brilliant Expansion Project and the offer are separate from, and

would not form part of, this Call. However, BC Hydro would process and evaluate any offer received from CPC/CBT on a timetable and according to criteria consistent with those applicable under this CFT, adapted as appropriate to account for differing product and contract terms which recognize the unique nature of the offer. The price and other features of any offer from CPC/CBT in response to BC Hydro's invitation would be evaluated by comparison to Tenders received in this Call. However, any contract awarded to CPC/CBT in respect of an offer, if any, from CPC/CBT will not materially alter the targets set out above for procurement of firm and non-firm energy under this Call.

BC Hydro and Alcan Inc. are party to a Long Term Electricity Purchase Agreement dated 27 February 1990, as amended (the "LTEPA") under which Alcan Inc. sells to BC Hydro electrical energy generated at Alcan Inc.'s Kitimat generating station ("LTEPA Energy"). Alcan Inc. gave BC Hydro a notice on 1 January 2005 in which Alcan Inc. states that it is recalling its obligation to sell all LTEPA Energy under the LTEPA, effective 1 January 2010. Notwithstanding the initial Mandatory Requirements or any other provisions of this CFT, recalled LTEPA Energy is not eligible to be tendered in this Call.

Certain capitalized words and phrases used in the CFT are defined in the CFT Glossary posted to the CFT Website. Bidders should ensure that they are familiar with those definitions.

Except as otherwise expressly stipulated herein, this CFT creates no agreement, or other legal right, obligation or liability between, in favour of, or binding upon, BC Hydro or any Bidder or other person, unless and until, with respect to each Bidder, that Bidder submits a Conforming Tender under this CFT.

2. BC HYDRO AND BCTC - BACKGROUND:

BC Hydro is an electrical generation and distribution public utility constituted as a Crown corporation under the *Hydro and Power Authority Act (British Columbia)*. BC Hydro is owned by the Province of British Columbia. It is regulated by the British Columbia Utilities Commission ("BCUC") under the *Utilities Commission Act (British Columbia)*.

The principal electricity transmission system in British Columbia is operated by British Columbia Transmission Corporation ("BCTC"), a Crown corporation owned by the Province of British Columbia and managed and operated independently of BC Hydro.

Further information is available about:

- BC Hydro at its corporate website, www.bchydro.com;
- BCTC at its corporate website, www.bctc.com; and
- BCUC and the regulation of British Columbia utilities, including BC Hydro and BCTC, at BCUC's website, www.bcuc.com.

3. CFT CONTENTS:

This CFT consists of, and all references to the CFT mean, (i) this BC Hydro F2006 Open Call for Power - Call for Tenders document, and the latest versions of the (ii) CFT Forms and CFT Reference Documents, posted to the CFT Website, and (iii) all Addenda, if any, posted to the CFT Website, from time to time.

CFT FORMS AND REFERENCE DOCUMENTS:**CFT Forms:**

- 1 Bidder Registration Form
- 2 Seller's Plant Description Form
- 3 Large Project Tender Form
- 4 Small Project Tender Form
- 5 Large Project Bid Price/Options Form
- 6 Small Project Bid Price/Options Form

CFT Reference Documents:

- CFT Glossary
- CFT Schedule
- Project Submission Instructions
- Form of Tender Security
- Large Project EPA
- Small Project EPA
- GHG Adjustment Table
- Form of TerraChoice Letter - Green
- Code of Conduct Guidelines Applicable to BC Hydro Contracts

The latest version of all or any part of the CFT posted to the CFT Website cancels and supersedes all material published by BC Hydro in connection with stakeholder engagement relative to this Call, and all prior drafts and prior versions of the CFT. The latest version posted from time to time to the CFT Website is the governing version. CFT Forms and CFT Reference Documents will be identified by issue date. References to a section of the CFT mean the applicable section of this document, unless otherwise stated. All references to all or any part of the CFT mean the latest version posted to the CFT Website.

Addenda govern over all other documents. If there is any conflict or inconsistency among Addenda, the latest Addendum issued and posted to the CFT Website governs.

For further information on the CFT Website, see section 5 - CFT Website.

4. **ADDENDA:**

The CFT may be amended and supplemented only by (i) Addenda, which may be issued by BC Hydro from time to time, or (ii) issue and posting of revised CFT Forms or CFT Reference Documents.

Addenda, if any, issued before the Tender Closing Time, will be issued and posted to the CFT Website not later than 7 days before the Tender Closing Time.

Each Addendum will be dated and numbered sequentially.

5. **CFT WEBSITE:**

This CFT including Addenda, if any, CFT Forms and CFT Reference Documents, together with notices to Bidders and other information relevant to the CFT, may be viewed and downloaded at the following CFT Website, which is devoted exclusively to this Call: www.bchydro.com/f2006call.

The CFT Website is public and access is available to Bidders and other persons.

This CFT and/or the CFT Website may include third party website addresses and/or links to other websites of interest to Bidders. BC Hydro is not responsible for the accuracy or completeness of any information on a website created or maintained by any third person.

It is the sole responsibility of each Bidder to check the CFT Website on a regular basis and to identify new postings, including Addenda and revised versions of the CFT Forms and the CFT Reference Documents. BC Hydro assumes no liability or obligation to Bidders who are unaware for any reason of the CFT Website content.

6. **COMMUNICATIONS:**

All communications from a Bidder to BC Hydro should come from the Bidder's Contact Person designated in its Bidder Registration Form, or as changed by subsequent notice to BC Hydro.

Except only as otherwise indicated below or in section 12 - Interconnection Matters, Bidders should direct all communications to BC Hydro on any matter pertaining to the CFT **only** as follows:

**BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager**

email: f2006call@bchydro.com

Bidders should **not** contact any BC Hydro director, officer, or other employee on any matter pertaining to the CFT, except only as permitted below or in section 12.2. See also section 17.18.

Except as otherwise specifically stated in the CFT, all communications to BC Hydro should be by personal or courier delivery (not by regular or registered mail), or by email, which may include electronic attachments. Fax transmission is not permitted, unless specifically authorized in advance by BC Hydro in respect of a particular communication.

Bidders are strongly encouraged to maximize the use of email communications, including electronic attachments where necessary, except where personal or courier delivery is specifically required under the CFT. Upon registration, each Bidder will be provided with a BC Hydro telephone contact. This contact should be used only to clarify administrative requirements relative to the CFT which cannot otherwise be addressed through the Q&A process.

In particular, Bidders should note that certain submissions (e.g. Tenders, including Tender Security) must be delivered by personal or courier delivery. Delivery of such submissions by email, fax or other means of delivery is not acceptable.

Submissions or communications will be considered delivered **only** at the time and date shown on receipts, or if no receipt is given, then when actually delivered to the place specified in the CFT for deliveries, according to BC Hydro's records. BC Hydro is not responsible for considering any submission that is delivered elsewhere or that has gone astray.

If it is necessary for BC Hydro to communicate directly with a registered Bidder, it will do so by personal or courier delivery, email or telephone, directed to the Contact Person and using the addresses or telephone number designated by the Bidder in its Bidder Registration Form. Bidders may change their Contact Person, delivery and/or email addresses and telephone number by notifying BC Hydro in writing (by email or letter).

7. BIDDER REGISTRATION:

Each person who wishes to submit a Tender must first register as a Bidder.

A registration fee in the amount of \$5,000 is payable by cheque made payable to "British Columbia Hydro and Power Authority" or to "BC Hydro" at the time of registration.

The registration fee is not refundable, unless BC Hydro terminates the CFT before the Tender Closing Time as to either or both of Large Projects and Small Projects, in which case all registration fees will be refunded to Bidders in the applicable category. Registration fee refunds do not bear interest.

If a Bidder intends to submit Tenders in respect of two or more Projects, the Bidder should complete and deliver a separate Bidder Registration Form for each Project. However, only one registration fee per Bidder is payable, regardless of the number of Tenders the Bidder submits, or intends to submit.

Project information called for in the Bidder Registration Form is for BC Hydro's general information at the time of registration only. Bidders are not required to submit a Tender reflecting that information, and may change that information in their Tenders as they see fit. However, Bidders should note that changes to Project data from that on which F2006 Preliminary Interconnection Studies are based may result in a Tender being rejected. See section 15.2 - Mandatory Requirements.

Registrations may be assigned by a Bidder only to an Affiliate of the Bidder. See the CFT Glossary for the definition of Affiliate. To assign a registration, a Bidder must notify BC Hydro of the assignment, and provide a Bidder Registration Form completed for the assignee and evidence satisfactory to BC Hydro that the assignee is an Affiliate of the Bidder, not later than the Tender Closing Time. Early notification of assignment is encouraged so that deficiencies, if any, in assignment information may be identified and rectified before the Tender Closing Time. Assignment information should be sent by personal or courier delivery or by email to the address indicated below in this section. No additional fee is payable on an assignment. Upon submission of compliant assignment information, the assignee

becomes a registered Bidder and is eligible to submit a Tender, and the assignor ceases to be a registered Bidder and is not eligible to submit a Tender. All submissions and communications from the assignor to BC Hydro before the assignment are deemed to have been made by the assignee, who is responsible for the accuracy and completeness of such submissions and communications. Also, all communications from BC Hydro to the assignor before the effective date of the assignment will be deemed to have been given to, and received by, the assignee.

To register, complete and sign the Bidder Registration Form (*CFT Form # 1*). The form may be downloaded from the CFT Website in Word format and completed by tabbing through and completing information in the form fields. Then deliver the signed form, together with a cheque in payment of the registration fee, **by personal or courier delivery** to:

BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager

BC Hydro requests that Bidders also deliver a copy of the Bidder Registration Form to BC Hydro via email to f2006call@bchydro.com.

Bidder Registration Forms must be submitted on or before the date shown in the CFT Schedule. Late registration will not be accepted. Persons who have not completed timely registration will not be eligible to submit a Tender. Any Tenders submitted by unregistered Bidders will be rejected and returned unopened.

BC Hydro encourages early registration. Persons who are not registered will not be eligible to submit questions under the Q&A process or receive any other communications to Bidders from BC Hydro regarding the Call.

A registered Bidder may withdraw from the Call at any time before the Tender Closing Time by notifying BC Hydro of its withdrawal and confirming that it will not submit a Tender. Bidders are requested to notify BC Hydro if and when they have decided not to submit a Tender. A Bidder that withdraws after the deadline for registration may not thereafter re-register and is ineligible to submit a Tender.

8. BIDDERS' WORKSHOPS:

BC Hydro will convene Bidders' Workshops for the purpose of reviewing tendering options, interconnection matters, Tender submission forms and requirements, Mandatory Requirements, Risk Assessment standards, Project Submission requirements, Tender evaluation criteria, prescribed forms of EPA, and other matters of importance to Bidders.

A person must be a registered Bidder or its representative in order to attend the workshop. Bidders may have up to 5 persons attend and represent them at the Bidders' Workshops, including consultants and professional advisors, as well as employees.

Two workshops will be convened, one for Bidders intending to tender a Large Project, and one for Bidders intending to tender a Small Project.

The Small Project Bidders' Workshop will be held at the following time and place:

DATE: 20 January 2006

TIME: 8:00 a.m. to noon, PPT

PLACE: Hyatt Regency, downtown Vancouver

The Large Project Bidders' Workshop will be held at the following time and place:

DATE: 20 January 2006

TIME: 1:00 p.m. to 5:00 p.m., PPT

PLACE: Hyatt Regency, downtown Vancouver

Bidders should register their intent to attend the Bidders' Workshop by completing the applicable portion of the Bidder Registration Form (*CFT Form # 1*).

Bidders are encouraged to attend the Bidders' Workshops, but attendance is not mandatory.

BC Hydro assumes no obligation to deliver to Bidders not in attendance at a Bidders' Workshop, or to post to the CFT Website, any information, whether oral, written or in any other form, that may be made available to those in attendance at a Bidders' Workshop.

Bidders' Workshops are not public meetings. BC Hydro may decline admittance to a Bidders' Workshop of any person who does not represent BC Hydro or a registered Bidder or is not an invitee of BC Hydro.

BC Hydro may convene one or more additional Bidders' Workshops as it considers necessary.

9. Q&As:

A registered Bidder may submit written questions to BC Hydro for clarification of any instruction, term or condition contained in the CFT.

Questions must be submitted only by a Bidder's Contact Person and must be received not later than 14 days before the Tender Closing Time.

Questions should be in writing (by email or letter) and identify the Bidder and its Project by name. Bidders are encouraged to use email for submission of questions.

Written questions should be sent by email or by personal or courier delivery to the CFT Records Manager as follows:

BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager

email: f2006call@bchydro.com

BC Hydro will post Bidders' questions and BC Hydro's answers on the CFT Website.

The identity of the Bidder submitting a question will not be posted on the CFT Website. BC Hydro may decline to post questions and answers, which pertain to Project-specific matters that would disclose the Bidder's identity. Bidders should take care in framing questions to avoid any disclosure of information, which they consider confidential. BC Hydro assumes no obligation to decline to post, or to modify, questions that may disclose information that is confidential.

BC Hydro may alter questions for posting to render the question and answer of general application and benefit to all Bidders. BC Hydro may also edit questions for clarity and may consolidate multiple, but similar, questions in the interests of efficiency and clarity in communicating with Bidders.

The purpose of Q&As is to assist Bidders to obtain clarification of CFT requirements so that they can prepare and submit competitive, Conforming Tenders. Bidders' questions should be direct, clear and concise and in the form of a question. Questions concerning interconnection applications and studies and related technical matters should be directed to BCTC in respect of the Transmission System or to BC Hydro - Distribution Generator Interconnections in respect of the Distribution System, as indicated in section 12 - Interconnection Matters. Questions concerning federal, provincial or local permitting or other matters concerning legal, regulatory or policy issues pertaining to Project development should be submitted to the relevant governmental agency and not to BC Hydro. BC Hydro may decline to post or respond to submissions, which constitute opinions or complaints or which seek changes in the CFT to serve the interests of a particular Bidder or class of Bidders, or which BC Hydro otherwise considers will not provide assistance to Bidders in understanding the requirements of the CFT and in the preparation and submission of competitive, Conforming Tenders.

BC Hydro's answers to Bidders' questions are for general information only and do not amend, or form part of, the CFT, unless confirmed by Addendum or revised CFT Forms or CFT Reference Documents.

10. CFT SCHEDULE:

The schedule for completing the Call from issue of the CFT to award and regulatory filing of Awarded EPAs is set out in the CFT Schedule.

The CFT Schedule may be modified by BC Hydro from time to time. All modifications will be made by posting a revised CFT Schedule to the CFT Website.

Unless otherwise specified, any submission or other act that is required to be made or done by a Bidder under this CFT on or before a particular day must be made or done on or before 4:00 p.m., PPT on that day.

Where the CFT requires any submission or other act on the part of a Bidder to be made or done on a certain day or within or in relation to a specified number of days, as a result of which the submission or other act would be due on a day that is not a Business Day, then the submission or other act is due on the next following Business Day.

11. TENDERED INFORMATION AND OPTIONS:

Bidders have a number of options in preparing their Tenders. In addition to the Bid Price, the following issues are addressed in the Bid Price/Options Form (*CFT Form # 5 or 6*) forming part of the Tender, or elsewhere in the Tender.

- **Special Purpose or Other Legal Entities:** A Bidder may consist of one or more legal entities. Each entity may be an individual, corporation, joint venture, general partnership, limited partnership or other legal entity. A Bidder may be a special purpose entity formed exclusively for the purpose of submitting a Tender and, if successful, entering into an Awarded EPA and building, owning and operating a Project.

Entities, which are formed outside British Columbia, should be registered to carry on business in British Columbia, as required by applicable British Columbia law, before submitting a Tender.

If the Bidder is a joint venture or general partnership, Appendix 10, Part J of the Large Project EPA, or Appendix 9, Part H of the Small Project EPA, as applicable, will be included in any Awarded EPA.

If the Bidder is a limited partnership, Appendix 10, Part K of the Large Project EPA or Appendix 9, Part I of the Small Project EPA, as applicable, will be included in any Awarded EPA.

- **Alternate Tenders:** A Bidder, or its Affiliates, may submit only one Tender and one Alternate Tender for any particular Project. An Alternate Tender may reflect alternate tendered data for Plant Capacity, pricing and other terms. A Bidder tendering a Split Bid and a non-Split Bid (see “Split Bid” below) for the same Project will be considered to have submitted an Alternate Tender, and will not be permitted to submit a second alternate Tender for that Project.
- **Co-dependent Tenders:** A Bidder submitting separate Tenders for two or more different Projects may designate two or more of such Tenders as “Co-dependent Tenders”. If so designated, then BC Hydro may accept all, but not less than all, the Co-dependent Tenders. Separate EPAs will be awarded for each successful Co-dependent Tender.
- **Mutually Exclusive Tenders:** A Bidder submitting separate Tenders for two or more different Projects may designate two or more of such Tenders as “Mutually Exclusive Tenders”. If so designated, then BC Hydro may accept one only of such Tenders.
- **Multiple Projects:** A Bidder may submit separate Tenders for two or more different Projects. A Bidder, or its Affiliates, may also participate as a direct or indirect co-owner of, or lender to, or otherwise support a Tender submitted by, another Bidder, provided that participation is clearly disclosed in its Tender.
- **Multiple Generating Units:**
 - **One Project:** A Bidder may tender output from multiple generating units, which need not necessarily be on the same site, provided however that all such units have a common point of interconnection and delivery. Where such output is so tendered and the Tender is accepted, a single EPA will be awarded in respect of that Tender.
 - **Separate Projects:** A Bidder may tender output from multiple generating units with a common point of interconnection and delivery under separate Tenders, with the prior written consent of BC Hydro. Generally, where multiple generating units are not substantially dependent on common facilities and infrastructure, other than interconnection facilities, and output can be separately metered, separate Tenders will be permitted. However, Bidders considering this option should notify BC Hydro as soon as practicable, and in any event well before the Tender Closing Time, of the details of the proposed configuration of Projects and seek BC Hydro’s consent to the submission of

separate Tenders. If consent is given, then a separate EPA will be awarded in respect of each successful Tender.

- **Interconnection:** Bidders may be eligible for interconnection to the Transmission System, or to the Distribution System, depending on the Project size and location.

If a Large Project is interconnected to the Distribution System, then Appendix 10, Part F of the Large Project EPA will be included in any Awarded EPA.

If a Small Project is interconnected to the Transmission System, then Appendix 9, Part E of the Small Project EPA will be included in any Awarded EPA.

- **Indirect Interconnection:** Projects may be interconnected directly to the Integrated System, or may be interconnected indirectly (an “Indirect Interconnection”) through (i) a configuration involving generating equipment interconnected through an industrial facility, or (ii) a private transmission or distribution line owned by a third party, such as an existing independent power producer, or (iii) a public utility transmission/distribution system owned and/or operated by a third party, other than BCTC, such as the Fortis system, provided in each case that the applicable Mandatory Requirements are met. See section 15.2 - Mandatory Requirements.

If a Large Project will have an Indirect Interconnection as described in (i) above, Appendix 10, Part E of the Large Project EPA will be included in any Awarded EPA.

If a Large Project will have an Indirect Interconnection as described in (ii) above, Appendix 10, Part G (to be released by Addendum, if required) of the Large Project EPA will be included in any Awarded EPA.

If a Large Project will have an Indirect Interconnection as described in (iii) above, Appendix 10, Part H (to be released by Addendum, if required) of the Large Project EPA will be included in any Awarded EPA.

If a Small Project will have an Indirect Interconnection as described in (i) above, Appendix 9, Part D of the Small Project EPA will be included in any Awarded EPA.

If a Small Project will have an Indirect Interconnection as described in (ii) above, Appendix 9, Part F (to be released by Addendum, if required) of the Small Project EPA will be included in any Awarded EPA.

If a Small Project will have an Indirect Interconnection as described in (iii) above, Appendix 9, Part G (to be released by Addendum, if required) of the Small Project EPA will be included in any Awarded EPA.

Any Bidder intending to interconnect its Project to the Integrated System indirectly as described above is solely responsible for making all necessary transmission and other arrangements with third parties to enable it to satisfy the relevant Mandatory Requirements.

- **Guaranteed COD: This option applies only to Large Project Bidders.** Large Project Bidders must tender a Guaranteed COD. The Guaranteed COD must be the first day of any month from 1 October 2007 to 1 November 2010. The EPA permits the Bidder to advance COD by up to 12 months, but not earlier than 1 October 2007, subject to certain conditions set out in the EPA. The tendered Guaranteed COD is a non-price factor to be considered in Tender evaluation and may

impact award decisions. See section 15.5 for further information on Tender evaluation and award impacts.

- **Target COD: This option applies only to Small Project Bidders.** Small Project Bidders must tender a Target COD. The Target COD must be the first day of any month from 1 October 2007 to 1 November 2010. The EPA permits the Bidder to advance COD by up to 12 months, but not earlier than 1 October 2007, subject to certain conditions set out in the EPA.
- **EPA Term:** A Bidder must select the EPA Term it tenders. The Term may be 15, 20, 25, 30, 35, or 40 years, in each case commencing on COD. There are no renewal provisions in the EPA. If a Term longer than 15 years is selected, a Bidder may also elect the “Two-Part Term Pricing” option described below.
- **Two-Part Term Pricing:** A Bidder that selects a Term in excess of 15 years may elect to tender two Bid Prices - one applicable to the initial portion of the Term of not less than 15 years, and one applicable to the balance of the Term. This option is called “Two Part Term Pricing”.
- **Escalation:** A Bidder may tender a percentage (between 0% and 50%) of its Bid Price to be subject to escalation under the EPA to reflect annual changes in the CPI from that prevailing as of 1 January 2006. Bidders that elect the Two-Part Term Pricing option above must tender only one percentage for this purpose, and that percentage will apply to both Bid Prices.
- **Split Bid: This option applies only to Large Project Bidders.** Except as noted below, a Large Project Bidder has the option to tender, all or a part of, the Project output to BC Hydro. A Tender consisting of part of a Project’s output is called a “Split Bid”.

A Bidder tendering a Large Project with an Indirect Interconnection to the Distribution System may not tender a Split Bid.

A Bidder that tenders a Project with an Indirect Interconnection to the Transmission System through a public utility transmission/distribution system, such as the Fortis system, may tender a Split Bid.

A Bidder that tenders a Project with an Indirect Interconnection to the Transmission System through a host facility or a private transmission or distribution line may tender a Split Bid with the prior written consent of BC Hydro. Generally, consent will be given where BC Hydro, in its discretion, is satisfied that Project-specific changes, if any, can be made to the Large Project EPA that are necessary to facilitate the Split Bid without adversely impacting materially the benefit of the EPA to BC Hydro. Bidders considering a Split Bid requiring such consent should notify BC Hydro as soon as practicable, and in any event well before the Tender Closing Time, of the details of the proposed configuration of Projects and seek BC Hydro’s consent.

Bidders that tender a Split Bid and an Hourly Firm Energy Profile (see “Energy Profile” below) are required to tender a Split Bid Threshold Level (HLH and LLH MWh/h) for each month at or above their tendered hourly firm energy amount. Energy produced in excess of the Split Bid Threshold Level will not be sold to, or purchased by, BC Hydro under the Large Project EPA.

Bidders that tender a Split Bid and a Monthly Firm Energy Profile (see “Energy Profile” below) must tender a Split Bid Threshold Level (MWh/h) for each month at or above the monthly firm energy amount divided by the number of hours for that month. Energy produced in excess of the

Split Bid Threshold Level will not be sold to, or purchased by, BC Hydro under the Large Project EPA.

A Bidder may submit a Tender reflecting a Split Bid and an Alternate Tender reflecting a non-Split Bid for the same Project, with separate pricing and other tendered data and terms for each of them.

Where a Split Bid is tendered, under the EPA, energy contracted to BC Hydro must be fully delivered in priority to all energy contracted to others. For further information on the contractual effects of the Split Bid option, see the Large Project EPA.

All Large Project Bidders that do not tender a Split Bid, and all Small Project Bidders, must sell their entire Project output to BC Hydro under the EPA. However, under the EPA, BC Hydro is not obliged to accept or pay for any quantity of energy that at any time exceeds 120% of the Plant Capacity.

If a Bidder tenders a Split Bid, Appendix 10, Part I of the Large Project EPA will be included in any Awarded EPA.

- **Energy Profile: This option applies only to Large Project Bidders.** A Large Project Bidder must tender a Firm Energy Profile. This profile determines the amount of electrical energy the Bidder will be required to deliver under the EPA from its Project, failing which liquidated damages may apply. The profile may be monthly (a “Monthly Firm Energy Profile”) or hourly (an “Hourly Firm Energy Profile”). For further information on Hourly Firm Energy Profiles, see “Hourly Firm Credit” below. The annual profile tendered, whether monthly or hourly, will be applicable under the EPA in each year of the EPA Term commencing on COD. Bidders may tender whatever Firm Energy Profile they wish, except only that, whether the Firm Energy Profile is monthly or hourly, the total firm energy tendered for the period April to July inclusive may not exceed one-third of the total annual firm energy tendered. Under the EPA, BC Hydro will purchase associated non-firm energy. See the Large Project EPA, Appendix 3 for Tier 1 and Tier 2 non-firm energy pricing.
- **Hourly Firm Credit: This option applies only to Large Project Bidders.** A Large Project Bidder may elect to tender an Hourly Firm Energy Profile. This profile determines the hourly firm energy delivery that must be delivered during each heavy load hour (HLH) and each light load hour (LLH). If a Bidder makes this election in its Tender, then its Bid Price will be adjusted for Tender evaluation purposes only to reflect the value to BC Hydro of additional firmness associated with this option. See section 15.4 - Quantitative Bid Price Adjustments, for further information on the Bid Price adjustment.

If a Bidder tenders an Hourly Firm Energy Profile, Appendix 10, Part A of the Large Project EPA will be included in any Awarded EPA.

- **BC Clean Electricity Projects:** A qualifying Project may elect to be treated as a BC Clean Electricity Project, which may impact Tender evaluation and award decisions. See section 15.5 - Determination of Optimal Portfolios for further information on evaluation and award impacts.

For further information regarding BC Clean Electricity, see the BC Clean Electricity Guidelines, revised 15 September 2005 and issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources, which is available at

http://www.em.gov.bc.ca/AlternativeEnergy/Clean_Energy_2005.pdf.

For the purpose of this Call, a Project will be considered to consist of BC Clean Electricity if either (i) it qualifies as “Green” under the CFT (see “Green Projects” below), or (ii) the Bidder obtains and files with its Tender a letter, in form and content satisfactory to BC Hydro, from the Minister of Energy, Mines and Petroleum Resources of British Columbia confirming that the Project satisfies the provincial requirements for designation as BC Clean Electricity. In respect of (i) above, see the Form of TerraChoice Letter - Green on the CFT Website.

If the required letter is not submitted with a Tender, then the Tender will not be disqualified for that omission, but will not be considered BC Clean Electricity for Tender evaluation purposes, and for the purpose of any Awarded EPA.

- **Green Projects:** A Bidder tendering output from a Project that is eligible for EcoLogo^M Certification (criteria for EcoLogo^M Certification are available at www.environmentalchoice.com) may select one of the following options:
 - *Transfer Green Attributes:* tender Green Attributes to BC Hydro, in which case a Bid Price adjustment will be applied for Tender evaluation purposes only (see section 15.4 - Quantitative Bid Price Adjustments for further information on the adjustment), or
 - *Retain Green Attributes:* retain Green Attributes for sale to third parties or other use at the discretion of the Bidder, in which case no Bid Price adjustment will be applied in Tender evaluation, but the Project may still realize an advantage in Tender evaluation if the output satisfies the requirements of BC Clean Electricity as outlined above.

A Bidder tendering Green Attributes to BC Hydro must obtain at its expense and file with its Tender a letter from TerraChoice in substantially the form posted on the CFT Website regarding eligibility for EcoLogo^M Certification. See the Form of TerraChoice Letter - Green on the CFT Website. For information on requirements for obtaining the letter, contact:

**Susan Herbert,
Director, Program and Service Excellence
TerraChoice Environmental Marketing**

Toll free telephone: 1-800-478-0399 (ext. 224)

Fax: 613-247-2228

email: sherbert@terrachoice.ca

or visit the TerraChoice website at www.terrachoice.ca.

If a Bidder tenders Green Attributes to BC Hydro, then under the EPA, BC Hydro will pay certain certification costs to obtain and maintain EcoLogo^M Certification as set out in the EPA.

Under the EPA, Bidders that tender Green Attributes to BC Hydro retain the right to apply for government programs such as the federal Renewable Power Production Incentive (“RPPI”) or the Wind Power Production Incentive (“WPPI”). If participation in the government program requires government ownership of all or any Green Attributes and the Bidder gives BC Hydro due notice thereof in accordance with the EPA, then in order to enable the Bidder to participate in the program, BC Hydro will forfeit its rights under the EPA to those attributes and the Bidder must reimburse any EcoLogo^M Certification costs borne by BC Hydro. In that event, the price payable to the Bidder for electrical energy under the EPA will be reduced by an amount equal to

the credit applied in Tender evaluation, escalated for inflation, all as set out in further detail in the EPA.

If a Bidder tenders a Green Large Project, Appendix 10, Part B of the Large Project EPA will be included in any Awarded EPA.

If a Bidder tenders a Green Small Project, Appendix 9, Part A of the Small Project EPA will be included in any Awarded EPA.

If the required letter from TerraChoice is not submitted with a Tender, then the Tender will not be disqualified for that omission, but will not be considered Green for Tender evaluation purposes, and for the purpose of any Awarded EPA.

- **GHG Emission Offset Obligations:** Bidders may either:
 - *Transfer GHG Emission Offset Obligations:* transfer to BC Hydro responsibility for any regulatory obligation to purchase GHG-related Compliance Units attributable to the Project up to the Guaranteed GHG Intensity tendered by the Bidder, with the Bidder retaining all other GHG-related regulatory and legal liabilities and obligations, including the obligation to purchase any GHG-related Compliance Units attributable to the Project GHG intensity exceeding that tendered. If this option is selected, a Bid Price adjustment will be applied in Tender evaluation to reflect the burden of this transfer on BC Hydro. See section 15.4 - Quantitative Bid Price Adjustments for further details on the adjustment amount. Note that if this option is selected, BC Hydro's responsibility under the EPA for offset obligations will be capped by the Bidder's Guaranteed GHG Intensity, with the result that, depending on the intensity tendered, as compared to the actual intensity, the transfer may be less than all GHG offset obligations. See the EPA for further details. In addition, if this option is selected, the Bidder's tendered Guaranteed GHG Intensity must be equal to or greater than 0.3 tonnes CO₂e/MWh per year; or
 - *Retain all GHG-related Obligations:* retain all GHG-related regulatory and legal liabilities and obligations, including responsibility to purchase all GHG-related Compliance Units attributable to the Project. Bidders that elect to retain all GHG offset obligations may also elect to commit to optional GHG mitigation measures beyond those required by all applicable laws and regulations by tendering a GHG Compliance Commitment. In that event, under the EPA the Bidder will be required to meet the most stringent of its commitment and the standard required by applicable laws and regulations. If a Bidder tenders a GHG Compliance Commitment, such commitment may be considered as a non-price factor in the Tender evaluation. See section 15.5 - Determination of Optimal Portfolios.

If a Bidder tenders a Large Project and elects to transfer to BC Hydro obligations to purchase GHG-related Compliance Units, Appendix 10, Part C of the Large Project EPA will be included in any Awarded EPA.

If a Bidder tenders a Small Project and elects to transfer to BC Hydro obligations to purchase GHG-related Compliance Units, Appendix 9, Part B of the Small Project EPA will be included in any Awarded EPA.

12. INTERCONNECTION MATTERS:

12.1 Projects Interconnected to the Transmission System:

12.1.1 Mandatory Requirements: A Bidder tendering a Project to be interconnected to the Transmission System **must:**

- have submitted to BCTC a F2006 CFT Preliminary Interconnection Study Application on or before 4:00 p.m., PPT, 1 December 2005, and
- have received a completed F2006 CFT Preliminary Interconnection Study Report from BCTC on or before the Tender Closing Time.

The foregoing are Mandatory Requirements. See section 15.2 - Mandatory Requirements. **Tenders submitted by Bidders who have failed to comply with these requirements will be rejected.**

12.1.2 Study Applications: Time and resources available to BCTC for study work are limited. Bidders should note that timely completion of a F2006 CFT Preliminary Interconnection Study Report is dependent on Bidders (i) signing the required F2006 CFT Study Agreement and paying the associated deposit not later than 23 December 2005, and (ii) providing complete and accurate Project information with their application and responding promptly to any further enquiries made by BCTC during the study period. **Bidders that fail to meet these conditions are unlikely to receive a completed F2006 CFT Preliminary Interconnection Study Report before the Tender Closing Time, and accordingly may be unable to submit a Conforming Tender.**

For purposes of this Call, F2006 CFT Preliminary Interconnection Studies for all Bidders will be conducted on the basis of a common F2006 CFT Preliminary Interconnection Study Application time, which is 4:00 p.m., PPT, 1 December 2005 (“Application Time”). In order to recognize this, the following rules apply, as set out in the notice posted to the CFT Website on 31 October 2005 (the “Notice Date”):

- *Preliminary Interconnection Study Application:* The BCTC form of F2006 CFT Preliminary Interconnection Study Application specifies that notwithstanding its receipt by BCTC in advance of the Application Time, it is not to be treated by BCTC as delivered until the Application Time;
- *Pending Applications:* A Bidder that has filed a non-F2006 CFT Preliminary Interconnection Study Application for a Project before the Notice Date, in respect of which no Preliminary Study Agreement has been executed or completed study report has been issued, (i) must on or before 1 December 2005 submit a F2006 CFT Preliminary Interconnection Study Application in the manner set out above, and (ii) should on or before 23 December 2005 initiate a F2006 CFT Preliminary Interconnection Study by signing a F2006 CFT Preliminary Interconnection Study Agreement, or abandon its existing study in favour of a F2006 CFT Preliminary Interconnection Study, by signing a F2006 CFT Amended and Restated Preliminary Interconnection Study Agreement, and in either case paying the associated deposit; and
- *Completed Studies:* A Bidder to whom a completed non-F2006 CFT Preliminary Interconnection Study Report has been issued by BCTC before the Notice Date (i) must on or before 1 December 2005 submit a F2006 CFT Preliminary Interconnection Study Application in the manner set out above, and (ii) should on or before 23 December 2005 initiate a F2006 CFT Preliminary Interconnection Study by signing a F2006 CFT Preliminary Interconnection Study Restudy Agreement and paying the associated deposit.

The forms of the F2006 CFT Preliminary Interconnection Study Application and the F2006 CFT Study Agreements referred to above for use in each of the foregoing circumstances were posted to the BCTC website on the Notice Date or shortly thereafter.

12.1.3 Access to Facilities: By submitting a Bidder Registration Form, Bidders agree to use the Application Time as the time for their F2006 CFT Preliminary Interconnection Study Applications. Bidders will not be permitted to use F2006 CFT Preliminary Interconnection Study Reports for purposes of the Call unless they are based on a F2006 CFT Preliminary Interconnection Study Application submitted or deemed to have been submitted at the Application Time. The Application Time will determine the configuration of the Transmission System to be used in all of the F2006 CFT Preliminary Interconnection Studies. Each F2006 CFT Preliminary Interconnection Study will assume a Transmission System configuration consistent with BCTC's base case - the current and expected future configuration of the Transmission System used by BCTC for planning and study purposes - as at the Application Time. Facilities in the base case that are not fully utilized and can be used to accommodate a Project's interconnection will be taken into account in the F2006 CFT Preliminary Interconnection Study for that Project.

Following its selection, a successful Bidder may proceed with the detailed studies of its Project's interconnection to the Transmission System necessary to obtain an interconnection agreement with BCTC, without having to submit another interconnection request for its Project, **only** by executing a Combined Study Agreement, in prescribed form, with BCTC and paying the associated deposit, within 60 days of BC Hydro selecting the Bidder as a successful Bidder.

Successful Bidders that fail to execute a Combined Study Agreement as provided for above and unsuccessful Bidders that wish to pursue the interconnection of their Projects to the Transmission System may **only** do so by submitting a new Preliminary Interconnection Study Application (or interconnection request once BCTC's Open Access Transmission Tariff comes into force). A registered Bidder may not submit a new application or request, or any application for point-to-point transmission service (except for any portion of Plant Capacity pertaining to a Split Bid third party sale), in respect of its Project until the earlier of (i) the Bidder notifying BC Hydro that it is withdrawing from the Call and will not submit a Tender, (ii) the Bidder being notified by BC Hydro that its Tender has not been accepted, and (iii) 180 days after the issuance of the F2006 CFT Preliminary Interconnection Study.

12.1.4 Study Reports: BCTC will release all F2006 CFT Preliminary Interconnection Study Reports to Bidders and to BC Hydro on the same day, currently scheduled for approximately two weeks before the Tender Closing Time. The F2006 CFT Preliminary Interconnection Study Report should be appended to the Project Submission submitted as part of the Tender. See the Project Submission Instructions for further information.

A F2006 CFT Preliminary Interconnection Study Report will provide:

- an estimate of the costs to design, engineer, procure, construct, install and commission Direct Assignment Facilities;
- an estimate of the costs to design, engineer, procure, construct, install and commission Network Upgrades; and
- whether the Direct Assignment Facilities and Network Upgrades are unlikely to be commissioned not later than 90 days before the COD for the Project as specified by the Bidder in its F2006 CFT Preliminary Interconnection Study Application.

With regard to the F2006 CFT Preliminary Interconnection Study Report, Bidders should note that:

- The study will be done on a “stand alone” basis - that is ignoring the impact, if any, on Direct Assignment Costs and/or Network Upgrade Costs of one or more other Projects that are tendered in this Call, for which one or more EPAs may be awarded;
- Direct Assignment Costs are distinguished from Network Upgrade Costs based on a “sole benefit” test. Interconnection costs incurred for the sole benefit of a particular Project will be considered Direct Assignment Costs. The decision of BCTC as to whether costs are Direct Assignment Costs or Network Upgrade Costs will be final for purposes of the CFT;
- Estimates are not guaranteed by BCTC or by BC Hydro. Actual costs may vary from estimates. Also, estimates are based on the accuracy and completeness of all information furnished by the Bidder to BCTC, and further subject to all assumptions, conditions and limitations set out in the F2006 CFT Preliminary Interconnection Study Agreement and the F2006 CFT Preliminary Interconnection Study Report;
- A Bidder is solely responsible for the payment of all actual Direct Assignment Costs associated with its tendered Project, including any such incremental costs which may result from the interconnection of one or more other Projects tendered in this Call, for which EPAs are awarded. As indicated above, such incremental costs or cost savings, as applicable, will not be reflected in the estimate contained in the F2006 CFT Preliminary Interconnection Study Report, nor can a Bidder assume that any Project tendered by another Bidder will, or will not, be awarded an EPA, which could increase or decrease actual Direct Assignment Costs; and
- Bidders should note that under the EPA, a successful Bidder must apply to BCTC for an interconnection impact study, sign a Combined Study Agreement and pay the associated deposit within 60 days after BC Hydro selects the Bidder as a successful Bidder. Failure to do so constitutes a default under the EPA. See the EPA for further details.

12.1.5 Portfolio Studies: BC Hydro will engage BCTC to study and report on the further economic impact on BC Hydro, if any, of multiple Projects comprised in one or more portfolios then under consideration for award of EPAs. The results of these portfolio studies will be taken in to account by BC Hydro when selecting the optimal portfolio. See section 15.4 - Quantitative Bid Price Adjustments and section 15.5 - Determination of Optimal Portfolios for further information.

The portfolio studies will also include BCTC’s identification of any portfolios in which Network Upgrades for any of the Projects in a portfolio are unlikely to be commissioned 90 days before the COD for those Projects, as specified by the Bidders in their respective F2006 CFT Preliminary Interconnection Study Applications. Portfolios so identified may result in further consideration of the Risk Assessment associated with Projects within the applicable portfolio. See section 15.3 - Risk Assessment for further information.

12.1.6 Communications: For further information, contact:

**British Columbia Transmission Corporation
Market Operations: Interconnections
Suite 1100, Four Bentall Centre
1055 Dunsmuir Street
P.O. Box 49260
Vancouver, BC, V7X 1V5**

Telephone: 604-699-7381
email: bctc.interconnection@bctc.com
Fax: 604-699-7539
Attention: Interconnections Manager

12.1.7 Call-specific Process/Rules: The process and rules described in this section apply **only** to Projects to be tendered in this Call and interconnected to the Transmission System. This process and these rules differ from those applicable under BCTC's new Open Access Transmission Tariff, which is applicable to all other interconnection and transmission applications and studies once in force. In particular, Bidders should note that for the purposes of this CFT, the terms "Direct Assignment Costs" and "Network Upgrade Costs" have the meanings given in the CFT Glossary, and any such definitions appearing in the aforesaid tariff are not applicable to this Call.

12.2 Projects Interconnected to the Distribution System:

12.2.1 Mandatory Requirements: A Bidder tendering a Project to be interconnected to the Distribution System **must**:

- have submitted to BC Hydro - Distribution Generator Interconnections a F2006 CFT Preliminary Interconnection Study Application and paid the associated deposit on or before 4:00 p.m., PPT, 25 November 2005, and
- have received a completed F2006 CFT Preliminary Interconnection Study Report from BC Hydro - Distribution Generator Interconnections on or before the Tender Closing Time.

The foregoing are Mandatory Requirements. See section 15.2 - Mandatory Requirements. Tenders submitted by Bidders who have failed to comply with these requirements will be rejected.

12.2.2 Study Applications: Time and resources available to BC Hydro - Distribution Generator Interconnections for study work are limited. Bidders should note that timely completion of a F2006 CFT Preliminary Interconnection Study Report is dependent on Bidders providing complete and accurate Project information with their application and responding promptly to any further inquiries made by BC Hydro - Distribution Generator Interconnections during the study period. **Bidders that fail to meet these conditions are unlikely to receive completed studies before the Tender Closing Time, and accordingly may be unable to submit a Conforming Tender.**

For purposes of this Call, F2006 CFT Preliminary Interconnection Study Reports for all Bidders will be conducted on the basis of a common F2006 CFT Preliminary Interconnection Study Application time, which is 4:00 p.m., PPT, 25 November 2005 ("Application Time"). In order to recognize this, the following rules apply, as set out in the notices posted to the CFT Website on 31 October 2005 (the "Notice Date"):

- **Preliminary Interconnection Study Application:** The BC Hydro - Distribution Generator Interconnections form of F2006 CFT Preliminary Interconnection Study Application specifies that notwithstanding its receipt by BC Hydro in advance of 4:00 p.m., PPT, 24 November 2005, it is not to be treated by BC Hydro as delivered until 4:00 p.m., PPT, 24 November 2005; BC Hydro issued Interconnection Notice No. 3 on 24 November 2005 extending the deadline for filing of Preliminary Interconnection Study Applications; accordingly, the effective date shown on all F2006 CFT Preliminary Interconnection Study Applications is deemed to be modified to 4:00 p.m., PPT, 25 November 2005;

- *Pending Applications:* A Bidder that has filed a non-F2006 CFT Preliminary Interconnection Study Application for a Project before the Notice Date, in respect of which no completed study report has been issued, must on or before 4:00 p.m., PPT, 25 November 2005 submit a F2006 CFT Preliminary Interconnection Study Application in the manner set out above, and pay any associated deposit; and
- *Completed Studies:* A Bidder to whom a completed F2006 CFT Preliminary Interconnection Study Report has been issued by BC Hydro - Distribution Generator Interconnections before the Notice Date must on or before 4:00 p.m., PPT, 25 November 2005 submit a F2006 CFT Preliminary Interconnection Study Application in the manner set out above, and pay any associated deposit.

The form of the F2006 CFT Preliminary Interconnection Study Application referred to above for use in each of the foregoing circumstances were posted to the BC Hydro web site on the Notice Date.

12.2.3 Access to Facilities: By submitting a Bidder Registration Form, Bidders agree to use 4:00 p.m., PPT, 25 November 2005 as the time for their F2006 CFT Preliminary Interconnection Study Applications. Bidders will not be permitted to use F2006 CFT Preliminary Interconnection Study Reports for purposes of the Call unless they are based on a F2006 CFT Preliminary Interconnection Study Application submitted or deemed to have been submitted at 4:00 p.m., PPT, 25 November 2005. The Application Time applicable to Projects interconnected to the Transmission System (see section 12.1.2) will determine the configuration of the Distribution System and the Transmission System to be used in all of the F2006 CFT Preliminary Interconnection Studies, including Projects interconnected to the Distribution System. Facilities in the base case that are not fully utilized and can be used to accommodate a Project's interconnection will be taken into account in the F2006 CFT Preliminary Interconnection Study for that Project.

Following its selection, a successful Bidder may proceed with the detailed studies of its Project's interconnection to the Distribution System necessary to obtain an interconnection agreement with BC Hydro - Distribution Generator Interconnections, without having to submit another interconnection request for its Project, only by initiating a Design Study, in prescribed form, with BC Hydro - Distribution Generator Interconnections and paying the associated study fee, within 60 days of BC Hydro selecting the Bidder as a successful Bidder.

Successful Bidders that fail to initiate a Design Study as provided for above and unsuccessful Bidders that wish to pursue the interconnection of their Projects to the Distribution System may only do so by submitting a new Preliminary Interconnection Study Application. A registered Bidder may not submit a new application or request, or any application for point-to-point transmission service or distribution wheeling service (except for any portion of Plant Capacity pertaining to a Split Bid third party sale), in respect of its Project until the earlier of (i) the Bidder notifying BC Hydro that it is withdrawing from the Call and will not submit a Tender, (ii) the Bidder being notified by BC Hydro that its Tender has not been accepted, and (iii) 180 days after the issuance of the F2006 CFT Preliminary Interconnection Study.

12.2.4 Study Reports: BC Hydro - Distribution Generator Interconnections will release all F2006 CFT Preliminary Interconnection Study Reports to Bidders on the same day, currently scheduled for approximately two weeks before the Tender Closing Time. The F2006 CFT Preliminary Interconnection Study Report should be appended to the Project Submission submitted as part of the Tender. See the Project Submission Instructions for further information.

A F2006 CFT Preliminary Interconnection Study Report will provide:

- an estimate of the costs to design, engineer, procure, construct, install and commission Direct Assignment Facilities;
- an estimate of the costs to design, engineer, procure, construct, install and commission Network Upgrades; and
- whether the Direct Assignment Facilities and Network Upgrades are unlikely to be commissioned not later than 90 days before the COD for the Project as specified by the Bidder in its F2006 CFT Preliminary Interconnection Study Application.

With regard to the F2006 CFT Preliminary Interconnection Study Report, Bidders should note that:

- The study will be done on a “stand alone” basis - that is ignoring the impact, if any, on Direct Assignment Costs and/or Network Upgrade Costs of the interconnection of one or more other Projects that are tendered in this Call, for which one or more EPAs may be awarded;
- Direct Assignment Costs are distinguished from Network Upgrade Costs based on a “sole benefit” test. Interconnection and distribution/transmission-related costs incurred for the sole benefit of a particular Project will be considered Direct Assignment Costs. The decision of BC Hydro - Distribution Generator Interconnections as to whether costs are Direct Assignment Costs or Network Upgrade Costs will be final for purposes of the CFT;
- Estimates are not guaranteed by BC Hydro. Actual costs may vary from estimates. Also, estimates are based on an assumption as to the accuracy and completeness of all information furnished by the Bidder to BC Hydro - Distribution Generator Interconnections, and further subject to all assumptions, conditions and limitations set out in the F2006 CFT Preliminary Interconnection Study Report;
- A Bidder is solely responsible for the payment of all actual Direct Assignment Costs associated with its tendered Project, including any such incremental costs which may result from the interconnection of one or more other Projects tendered in this Call, for which EPAs are awarded. As indicated above, such incremental costs or cost savings, as applicable, will not be reflected in the estimate contained in the F2006 CFT Preliminary Interconnection Study Report, nor can a Bidder assume that any Project tendered by another Bidder will, or will not, be awarded an EPA, which could increase or decrease actual Direct Assignment Costs; and
- Bidders should note that under the EPA, a successful Bidder must apply to BC Hydro - Distribution Generator Interconnections for a Design Study and pay the associated study fee within 60 days after BC Hydro selects the Bidder as a successful Bidder. Failure to do so constitutes a default under the EPA. See the EPAs for further detail.

12.2.5 Portfolio Studies: The interconnection of, and transmission of energy from, one or more Projects interconnected to the Distribution System may have impacts on the Transmission System, including Network Upgrade Costs and/or net system energy losses. BC Hydro will engage BCTC to study and report on the further economic impact on BC Hydro, if any, of multiple Projects comprised in one or more portfolios then under consideration for award of EPAs. The results of these portfolio studies will be taken in to account by BC Hydro when selecting the optimal portfolio. See section 15.4 - Quantitative Bid Price Adjustments and section 15.5 - Determination of Optimal Portfolios for further information.

The portfolio studies will also include BCTC’s identification of any portfolios in which Network Upgrades for any of the Projects in a portfolio are unlikely to be commissioned 90 days before the COD

for those Projects, as specified by the Bidders in their respective F2006 CFT Preliminary Interconnection Study Applications. Portfolios so identified may result in further consideration of the Risk Assessment associated with Projects within the applicable portfolio. See section 15.3 - Risk Assessment for further information.

12.2.6 Communications: For further information, contact:

BC Hydro - Distribution Generator Interconnections
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3

Telephone: 604-623-3755 or 604-623-4138

Fax: 604-623-4335

email: gen.connections@bchydro.com

12.3 Special Cases:

12.3.1 Split Bids: A Bidder intending to submit a Tender in respect of a Large Project consisting of a Split Bid should ensure that its F2006 CFT Preliminary Interconnection Study Application reflects the total Plant Capacity. Such Bidders are solely responsible for arranging whatever take-away transmission and distribution services that may be required in respect of that portion of the Project output not tendered to BC Hydro under this CFT, including timely application for all point-to-point transmission services, and distribution wheeling services, if applicable.

12.3.2 Indirect Interconnections: Bidders intending to submit a Tender in respect of a Project with an Indirect Interconnection are solely responsible for ensuring that the third party submits to BC Hydro or to BCTC, in accordance with the timeframes discussed above, all necessary requests for any necessary modifications to existing interconnection facilities and any existing Interconnection Agreement and/or Facilities Agreement. See section 11 - Tendered Information and Options, Indirect Interconnection for a description of Indirect Interconnections.

12.3.3 Projects with Interconnection/Facilities Agreements: If a Bidder intends to tender a Project for which an Interconnection Agreement and/or Facilities Agreement with BCTC or with BC Hydro is in place, BC Hydro will require further Project and/or portfolio study work to be undertaken to ensure that additional economic impacts on BC Hydro, if any, are available to consider when determining optimal portfolios. Accordingly, such Bidders are still required to follow the procedures for *Completed Studies* outlined in section 12.1.2, or in section 12.2.2, as the case may be.

12.3.4 Alternate Tenders, Multiple Tenders: Each Bidder intending to submit an Alternate Tender and/or multiple Tenders, whether or not Co-dependent Tenders or Mutually Exclusive Tenders, which reflect different Project data forming the basis of an F2006 Preliminary Interconnection Study Application, must comply with the foregoing in respect of each Project, and any Alternate Tender for a Project.

13. ELECTRICITY PURCHASE AGREEMENTS:

13.1 Prescribed EPA Form:

Prescribed forms of the Large Project EPA and Small Project EPA are posted to the CFT Website. The risk profile and terms and conditions of these two forms of EPA are materially different. Bidders should

ensure that before submitting a Tender they have carefully reviewed, taken any necessary professional advice upon, and fully understand the prescribed form of EPA that is applicable to their tendered Project.

A successful Bidder that is awarded an EPA under this CFT is required to execute and deliver an electricity purchase agreement in a prescribed form. This form consists of:

- (a) the Large Project EPA or the Small Project EPA, as applicable, including the applicable Parts of Appendix 10 (Large Project EPA) or Appendix 9 (Small Project EPA) to that form as indicated in section 11 - Tendered Information and Options, modified only by,
- (b) Project-specific changes, if any, approved or prescribed by BC Hydro as outlined below, and
- (c) completed with the Bid Price and other Bidder and Project-specific information in the Tender, which is identified in the EPA for inclusion therein,

together with the Performance Security required under the Awarded EPA, after BC Hydro has delivered to the Bidder a notice of award and within 15 days after BC Hydro has delivered the executable Awarded EPA to the Bidder.

The Awarded EPA is not negotiable.

13.2 Seller's Plant Description - Pre-Tender Submission:

The prescribed form of EPA requires the completion of an Appendix, being the Seller's Plant Description Form, which consists of a Project technical description (*CFT Form # 2*).

Bidders must complete the Seller's Plant Description Form and submit the completed form to BC Hydro not later than 45 days before the Tender Closing Time.

The Seller's Plant Description Form is a form field document and may be downloaded from the CFT Website in Word format. Follow the instructions on the form. Tab through the fields to complete the information required.

The completed form should be delivered personally or by courier or by email to the CFT Records Manager as follows:

**BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager**

email: f2006call@bchydro.com

13.3 Project-specific Changes to EPA - Pre-Tender Submission:

A Bidder may request Project-specific changes to the prescribed form of EPA to accommodate its technology and operating scenarios. Changes will be included in an Awarded EPA only if approved in writing by BC Hydro before the Tender Closing Time.

Requests may be made from time to time, but **all requests must be titled “Project-specific Change Request” and identify the Project, and be made not later than 45 days before the Tender Closing Time.**

Approved changes will be limited to those which, in BC Hydro’s opinion, do not alter materially the benefit to, or burden upon, BC Hydro under the EPA or give the Bidder an unfair preference over other Bidders. BC Hydro may decline to give reasons for approving or not approving a requested change. BC Hydro is not obliged to disclose to any Bidder change requests made by any other Bidder. BC Hydro’s decision to approve or not to approve a requested change is final.

Whether or not a Bidder exercises its right to request changes to the prescribed form of EPA, BC Hydro may prescribe Project-specific changes to the EPA. These changes may include a condition that certain amendments be made to any existing contracts with BC Hydro, which are necessary to properly coordinate those contracts with any Awarded EPA. Such changes will be notified to the affected Bidder not later than 30 days before the Tender Closing Time. Project-specific changes prescribed by BC Hydro, and notified to a Bidder before the Tender Closing Time will be included in any Awarded EPA with that Bidder.

BC Hydro will advise Bidders as soon as practicable after receiving a change request whether the request is approved by BC Hydro and will confirm approved changes in writing to the Bidder.

Each Project-specific change request must be in writing, identifying the Bidder and Project by name, and setting out (i) the specific contractual wording change requested (which may be in the form of a black lined copy of the EPA or relevant portion thereof or in such other form as the Bidder considers appropriate), and (ii) a brief statement of the reason for the change. Multiple change requests can be combined in one submission.

Change requests should be delivered personally or by courier or by email to:

BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager

email: f2006call@bchydro.com

14. TENDER SUBMISSION:

14.1 Tender Instructions:

This section 14 summarizes important information regarding the preparation and submission of Tenders. For further detailed instructions, Bidders should refer to the particular CFT Forms and CFT Reference Documents referenced below.

14.2 Required Tender Submissions:

A complete Tender consists of the following, properly completed and signed:

- **One** originally signed and properly completed Tender Form (*CFT Form # 3 or 4*, as applicable), in a sealed envelope,

- **One** originally signed Bid Price/Options Form (*CFT Form # 5 or 6*, as applicable), in a separate sealed envelope,
- **One** originally signed and **Two** photocopies of a Project Submission, each in a 3 ring binder,
- **One** CD containing one electronic copy of the Bid Price/Options Form only, in Word format, and
- **One** originally signed Tender Security in the prescribed or approved form.

The complete Tender should be delivered personally or by courier to BC Hydro in a single sealed envelope or box, labeled as indicated in section 14.10.

Bidders should not make deletions, additions or other modifications to the prescribed Tender forms, except where the form instructions specifically permit. Bidders should not add to the prescribed Tender forms or otherwise incorporate in their Tender any qualification, condition or other term not specifically permitted by the CFT or the form instructions. **Failure to comply with the foregoing may render the Tender a Non-Conforming Tender, with the result that it will be rejected.**

14.3 Tender Form:

The prescribed Tender Form on the CFT Website must be used. Tenders for Large Projects must use the Large Project Tender Form (*CFT Form # 3*). Tenders for Small Projects must use the Small Project Tender Form (*CFT Form # 4*).

The applicable Tender Form is a form field document and may be downloaded in Word format. Complete the form by tabbing through and completing the form fields.

14.4 Bid Price/Options Form:

The prescribed Bid Price/Options Form on the CFT Website must be used. Tenders for Large Projects must use the Large Project Bid Price/Options Form (*CFT Form # 5*). Tenders for Small Projects must use the Small Project Bid Price/Options Form (*CFT Form # 6*).

The Bid Price/Options Form is a form field document and may be downloaded in Word format. Complete the form by tabbing through and completing the form fields.

These forms should be completed with the Bidder's Bid Price and elections regarding various tendered options as set out on the forms.

14.5 Project Submission:

Each Bidder should prepare a Project Submission to provide the information regarding the Bidder, its team and the Project, which will be considered by BC Hydro in Tender assessment and evaluation, including particularly verifying compliance with Mandatory Requirements set out in section 15.2 - Mandatory Requirements, and carrying out a Risk Assessment as outlined in section 15.3 - Risk Assessment.

In preparing the Project Submission, Bidders should review carefully and follow the Project Submission Instructions on the CFT Website. These instructions contain important information on the proper preparation of this part of the Tender.

14.6 **Tender Signing:**

The Tender Form, the Bid Price/Options Form, and the Project Submission must be signed on behalf of the Bidder by a person or persons authorized to legally bind the Bidder.

If the Bidder is a corporation, the forms must be signed by one or more directors or officers of the corporation, and if the corporation has, or is required by law to have a corporate seal, then the corporate seal should be affixed.

If the Bidder is a joint venture, the forms must be signed by each joint venturer. The signature requirements of each joint venturer will depend on the legal nature of the entity, whether a corporation or otherwise, as set out in this section.

If the Bidder is a general partnership, the forms must be signed by each partner. The signature requirements of each partner will depend on the legal nature of the entity, whether a corporation or otherwise, as set out in this section.

If the Bidder is a limited partnership, the forms must be signed by the general partner as representing the partnership. The signature requirements of the general partner will depend on the legal nature of the entity, whether a corporation or otherwise, as set out in this section.

If the Bidder is a legal entity, other than a corporation, joint venture, general partnership or limited partnership, it should submit a question to BC Hydro under the Q&A process to clarify signing formalities for that entity.

One of the persons signing the Tender Form and the Bid Price/Options Form should also initial each page of the forms where indicated on the form for identification.

14.7 **Tender Security:**

Each Tender must be accompanied by a Tender Security delivered to BC Hydro on or before the Tender Closing Time.

Tender Securities must be originals, executed by the issuing bank or financial institution, and where applicable the advising bank or financial institution. Electronic, fax or photocopy deliveries will not be accepted, and any Tender for which an original, executed Tender Security is not delivered to BC Hydro on or before the Tender Closing Time will be rejected.

A Tender Security must meet the following requirements:

- A clean, irrevocable and unconditional letter of credit in favour of “British Columbia Hydro and Power Authority” in substantially the form of the Form of Tender Security on the CFT Website , or such other clean, irrevocable and unconditional letter of credit form as BC Hydro may approve in writing before the Tender Closing Time on request of the Bidder as outlined below,
- The Tender Security must be issued or advised by a branch in Vancouver, Canada of a bank or financial institution where the issuing bank or financial institution has a credit rating not less than Standard & Poor’s A-, Moody’s A3 or Dominion Bond Rating Service A (low) and if such credit rating agencies publish differing credit ratings for the same bank or financial institution, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section,

- The Tender Security must have an expiry date not earlier than the day which is 75 days after the scheduled EPA Award Date shown on the CFT Schedule, and
- The Tender Security must be in a principal amount determined as follows:
 - For Large Projects, \$10,000/MW (based on annual firm tendered energy in MWh, divided by 8760), or
 - For Small Projects, the greater of (i) \$5,000/MW of Plant Capacity, or (ii) \$5,000.
- The Tender Security for Large Projects must be calculated as follows:
 - For Bidders that tender a Monthly Firm Energy Profile, the annual firm tendered energy is the sum for the year of the Monthly Firm Energy Amounts set out in the Monthly Firm Energy Profile; and
 - For Bidders that tender an Hourly Firm Energy Profile, the annual firm tendered energy is the sum for the year of the Hourly Firm Energy Amounts set out in the Hourly Firm Energy Profile.
- If a Bidder submits a Tender and an Alternate Tender for the same Project, or Mutually Exclusive Tenders for different Projects, only one Tender Security is required for those Tenders. In that case, the amount of the Tender Security must be the highest amount that would otherwise be required for those Tenders as set out in this section.

Bidders may request that BC Hydro approve an alternate form of clean, irrevocable and unconditional letter of credit by submitting a written request, sent by personal or courier delivery or by email to BC Hydro not later than 30 days before the Tender Closing Time, as follows:

BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager

email: f2006call@bchydro.com

All fees and costs in connection with the issue, advisement, confirmation and maintenance of the Tender Security are for the account of, and must be paid by, the Bidder.

The Tender Security secures the obligation of a Bidder, if awarded an EPA under the CFT, to execute and deliver the Awarded EPA in the prescribed form and to deliver the Performance Security required thereunder on or before the time required under section 13.1. If a Bidder fails to execute and deliver the Awarded EPA or to deliver the Performance Security therewith, both within the time stipulated above, BC Hydro may draw upon the Tender Security and retain the proceeds thereof as liquidated damages, and not as a penalty. Bidders are not liable to BC Hydro for any such failure for any amount in excess of the amount of the Tender Security.

If a Bidder is awarded an EPA and executes and delivers the Awarded EPA and delivers the Performance Security within the time stipulated above, then BC Hydro will promptly return the Tender Security to that Bidder.

Tender Securities will be returned to unsuccessful Bidders promptly after their Tenders expire.

14.8 Tender Conformity:

Tenders that do not conform to the CFT requirements in any material respect, as determined by BC Hydro, will be considered Non-Conforming Tenders and will be rejected and given no further consideration. BC Hydro may waive non-conformities, which it determines to be non-material, and may determine materiality for that purpose. Tenders that meet the CFT requirements, or in respect of which BC Hydro has waived all non-conformities, will be considered Conforming Tenders and given further consideration. BC Hydro's decisions on materiality and Tender conformity are final.

Bidders who are in any doubt whatsoever as to the CFT requirements for Tender submission or conformity are strongly urged to submit questions to BC Hydro under the Q&A process well before the Tender Closing Time, and in any event not later than the latest date for submitting questions in the Q&A process, to ensure that they clearly understand and can comply with all CFT requirements.

14.9 Timely Submission of Tenders:

Tenders, including the required Tender Security, must be submitted by delivery to BC Hydro personally or by courier delivery on or before 4:00 p.m., PPT on the day on which the Tender Closing Time occurs.

To determine the Tender Closing Time, consult the latest version of the CFT Schedule posted to the CFT Website.

If all or any part of a Tender, including the required Tender Security, is submitted after the Tender Closing Time, regardless of the reason for late submission, that Tender will be rejected without further consideration.

14.10 Place and Format for Submission of Tenders:

Tenders must be submitted in a sealed envelope or box, addressed and delivered on or before the Tender Closing Time, on a Business Day and between the hours of 9:00 a.m., PPT to 4:00 p.m., PPT, personally or by courier delivery to:

**BC Hydro
10th Floor, 333 Dunsmuir Street
Vancouver, BC
V6B 5R3
Attention: CFT Records Manager**

The sealed envelope or box should be addressed as indicated above and also bear the Bidder's name and address.

Electronic, fax, or photocopy delivery of Tenders, including the Tender Security, in lieu of originally signed delivery, will not be accepted, and any Tender so delivered will be rejected.

14.11 Tenders Binding and Irrevocable:

A Tender constitutes a legally binding offer to enter into an electricity purchase agreement in the form of the Awarded EPA described in section 13.1 above and to deliver the Performance Security required under the Awarded EPA, both within the time stipulated in section 13.1.

Tenders are irrevocable, may not be amended or revoked, and are open for acceptance by BC Hydro from and after the Tender Closing Time until 4:00 p.m., PPT on the 180th day following the Tender Closing Time, or if that day is not a Business Day, then at that time on the next following Business Day.

14.12 Alternate Tenders (Including Split Bids):

An Alternate Tender for a Project should be marked clearly as “Alternate” after the Project name on the Tender Form and the Bid Price/Options Form. A Bidder wishing to submit a Tender and an Alternate Tender for the same Project should complete and file a separate Tender Form and Bid Price/Options Form for each of the Tender and the Alternate Tender. The Project Submission should reflect the Tender and be accompanied by an addendum, if required, to the Project Submission clearly showing what modifications, if any, to the Project Submission are required to accommodate the Alternate Tender. The Tender and the Alternate Tender will be considered separate and Mutually Exclusive Tenders.

14.13 Multiple, Co-dependent or Mutually Exclusive Tenders:

Each Project for which a Tender is submitted must have a unique name. A Bidder that wishes to designate two or more Tenders in respect of different Projects as either Co-dependent Tenders or Mutually Exclusive Tenders, must submit complete Tenders for each Project, together with a letter specifying clearly those Tenders that are Co-dependent Tenders and/or those Tenders that are Mutually Exclusive Tenders. The letter should contain no other qualifications or conditions. If Tenders are not so designated, they will be deemed to be **not** Co-dependent Tenders or **not** Mutually Exclusive Tenders.

15. TENDER ASSESSMENT, EVALUATION AND AWARD:

15.1 Overview:

Tenders will not be opened publicly. Following receipt of Tenders and completion of a conformity review, BC Hydro will conduct the Tender assessment and evaluation of Conforming Tenders and award as follows:

- *Initial Assessment:*
 - Mandatory Requirements Review,
 - Risk Assessment,
- *Quantitative Bid Price Adjustments:*
 - Determine Levelized Bid Prices,
 - Apply Bid Price Adjustments,
- *Determination of Optimal Portfolios.*

The foregoing steps will be carried out separately for Large Projects and for Small Projects.

Depending upon the number of Tenders submitted and the distribution of Bid Prices, in order to utilize its evaluation resources efficiently and effectively, BC Hydro may establish, after Tenders are submitted and opened, a maximum Bid Price for evaluation purposes, or another mechanism, for either or both of Large

Projects and Small Projects in order to defer, or eliminate from further, consideration of any Tenders that are clearly non-competitive. The maximum price or other mechanism for Large Projects will not necessarily be the same as the maximum price or other mechanism for Small Projects. Tenders determined by BC Hydro as being clearly non-competitive, will not necessarily be considered further.

15.2 **Mandatory Requirements:**

Conforming Tenders will be reviewed to determine on a “pass/fail” basis whether they meet Mandatory Requirements.

BC Hydro will determine compliance with Mandatory Requirements using information contained in the Project Submission. BC Hydro may seek clarifications from the Bidder and/or undertake further investigation concerning a Project or a Bidder, but BC Hydro is not obliged to do so. While BC Hydro may seek further Project or Bidder information, Bidders will not be permitted to amend or re-tender data tendered in the Bid Price/Options Form. Therefore, each Bidder should review carefully the Project Submission Instructions and ensure that all information called for by those instructions is included in the Project Submission to be submitted as part of its Tender.

The Mandatory Requirements are:

- *Project Location:* Projects must be located in British Columbia, which includes Canadian and British Columbia territorial waters;
- *Project Size:* The minimum size of qualifying Projects is greater than 0.05 MW of Plant Capacity for Small Projects and 10 MW for Large Projects;
- *Generation Technology:* All “proven” generation technologies (except for nuclear technology) are eligible. For this purpose “proven” technologies are generation technologies, which are readily available in commercial markets and in commercial use (not demonstration use only), as evidenced by at least 3 generation plants (which need not be owned or operated by the Bidder) generating electrical energy for a period of not less than 3 years, to a standard of reliability generally required by Good Utility Practice and the terms of the EPA. Prototype and near commercial technologies do not qualify;
- *Project Type:* Projects may be new, refurbished, incremental or existing generation, except as noted below. Incremental generation from existing, interconnected and synchronized generators is not eligible. However, incremental generation from additional generator units to be installed in existing interconnected and synchronized facilities is eligible, provided that the incremental portion of the facility generation is separately metered at the new generator unit. Generation projects, which have received, or are entitled to receive, funding through a load displacement or demand side management contract with BC Hydro are not eligible. Existing load displacement generation is not eligible, unless those Projects ceased to be synchronized with the Integrated System before 1 January 2004;
- *Interconnection:* Projects that are located within the Integrated System Area must:
 - be metered separately, and
 - have an interconnection to the Integrated System, and for this purpose an interconnection includes an Indirect Interconnection.

See the definition of Integrated System Area in the CFT Glossary and note that certain areas, such as the Fort Nelson service area, are excluded from the Integrated System Area for purposes of this CFT.

Projects, other than Projects within the Fort Nelson service area, which are not located within the Integrated System Area, will be eligible, but the point of delivery under the EPA must be at a specified interconnection point on the Integrated System, and the Bidder must bear all costs of transmission and energy losses to that point. Also, the Project must be metered separately at the generator and calibrated for energy losses to the point of delivery. Losses between the meter and the point of delivery will be deducted from generation metered at the generator for payment purposes under the EPA;

- *Interconnection Study Application and Agreement:* All Bidders must have submitted a F2006 CFT Preliminary Interconnection Study Application, including in the case of a Project to be interconnected to the Distribution System, payment of the required deposit by the deadline specified in section 12 - Interconnection Matters, and have a completed F2006 CFT Preliminary Interconnection Study Report, to be submitted with their Tender. The Bidder's F2006 Preliminary Interconnection Study Application and any additional information furnished by the Bidder to support the study and the F2006 CFT Preliminary Interconnection Study Report must be based upon information that is consistent in all material respects with the Bidder's Tender. Any Project data contained in the Tender that differs from the corresponding information contained in the Bidder's F2006 Preliminary Interconnection Study Application and/or additional information furnished by the Bidder to support the study, and on which the study is based, will be considered materially inconsistent if, in BC Hydro's opinion, the difference, if taken into account in the study, could materially impact the study results; and
- *No Current Contracts:* All or any part of the Plant Capacity or electrical energy output from the Project tendered to BC Hydro under this CFT may **not** be under any contract to BC Hydro or any other person (including any right of first refusal or similar entitlement) providing for energy delivery from or at any time after the Guaranteed COD or Target COD, as applicable, and during all or any part of the Term, both as specified in the Tender, except capacity and/or energy under a contract that may and will be lawfully terminated, or the capacity and/or energy may and will be lawfully recalled, at the option of the Bidder by notice given on or before the Tender Closing Time, provided, however, any such contract with BC Hydro is terminated, and any termination payment due from the Bidder is paid, and/or the capacity and/or energy is recalled, by notice given on or before 20 December 2005.

BC Hydro will determine on a "pass/fail" basis whether a Tender meets the Mandatory Requirements. BC Hydro's decisions on compliance with Mandatory Requirements are final.

Bidders who are in any doubt whatsoever as to whether their Project meets the Mandatory Requirements are strongly urged to submit questions to BC Hydro under the Q&A process well before the Tender Closing Time, and in any event not later than the deadline for submitting questions in the Q&A process, to ensure that they clearly understand whether and how their Project can meet those requirements.

15.3 Risk Assessment:

Conforming Tenders that pass the Mandatory Requirements review will undergo a Risk Assessment on a "pass/fail" basis. In the Risk Assessment, BC Hydro will assess each Tender in respect of (i) *Development Risk*, and (ii) *Performance Risk*.

BC Hydro will carry out the Risk Assessment using information contained in the Project Submission. BC Hydro may seek clarifications from the Bidder and/or undertake further investigation concerning a Project, but BC Hydro is not obliged to do so. Therefore, Bidders should review carefully the Project Submission Instructions and ensure that all information called for by those instructions is included in the Bidder's Project Submission to be submitted as part of its Tender.

Development Risk involves an assessment of the likelihood that the Project can achieve COD, and any required Network Upgrades can be in service, by the tendered COD.

Performance Risk involves an assessment of the likelihood that the Project will be technically and legally capable to perform substantially in accordance with the EPA.

Having regard particularly to the "Thresholds" set out in the Project Submission Instructions, the Risk Assessment will take into account the impact of the following on *Development Risk* and *Performance Risk*, as applicable, and having regard to the tendered Project data (other than pricing data), including particularly the Guaranteed COD or Target COD, and Firm Energy Profile, if applicable:

- *Development and Operating Organization and Experience:* The development and operating experience, and overall execution plan of the Bidder and/or its Project team, including information concerning:
 - Contracting method;
 - Existing Project team;
 - Further required Project team members;
 - Securing performance;
 - Project organization chart;
 - Operating plan; and
- *Financial Capacity and Creditworthiness:* The financial capacity and creditworthiness of the Bidder and/or persons who Control the Bidder, including information concerning:
 - Financing plan;
 - Status of financing;
 - Performance Security;
 - Financial capability and creditworthiness; and
- *Project Status:* The status of other matters impacting *Development Risk* and *Performance Risk*, including information concerning:
 - Project development schedule;
 - Site acquisition/control;
 - Permits;

- Community consultation;
- First Nations consultation;
- Site services;
- Fuel (energy source) supply;
- GHG mitigation strategy (for Projects using fossil fuel);
- Pending litigation;
- Labour disputes;
- Such other matters pertaining to the Bidder or the Project as may, in BC Hydro's opinion, impact the *Development Risk* or the *Performance Risk*.

Tenders that in BC Hydro's opinion pose a *Development Risk* and/or *Performance Risk*, which is unacceptable to BC Hydro, having regard to its obligation to serve its customers, will fail the Risk Assessment, be rejected and given no further consideration. Tenders that in BC Hydro's opinion do not pose unacceptable risks will pass the Risk Assessment and will be further considered as outlined below. BC Hydro's pass/fail determinations in respect of the Risk Assessment are final.

15.4 Quantitative Bid Price Adjustments:

Conforming Tenders that pass the Mandatory Requirements review and the Risk Assessment will undergo price levelization and Bid Price adjustment to determine the Adjusted Bid Price, as follows:

- **Price Levelization:** In order to compare pricing of Tenders reflecting different EPA, CODs and/or Terms, and/or Two-Part Term Pricing and different tendered escalation rates, Bid Prices will be levelized, for Tender evaluation purposes only, to 1 January 2006 constant dollars;
- **Large Project Bid Price Adjustments:** Bid Prices for Large Projects will be adjusted, **for Tender evaluation purposes only**, as follows:
 - **Green Credit:** For Large Projects that can achieve EcoLogo^M Certification and have elected to transfer Green Attributes to BC Hydro (see section 11 - Tendered Information and Options above), the levelized Bid Price will be reduced by \$3.00/MWh. (Note that under the EPA, if such a Project subsequently fails to obtain or maintain such certification or transfers Green Attributes to a government under a government incentive program, the price paid to the Bidder under the EPA will be reduced by a like amount, adjusted for escalation from 1 January 2006. See the Large Project EPA for further information on that price adjustment.);
 - **Hourly Firm Adjustment:** For Large Projects for which the Bidder elects to tender the Hourly Firm Energy Profile (see section 11 - Tendered Information and Options above), the levelized Bid Price will be reduced by \$3.00/MWh;
 - **Interconnection and Transmission Adjustment:** Levelized Bid Prices for Large Projects will be adjusted to take into account interconnection/transmission-related costs and energy losses, the burden of which will fall, directly or indirectly, on BC Hydro, as a result of the Project being interconnected to the Integrated System and energy being

transmitted from the Project to the load centre. Initially these adjustments will be assessed on a Project stand-alone basis, using information from the F2006 CFT Preliminary Interconnection Study (e.g. Network Upgrade Costs to the nearest cut-plane), as well as information posted on the BCTC website (e.g. cut-plane costs to the nearest bulk transmission system, and cumulative transmission losses and the cumulative cost of incremental firm transmission along the bulk transmission system to the Lower Mainland). BC Hydro may identify “clusters” of two or more Projects where (i) further cut-plane costs result from the cluster, as opposed to individual Projects considered on a stand-alone basis, and/or (ii) the allocation of cut-plane costs may be different from the allocation that would apply if the Projects were considered on a stand-alone basis. The financial impact on BC Hydro of these cluster effects may result in further adjustments to the levelized Bid Prices of those Projects within such clusters. BC Hydro may also identify Projects for further study by BC Hydro – Distribution Generator Interconnection and/or by BCTC to further assess the impact of energy losses on the Distribution System and/or Transmission System. BC Hydro will also identify portfolios of Tenders for further assessment by BCTC, to further refine the interconnection and transmission adjustment, taking into account the impact of any interconnection/transmission interdependencies between Projects in a given portfolio; and

- GHG Adjustment: For a Large Project for which the Bidder has elected to transfer to BC Hydro the obligation to purchase GHG-related Compliance Units based on a tendered Guaranteed GHG Intensity, levelized Bid Prices will be increased by an amount determined from the GHG Adjustment Table, based on the tendered Guaranteed GHG Intensity.
- *Small Project Bid Price Adjustments:* Bid Prices for Small Projects will be adjusted, **for Tender evaluation purposes only**, as follows:
 - Green Credit: For Small Projects that can achieve EcoLogo^M Certification and have elected to transfer Green Attributes to BC Hydro (see section 11 - Tendered Information and Options above), the levelized Bid Price will be reduced by \$3.00/MWh. (Note that under the EPA, if such a Project subsequently fails to obtain or maintain such certification or transfers Green Attributes to a government under a government incentive program, the price paid to the Bidder under the EPA will be reduced by a like amount, adjusted for escalation from 1 January 2006. See the Small Project EPA for further information on that price adjustment.);
 - Interconnection and Transmission Adjustment: Levelized Bid Prices for Small Projects will be adjusted to take into account interconnection/transmission-related costs and energy losses, the burden of which will fall, directly or indirectly, on BC Hydro, as a result of the Project being interconnected to the Integrated System and energy being transmitted from the Project to the load centre. Initially these adjustments will be assessed on a Project stand-alone basis, using information from the F2006 CFT Preliminary Interconnection Study (e.g. Network Upgrade Costs to the nearest cut-plane), as well as information posted on the BCTC website (e.g. cut-plane costs to the nearest bulk transmission system, and cumulative transmission losses and the cumulative cost of incremental firm transmission along the bulk transmission system to the Lower Mainland). BC Hydro may identify “clusters” of two or more Projects where (i) further cut-plane costs result from the cluster, as opposed to individual Projects considered on a stand-alone basis, and/or (ii) the allocation of cut-plane costs may be different from the allocation that would apply if the Projects were considered on a stand-alone basis. The

financial impact on BC Hydro of these cluster effects may result in further adjustments to the levelized Bid Prices of those Projects within such clusters. BC Hydro may also identify Projects for further study by BC Hydro – Distribution Generator Interconnection and/or by BCTC to further assess the impact of energy losses on the Distribution System and/or Transmission System. BC Hydro will also identify portfolios of Tenders for further assessment by BCTC, to further refine the interconnection and transmission adjustment, taking into account the impact of any interconnection/transmission interdependencies between Projects in a given portfolio; and

- GHG Adjustment: For a Small Project for which the Bidder has elected to transfer to BC Hydro the obligation to purchase GHG-related Compliance Units based on a tendered Guaranteed GHG Intensity, levelized Bid Prices will be increased by an amount determined from the GHG Adjustment Table, based on the tendered Guaranteed GHG Intensity.

All levelization and Bid Price adjustments described above are made only for Tender evaluation purposes. Payments to Bidders under EPAs will be based on the tendered Bid Price.

15.5 Determination of Optimal Portfolios:

BC Hydro will determine the optimal Large Project portfolio and the optimal Small Project portfolio. A portfolio may consist of one or more Tenders.

The determination of the optimal portfolios will respect BC Hydro's strong preference for acquiring an electricity supply that is low cost and in quantities sufficient to meet its planned needs, currently targeted for this CFT at firm energy of 900 GWh/year for COD on or before 1 November 2009 and an additional 1,600 GWh/year for COD on or before 1 November 2010.

BC Hydro is targeting (i) a Large Project portfolio consisting of 50% BC Clean Electricity, based on aggregate firm energy under Awarded EPAs, and (ii) a Small Project portfolio consisting of 50% BC Clean Electricity, based on aggregate Plant Capacity of Projects under Awarded EPAs. Consequently, a Project that meets the definition of BC Clean Electricity may have an advantage in the Tender evaluation, provided it is part of a competitively priced portfolio.

Without diminishing BC Hydro's strong preference for low cost energy as indicated above, in determining the optimal portfolios, BC Hydro may consider and apply, in addition to Adjusted Bid Prices and other factors indicated above, non-price criteria, including:

- The appropriate quantity of energy to be purchased and optimal COD, having regard to the most current information then available on quantities and timing of BC Hydro's system needs,
- Portfolio interconnection and transmission costs, energy losses, and other related impacts, if any, if and to the extent not otherwise fully addressed by Bid Price adjustments,
- The benefits of firm energy, including hourly firm energy,
- The extent, if any, to which the exercise by a Bidder of the Two-Part Term Pricing option unduly accelerates payment for energy,
- The benefits of BC Clean Electricity,

- The extent, if any, to which a Bidder elects to commit to optional GHG mitigation measures beyond those required by all applicable laws and regulations,
- Opportunities to minimize or avoid adverse environmental impacts,
- Overall portfolio *Development Risk* and *Performance Risk*, having regard to the need for timely and reliable supply, including benefits of regional diversity of supply,
- The benefits of diversity in generation technologies, and
- Any other public interest criteria that BC Hydro considers has not been adequately addressed by the quantitative Bid Price adjustments and consideration of other non-price criteria noted above.

While the determination of optimal portfolios will recognize a strong preference for electrical supply that is low cost, the non-price criteria may be applied at the discretion of BC Hydro and not necessarily according to any pre-determined weighting or methodology. All criteria will be applied with a view to determining the portfolios that best serve the interests, and meet the needs, of BC Hydro and persons to whom it provides or may provide services, while respecting the regulatory need for prudence and consideration of the public interest.

The Large Project and Small Project portfolios determined by BC Hydro's evaluation team to be optimal will be recommended to BC Hydro's executive management and/or board of directors for a decision on the award of EPAs. The board of directors and senior executive management retain full and final discretion on the award of any EPAs, and the decision of BC Hydro's board of directors or senior executive management is final.

A report on the assessment and evaluation of Tenders, including information on pricing and the application of any non-price criteria, will be published after EPA awards are made.

Unsuccessful Bidders to whom no EPAs are awarded will be advised of the rejection of their Tenders on or after successful Bidders have been advised of the award of EPAs. BC Hydro assumes no obligation to advise unsuccessful Bidders of rejection of their Tenders before that time, regardless of the reason(s) for rejection, save and except only that BC Hydro will promptly advise Bidders who submit Tenders after the Tender Closing Time that the Tender is rejected and will promptly return such Tenders and Tender Security.

BC Hydro assumes no obligation to advise individual unsuccessful Bidders of the reason(s) for rejection of their Tenders.

The Tender(s) having the lowest Bid Price(s) or Adjusted Bid Price(s) or the lowest cost to BC Hydro, or any Tender, will not necessarily be accepted. The portfolios having the lowest cost to BC Hydro, based on Bid Prices or Adjusted Bid Prices, will not necessarily be determined to be the optimal portfolios or result in EPA awards.

BC Hydro may terminate the CFT process, as to either or both of Large Projects or Small Projects, at any time before or after the submission of Tenders, in which case no Tenders will be accepted and no EPAs will be awarded under the CFT in respect of either or both of Large Projects or Small Projects, as the case may be.

16. REGULATORY MATTERS:

EPAs awarded under this CFT are “energy supply contracts” under the *Utilities Commission Act (British Columbia)*. Accordingly, subject to a valid exemption, if any, obtained by a Bidder, they must be filed with the BCUC under section 71 of that Act. The BCUC may accept the EPAs for filing without convening a public hearing, or the BCUC may convene a hearing. If the BCUC determines, after a hearing, that an EPA is not in the public interest, the BCUC may make an order declaring the EPA to be unenforceable, in whole or in part, or may make any other order it considers advisable in the circumstances. The foregoing is a very brief and general summary of the applicable regulatory framework. Bidders should seek their own legal advice on all regulatory issues associated with the CFT and any EPAs awarded under it.

17. GENERAL TERMS AND CONDITIONS:**17.1 Acceptance of Terms:**

By submitting a Tender, whether or not a Conforming Tender and whether or not the Tender is accepted, a Bidder represents, warrants and agrees that it has read carefully this CFT and that it accepts, is bound by, and has complied and will comply, with all the terms and conditions of this CFT.

17.2 Investigation:

Bidders should fully investigate and inform themselves of all aspects of the opportunity associated with this CFT and all matters impacting their quoted price(s) and other conditions of their Tender. Bidders should review carefully all information available from time to time on the CFT Website, including all CFT Forms and CFT Reference Documents and all Addenda that may be issued, and obtain such legal and other professional advice as is necessary for the Bidder to have a complete understanding of the CFT, including all such agreements and related risks. If a Bidder discovers any error, omission, conflict, inconsistency or ambiguity in this CFT or any document referenced herein, it should seek clarification from BC Hydro before submitting a Tender. BC Hydro is not liable for any claim, whether for reimbursement of costs or otherwise, arising from any failure of a Bidder to investigate and inform itself, or seek clarification, as required.

17.3 Code of Conduct:

Each Bidder, by submitting a Tender, represents and warrants that it has read carefully, and it has complied, and will comply, with the Code of Conduct Guidelines Applicable to BC Hydro Contracts.

17.4 Costs:

Bidders are responsible for all costs incurred by them in connection with this CFT, including the preparation of any Tender and any other submission and the execution and delivery of any agreements arising therefrom.

17.5 Limitation of Liability:

BC Hydro (which in this section includes BC Hydro, its Affiliates, and their respective directors, officers, employees and agents) incurs no liability whatsoever to any person that is not registered as a Bidder or that fails to submit a Conforming Tender.

BC Hydro is not liable to any Bidder that files a Conforming Tender for:

- (a) any loss of profits, loss of opportunity, or indirect, consequential, punitive or exemplary losses or damages, whether or not an EPA is awarded to that Bidder, and each Bidder waives any claim for any such loss or damage, or
- (b) any loss, damage, cost or expense in excess of the Bidder's actual, direct costs associated with the preparation and submission of a Tender, and

resulting directly or indirectly from any breach by BC Hydro of any term, condition, duty or obligation under, or with respect to, this CFT or the CFT process or any act or omission by BC Hydro of any nature or kind whatsoever, whether or not negligent, relating to this CFT or the CFT process. BC Hydro is not liable for any statement or other act or omission of BCTC or any other third person in relation to this CFT.

By submitting a Bidder Registration Form, a Bidder agrees to be bound by the foregoing exclusion and limitation of liability. The foregoing takes effect upon a Bidder Registration Form being submitted and binds a Bidder, whether or not the Bidder subsequently submits a Tender and whether or not such Tender is a Conforming Tender or is accepted.

17.6 Non-Compliant Communications:

BC Hydro is not responsible for any information, whether oral or written or in any other form, given to, or relied upon, by a Bidder, which is not posted to the CFT Website or provided in writing by the CFT Records Manager.

17.7 BC Hydro Request for Further Information/Meetings:

BC Hydro may, but is not required to, request that a Bidder provide further information, clarification, or verification concerning a Tender or other communication received from a Bidder after submission of the relevant document. All requests and responses will be in writing. BC Hydro reserves the right to meet separately at any time with one or more Bidders where BC Hydro, in its discretion, considers such a meeting necessary. A Bidder will attend a meeting, if any, requested by BC Hydro. BC Hydro is not obliged to meet with any or all Bidders, whether or not it meets with one or more Bidders.

17.8 Unsolicited Information not Considered:

BC Hydro is not bound to accept or consider any information concerning a Tender that is not contained in (i) the Tender, (ii) any amendment to the Tender delivered before the Tender Closing Time, or (iii) any written response to a written request from BC Hydro for further information, clarification or verification. Notwithstanding the foregoing, BC Hydro may undertake such further or other investigation concerning a Bidder and/or a Project as it considers necessary in connection with the consideration of a Tender, including contacting governmental and regulatory agencies and authorities, but BC Hydro is not obliged to do so.

17.9 Tender Withdrawal or Amendment:

A Bidder may withdraw or amend its Tender only by delivering a written withdrawal notice or an amended form to BC Hydro on or before the Tender Closing Time, at the location and in the manner designated herein for delivery of Tenders. Submitted Tenders may not be withdrawn or amended after the Tender Closing Time.

17.10 Ownership of Documents:

All Tenders, all documents submitted therewith, and all other Bidder submissions under or in relation to this CFT, will be retained by, and become the property of, BC Hydro, provided however that BC Hydro does not thereby acquire any ownership interest in intellectual property embodied therein.

17.11 BC Hydro Discretion:

Bidders acknowledge that they will have no claim whatsoever against BC Hydro, its directors, officers, employees, agents, consultants or advisors as a result of, or in any way related to, the exercise of any discretion exercisable by BC Hydro under or in relation to this CFT, including without limitation any discretion exercisable in relation to Risk Assessment, Tender evaluation or award of EPAs. Any such discretion is exercisable by BC Hydro in its discretion, whether or not so stated.

17.12 BC Hydro Advisors:

Bidders acknowledge that they will have no claim whatsoever against any consultant or advisor to BC Hydro, or the respective directors, officers, employees, partners and shareholders of any such advisor, as a result of any act or omission, whether or not negligent, by any of them.

17.13 No Implied Terms:

Bidders acknowledge that there are no terms, conditions, representations or warranties with respect to, or forming part of, this CFT, except as expressly set out herein.

17.14 Confidentiality:

BC Hydro may disclose with or without attribution to a particular Bidder to (i) BC Hydro's consultants and advisors, (ii) the Government of British Columbia, (iii) any regulatory proceeding, or (iv) as it may otherwise consider necessary or desirable to provide an adequate public report of the outcome of the CFT, all or any part of a Tender, including price and non price data, or any other information provided by a Bidder to BC Hydro in connection with the CFT, save and except only financial statements of a Bidder or any provider of equity funding or guarantee support in respect of debt, which may be contained in a Tender, and which are not otherwise in the public domain.

17.15 General Partnerships and Joint Ventures:

If there are co-Bidders in respect of a Tender or if the Bidder is a general partnership or joint venture, each co-Bidder, each partner or each joint venturer, as the case may be, is jointly and severally liable, and not severally liable only, to BC Hydro under and in relation to that Tender and any agreement arising therefrom.

17.16 Proceedings:

BC Hydro may in its discretion reject any Tender or rescind an award of an EPA (prior to execution and delivery of the EPA by both BC Hydro and the Bidder) without any liability to BC Hydro, other than the obligation to return the Tender Security, if at any time prior to full execution of the EPA there is any order or judgment, or pending or threatened proceeding, against the Bidder and/or BC Hydro commenced by any third person(s) in any court or before any regulatory body or any arbitrator, which, in BC Hydro's opinion, may prevent or delay the execution or performance by either or both parties under the EPA.

17.17 No Collusion:

Each Bidder that submits a Tender represents and warrants to BC Hydro that its Tender has been fairly prepared without collusion or fraud and in particular and without limitation (i) the price(s) in its Tender has been arrived at independently from that of any other Bidder, (ii) no attempt has been made, nor will be made, to induce any other person not to submit a Tender or take any other act or omission for the purpose of restricting competition, and (iii) the Bidder has required its consultants, advisors and contractors to comply with the foregoing provisions. The foregoing does not preclude a Bidder holding a financial interest, whether by way of ownership, in whole or in part and directly or indirectly, or otherwise, in another Bidder.

17.18 No Lobbying:

Each Bidder will direct all communications to BC Hydro relative to the CFT strictly to the person, and in accordance with the communications instructions, set out in section 6. The Bidder will not engage, and will cause its Affiliates not to engage, in lobbying, or otherwise communicating directly to, any other director, officer, employee or agent of BC Hydro, any consultant or advisor to BC Hydro, or any member of the Government of British Columbia for the purpose of influencing the terms, or outcome, of the CFT. The foregoing does not preclude any Bidder or its Affiliates from normal course communications with BC Hydro and/or the Government of British Columbia as required to further Project permitting and other Project planning and development.

17.19 Unavailable Service-Providers:

BC Hydro has retained the service-providers listed below in relation to the preparation and/or execution of this CFT and related matters. Accordingly, in order to avoid any actual or perceived conflict of interest, Bidders should not retain such service providers, or their Affiliates, to advise or assist them in connection with their participation in the CFT, including preparation of any submission hereunder:

Borden Ladner Gervais LLP
Lawson Lundell LLP

17.20 Prior Tenders:

Except as BC Hydro, in its discretion, determines otherwise with respect to a particular person or persons, a person may not register as a Bidder under this CFT or otherwise participate in the process outlined herein in respect of any project which is currently the subject of a tender or proposal, pending or accepted, that has been submitted to BC Hydro under any other power procurement program, which tender or proposal has not expired or been rejected by BC Hydro.

17.21 Legal Counsel:

Lawson Lundell LLP and Borden Ladner Gervais LLP have provided and continue to provide legal advice to BC Hydro in respect of this CFT and all matters referred to in this CFT. By submitting a Bidder Registration Form, the Bidder expressly consents to Lawson Lundell LLP and Borden Ladner Gervais LLP continuing to represent and advise BC Hydro in respect of this CFT and all matters referred to in this CFT, notwithstanding that either of such law firms may have non-confidential information of the Bidder and notwithstanding any unrelated solicitor-client relationship that the Bidder may have or previously has had with Lawson Lundell LLP or Borden Ladner Gervais LLP.

17.22 Violation of CFT Conditions:

Bidders acknowledge that BC Hydro may, in its discretion, disqualify any Tender or rescind any award of an EPA if a Bidder violates any term or condition set out in this CFT, whether before or after the submission of a Tender.

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT**LARGE PROJECTS****F2006 OPEN CALL FOR POWER***Notes to Bidders:*

1. *The base form of EPA applies to Projects with a Plant Capacity of 10 MW and larger with the following characteristics:*
 - *Monthly Firm Energy Profile*
 - *Full output sold to BC Hydro*
 - *Seller retains Green Attributes*
 - *Seller retains all GHG obligations*
 - *Project is a BC Clean Electricity Project*
 - *Project has a direct interconnection to the Transmission System*
 - *Seller is a corporation rather than a joint venture or limited partnership.*
2. *The terms and conditions applicable to other types of generating facilities or ownership structures are set out in the Appendices to this EPA. The applicable provisions of Appendix 10, other than Part E, will be incorporated into the relevant sections of the Awarded EPA based on the information in the Seller's Tender. Part E will remain in Appendix 10.*
3. *All blanks in this Standard Form EPA will be completed based on information contained in the Seller's Tender.*
4. *The Awarded EPA will include the Project name on the title page and at the bottom of each page.*

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BC HYDRO

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT

LARGE PROJECTS

THIS ELECTRICITY PURCHASE AGREEMENT (“**EPA**”) is made as of •, 2006 (the “**Effective Date**”)

BETWEEN:

_____ a corporation incorporated under the laws of
 _____ with its head office at _____

 (“**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**”)

WHEREAS:

- A. The Buyer issued a Call for Tenders on 8 December 2005 for the sale of electrical energy to the Buyer from independent power producers’ generation plants in British Columbia with a capacity greater than .05 MW.
- B. A Tender in respect of the Project was submitted in response to the CFT not later than _____, 2006.
- C. The Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, Energy from the Seller’s Plant on the terms, conditions and exceptions set forth in this EPA.

1. INTERPRETATION

1.1 Definitions - Appendix 1 sets out or references the definitions applicable to certain words and expressions used in this EPA.

1.2 Appendices - Attached to and forming part of this EPA are the following Appendices:

Appendix 1	-	Definitions
Appendix 2	-	Energy Profile
Appendix 3	-	Energy Price
Appendix 4	-	COD Certificate

Appendix 5	-	Seller's Plant Description
Appendix 6	-	Sample Form Standby Letter of Credit
Appendix 7	-	Sample Form Lender Consent Agreement
Appendix 8	-	Sample Form Development Progress Report
Appendix 9	-	Addresses for Delivery of Notices
Appendix 10	-	Special Terms and Conditions

1.3 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.

1.4 Plurality and Gender - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.

1.5 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 20.7, 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.

1.6 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.

1.7 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.

1.8 Currency - References to dollars or \$ means Canadian dollars, unless otherwise stated.

1.9 Reference Indices - If any 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 shall 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 20.7.

1.10 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.

1.11 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) unless otherwise expressly stated in this EPA, 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, unless otherwise expressly stated;
- (f) unless otherwise expressly stated in this EPA, 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;
- (g) the provisions of Appendix 10, if any, govern over the other provisions of this EPA, and all provisions of this EPA are mutually explanatory of one another; and
- (h) 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, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2. TERM

2.1 Term - The term (“**Term**”) of this EPA commences on the Effective Date and continues until the TO#2 anniversary of COD, subject to extension for the period specified pursuant to section 10.2, unless it is terminated earlier as authorized under this EPA.

3. REGULATORY REVIEW

3.1 Regulatory Review Termination - Either Party may terminate this EPA if, within 120 days after the Effective Date, the BCUC has not accepted the EPA for filing as an energy supply contract under section 71 of the UCA on terms and conditions that do not materially alter the price or any other material term or condition of the EPA (“**BCUC Acceptance**”).

3.2 Regulatory Filing - The Buyer, on behalf of itself and the Seller, shall file the EPA with the BCUC within a reasonable time after the Effective Date.

3.3 EPA Support - The Buyer shall take all steps reasonably required to secure the BCUC Acceptance and the Seller shall provide any assistance reasonably requested by the Buyer to secure the BCUC Acceptance. The Parties will not take, and will cause their Affiliates not to take, any action inconsistent with the performance by the Parties of their obligations under this section 3.3. If a Party fails to comply with this section (the “**Breaching Party**”) and, as a result, the EPA is terminated under section 3.1, the Breaching Party shall pay the non-Breaching Party, by not later than 5 Business Days

after the date of termination, an amount equal to \$60,000/MW multiplied by the Plant Capacity. The Breaching Party's liability for a breach of this section 3.3 is limited to the amount set out in this section.

3.4 Termination - A Party entitled to terminate under section 3.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to section 3.1 and prior to the earlier of:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 150 days after the Effective Date.

3.5 Effect of Termination - If this EPA is terminated by either Party in accordance with sections 3.1 and 3.4, the following provisions shall apply:

- (a) on or before the 30th day following the date of termination, or if that day is not a Business Day, then on or before the next succeeding Business Day, the Buyer shall return the Performance Security to the Seller after deducting any amount to which the Buyer is entitled but which has not been paid pursuant to section 3.3 of this EPA; and
- (b) except as set out in section 15.3, the Parties shall have no further liabilities or obligations under, or in relation to, this EPA.

4. DEVELOPMENT

4.1 Development and Construction of the Seller's Plant - The Seller shall, at its expense, perform, or cause to be performed, all Project activities necessary to complete the construction and commissioning of the Seller's Plant and achieve COD in accordance with the terms and conditions of this EPA. The Seller shall commence such Project activities by the date that is the later of: (a) 30 days after the BCUC Acceptance; or (b) if a right to terminate arises under section 3.1, 30 days after that right to terminate has expired, and shall thereafter diligently and continuously carry out such Project activities.

4.2 Modification to Plant Capacity - The Seller shall construct the Seller's Plant with a capacity that does not exceed the Plant Capacity. Except as set out in this section and notwithstanding section 6.2, the Seller shall not increase or decrease the Plant Capacity without the Buyer's prior consent. The Seller may at any time prior to the Guaranteed COD give notice to the Buyer that the Seller intends to increase or decrease the Plant Capacity by an amount not exceeding 10% of the Plant Capacity specified in Appendix 5, provided that:

- (a) the Seller has completed all studies required by the Transmission Authority in connection with the proposed increase or decrease in Plant Capacity, such studies include an estimate of any increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity, and the Seller provides copies of such studies to the Buyer together with the notice to the Buyer;
- (b) the Seller shall be responsible for, and shall pay, all costs associated with the increase or decrease in the Plant Capacity, including all additional Direct Assignment Costs and Network Upgrade Costs in accordance with section 4.5;
- (c) prior to the earlier of:

- (i) 30 days after the date of delivery of a notice to the Buyer under this section, and
- (ii) the date on which any additional Network Upgrade Costs associated with the increase or decrease in Plant Capacity are incurred,

the Seller shall deliver to the Buyer replacement Performance Security calculated in the manner set out in Appendix 1 to reflect any proposed increase or decrease in the Plant Capacity and an amount equal to the total estimated increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity. Upon receipt of the replacement Performance Security in the required form, the Buyer shall release the existing Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder;

- (d) the Seller shall complete all construction and commissioning associated with the increase or decrease in the Plant Capacity prior to COD;
- (e) the Guaranteed COD will not be extended by any increase or decrease in the Plant Capacity; and
- (f) the Seller may give only one notice under this section.

Upon delivery by the Seller of a notice under this section and compliance by the Seller with subsections (a) and (c) above, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 5 to reflect the proposed increase or decrease in the Plant Capacity as set out in the Seller's notice. The Buyer is not required to accept or pay for any Energy associated with an increase in the Plant Capacity that does not comply with this section and section 7.5 applies to such Energy.

4.3 Permits - The Seller shall promptly obtain, comply with and maintain in full force and effect all Permits. The Seller shall on request promptly provide to the Buyer copies of all Material Permits.

4.4 Development Reports - On each January 1, April 1, July 1 and October 1 after the Effective Date, (or, where such day is not a Business Day, on the first Business Day thereafter) and continuing until COD, the Seller shall deliver to the Buyer a report in the form specified in Appendix 8, describing the progress of the Project.

4.5 Project Changes - The Seller shall not make any change to the point of interconnection with the Transmission System (including any change to the point of interconnection specified in the F2006 CFT Preliminary Interconnection Study Report) without the prior consent of the Buyer, such consent not to be unreasonably withheld, provided that the Seller acknowledges that the Buyer is entitled to require as a condition of the Buyer's consent that the Seller enter into an amendment to this EPA as required to put the Buyer in the position it would have been in under this EPA had the Seller not made a change to the point of interconnection, including with respect to the amount of Eligible Energy. If the Seller makes any change to the point of interconnection between the Seller's Plant and the Transmission System as set out in the F2006 CFT Preliminary Interconnection Study Report or any other change to the information relied on by the Transmission Authority in completing the F2006 CFT Preliminary Interconnection Study Report and developing the Network Upgrade Cost estimate for purposes of the CFT, the Seller shall be liable for all costs related directly or indirectly to such change and for all other losses, costs and damages suffered or incurred by the Buyer, whether as a transmission customer or otherwise, as a result of such change and the Seller shall pay any such amount within 30 days after receiving an invoice from the Buyer for such amount.

5. COMMERCIAL OPERATION DATE

5.1 Guaranteed COD - The Seller shall ensure that the Seller's Plant achieves COD by the Guaranteed COD plus Force Majeure Days.

5.2 Requirements for COD - Subject to sections 5.5 and 5.6, the Seller's Plant will have achieved COD at the commencement of the hour immediately following the hour in which all of the following conditions have been satisfied:

- (a) the Seller has obtained all Material Permits and all such Material Permits are in full force and effect;
- (b) the Seller's Plant has generated Energy over any continuous 72 hour period, in compliance with all Material Permits, and delivered such Energy to the POI in an amount not less than the greater of:
 - (i) 90% of the applicable Monthly Firm Energy Delivery Rate multiplied by 72; and
 - (ii) 20% of the Plant Capacity multiplied by 1 hour multiplied by 72;
- (c) the Seller is not: (i) Bankrupt or Insolvent; (ii) in material default of any of its covenants, representations, warranties or obligations under this EPA (other than those defaults in respect of which the Seller has paid all LDs owing under this EPA); or (iii) in material default under any Material Permit, any tenure agreement for the site on which the Seller's Plant is located, the Interconnection Agreement or the Facilities Agreement; and
- (d) the Seller has delivered to the Buyer:
 - (i) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, issued by the Transmission Authority to the Seller under the Interconnection Agreement;
 - (ii) data from the Metering Equipment sufficient to demonstrate compliance by the Seller with subsection 5.2(b);
 - (iii) payment of any amounts owing by the Seller to the Buyer under any of sections 4.2, 4.5 and 5.7; and
 - (iv) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant,

provided that, except as hereinafter provided, within 30 days after the last of the requirements set out above is satisfied the Seller delivers to the Buyer: (I) a COD Certificate; (II) the Long Term Operating Plan; and (III) the Annual Operating Plan for the period from COD to December 31 next following COD or if COD occurs after September 30, for the period from COD to December 31 in the year following COD. If the COD Certificate, Long Term Operating Plan and Annual Operating Plan are not delivered by that date, COD will occur at 12:00 PPT on the day of delivery to the Buyer of the last of the foregoing documents. For greater certainty, the Parties acknowledge that, notwithstanding satisfaction of all the conditions set out in subparagraphs (a) to (d) above, the Seller may defer delivery of the documents

described in (I), (II) and (III) above until, and the COD will not occur earlier than, the date determined under section 5.5.

5.3 Buyer Right to Observe - The Seller shall provide not less than 10 days' prior notice to the Buyer of the commencement of any proposed testing under subsection 5.2(b) and the Buyer may attend and observe each test under that subsection. If the Seller has given notice to the Buyer in accordance with this section, the Seller shall not be required to give a notice to the Buyer of any further tests which are commenced within 72 hours of the prior test under subsection 5.2(b). The Seller shall provide a new notice in accordance with this section 5.3 in respect of any test that commences more than 72 hours after the end of an unsuccessful test under subsection 5.2(b).

5.4 COD Disputes - The Buyer may, by notice to the Seller within 10 Business Days after the date of delivery to the Buyer of a COD Certificate, contest the COD Certificate on the grounds that the Seller has not satisfied the requirements for COD in section 5.2. Pending the final resolution of any dispute relating to whether the requirements for COD have been satisfied, the Seller shall not be required to remit any COD Delay LDs, provided that upon final determination of the matter, if the determination is made that COD has not been achieved, the Seller shall forthwith remit COD Delay LDs in accordance with section 12.1 calculated from the Guaranteed COD plus Force Majeure Days, together with applicable interest in accordance with subsection 9.2(b). If the Buyer does not deliver a notice to the Seller contesting the COD Certificate within the time specified in this section, COD will be deemed to have occurred as provided in section 5.2.

5.5 Early COD - Except with the Buyer's prior consent, COD may not occur earlier than the later of: (a) 1 October 2007; and (b) 365 days prior to the Guaranteed COD. The Buyer shall not be required to incur any incremental expense (other than payment for Eligible Energy) to enable COD to occur prior to the Guaranteed COD.

5.6 Deemed COD - If on or after the Guaranteed COD, the Seller's Plant has satisfied all requirements for COD, other than those requirements that depend on completion of Network Upgrades, and if the Seller cannot achieve COD solely as a result of a delay in completion of Network Upgrades and such delay is solely caused by the Buyer, then COD will be deemed to have occurred on or after the Guaranteed COD at the commencement of the hour following the hour in which all other conditions for COD were satisfied. The Buyer shall thereafter be liable to pay the Seller for that portion of the Monthly Firm Energy Amount that could have been generated and delivered at the POI but for the delay in completion of the Network Upgrades described above, and all such Energy will be considered Eligible Energy for purposes of this EPA. The portion of the Monthly Firm Energy Amount that could have been generated and delivered at the POI will be determined based on the information described in section 7.9. Except for the payments for deemed Eligible Energy provided for pursuant to this section, the Seller shall have no other rights or remedies against the Buyer, and the Buyer shall have no other liability, with respect to any delay in completion of the Network Upgrades. If the Seller's Plant fails to satisfy the requirements specified in section 5.2 within a reasonable period, but not later than 60 days after completion of the Network Upgrades, the Seller will be deemed not to have achieved COD and the Seller shall within 10 days after receipt of an invoice from the Buyer, refund to the Buyer all payments made by the Buyer to the Seller prior to that date. This section 5.6 will not apply if a delay in completion of any Network Upgrades is due, in whole or in part, to any increase or decrease in Plant Capacity from the Plant Capacity specified in Appendix 5 or to any increase in any Monthly Firm Energy Amount pursuant to section 7.2 or to any change described in section 4.5.

5.7 Early Network Upgrades - If the Seller requires Network Upgrades to be completed prior to 90 days prior to the Guaranteed COD to enable early COD or to enable sales of Pre-COD Energy to third

parties, the Seller shall give notice of such requirement to the Buyer and following delivery of such notice, the Seller and the Buyer shall discuss such requirement with the Transmission Authority to determine the incremental costs, if any, required to complete the Network Upgrades prior to 90 days prior to the Guaranteed COD. The Seller shall be responsible for and shall indemnify the Buyer from and against all such incremental costs and expenses and, prior to commencement by the Transmission Authority of any work required to advance the completion date for the Network Upgrades, shall provide to the Buyer replacement Performance Security which includes an amount equal to the total estimated increase in Network Upgrade Costs resulting from any request by the Seller to complete the Network Upgrades prior to 90 days prior to the Guaranteed COD.

6. OPERATION OF SELLER'S PLANT

6.1 Owner and Operator - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated using qualified and experienced individuals.

6.2 Modifications to Seller's Plant/Additional Generators

- (a) **Modifications to Seller's Plant** - The Seller shall not make, without the Buyer's prior consent, any modification or addition, or series of modifications or additions, to the Seller's Plant, except for those modifications or additions which: (i) are not likely to have an adverse effect on the Seller's ability to observe and perform its obligations under this EPA, including the Seller's obligations under subsection 6.3(f); or (ii) are required to comply with a change in Law or a change in Permit conditions (where such change in Permit conditions is initiated by a Governmental Authority) after the Effective Date. The Seller shall provide prior notice to the Buyer of any modifications or additions, or series of modifications or additions, to the Seller's Plant together with an explanation of the reason for such modifications or additions.
- (b) **Additional Generators** - The Seller shall not add any additional generators on the site of the Seller's Plant or that otherwise inject output at the same POI as the Seller's Plant, unless the Seller has first entered into an amendment to this EPA with the Buyer as required to address any adverse impacts on the Buyer or on the benefit to the Buyer of this EPA resulting from the construction or operation of such additional generators.

6.3 Standard of Construction and Operation - The Seller shall cause the Seller's Plant to be designed, engineered, constructed, interconnected to the Transmission System, commissioned, operated and maintained in compliance with: (a) all applicable Laws; (b) the terms and conditions of all Permits and land tenure agreements issued in connection with the Seller's Plant; (c) Good Utility Practice; (d) the specifications in Appendix 5, as changed from time to time with the prior consent of the Buyer, provided that, subject to section 6.2, the Seller may amend the information in sections 4 and 5 of Appendix 5 at any time without consent on notice to the Buyer not less than 30 days prior to such change and the Buyer and the Seller will enter into an amendment to this EPA to amend Appendix 5 in accordance with such notice; (e) the Code of Conduct Guidelines Applicable to BC Hydro Contracts in effect as of the date specified for submission of Tenders under the CFT; (f) if applicable, the information provided to the British Columbia Minister of Energy, Mines and Petroleum Resources or to TerraChoice Environmental Marketing to obtain confirmation that the output from the Seller's Plant could be considered BC Clean Electricity in the CFT process; and (g) the terms and conditions of this EPA, the Interconnection Agreement and the Facilities Agreement. Without limiting the foregoing, all equipment installed in the Seller's Plant shall conform to the codes, standards and rules applicable to power plants in British Columbia and the Seller shall ensure that the Seller's Plant is designed, engineered and constructed to

operate in accordance with the requirements of this EPA for the full Term of this EPA. Without limiting section 7.3 but subject to subsection 7.8(a), when the Seller is delivering Energy to the Buyer, the Seller shall 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 within each hour.

6.4 Planned Outages - The Seller shall: (a) ensure that no Planned Outage occurs during the Peak Demand Months without the Buyer's prior consent, such consent not to be unreasonably withheld, delayed or conditioned; (b) give the Buyer not less than 90 days' prior notice of any Planned Outage and such notice shall state the start date and hour and the end date and hour for the Planned Outage; (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as notified to the Seller; and (d) make best efforts to coordinate Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller. Within 45 days after the date of receipt of the Annual Operating Plan or within 14 days after receipt of any adjustment to the Annual Operating Plan pursuant to subsection 6.6(b), the Buyer may request the Seller to reschedule any Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, of the costs the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section. For payment and all other purposes of this EPA, all Planned Outages will be deemed to start at the beginning of an hour and to end at the end of an hour.

6.5 Records - During the Term the Seller shall prepare and maintain all records required to properly administer this EPA, including Energy generation records and operating logs, a log book of all Outages and other reductions in Energy output (specifying the date, time, duration and reasons for each Outage and each reduction in Energy output), meter readings, maintenance reports, invoice support records, documents concerning compliance with Permits and applicable Laws, and all other records and logs consistent with Good Utility Practice. The Seller shall maintain such 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 to by the Buyer, acting reasonably, for a period of not less than 7 years from the date on which each such record is created.

6.6 Reports to the Buyer - The Seller shall deliver the following documents, reports, plans and notices to the Buyer:

- (a) **Long Term Operating Plan** - By the date specified in section 5.2, the Seller shall provide to the Buyer an operating plan for the Seller's Plant for a 10 year period commencing at COD and ending on December 31 of the year in which the tenth anniversary of COD occurs, including the long term major maintenance schedule. On or before September 30 in each year during the Term after the year in which COD occurs, the Seller shall provide the Buyer with an updated plan for the 10 year period commencing on the next succeeding January 1 or to the end of the Term, whichever is less. The Seller shall promptly provide the Buyer with copies of any amendments or modifications to the Long Term Operating Plan. The Long Term Operating Plan shall be

consistent with Good Utility Practice and is intended to assist the Buyer in planning activities and is not a guarantee of the timing of Planned Outages;

- (b) **Annual Operating Plan** - On or before September 30 in each year during the Term, the Seller shall provide to the Buyer an operating plan for the Seller's Plant for the 12 month period commencing on the next succeeding January 1 which plan may be included in the Long Term Operating Plan. The plan shall include a schedule of Planned Outages for that 12 month period which shall comply with the provisions of section 6.4 and be consistent with Good Utility Practice. The Seller may, on not less than 90 days prior notice to the Buyer, amend the Annual Operating Plan, subject to the provisions of section 6.4;
- (c) **Notice of Outages** - Other than for a Planned Outage for which notice has been given pursuant to section 6.4, the Seller shall promptly notify the Buyer of any Outage, or any anticipated Outage, of the Seller's Plant. Any notice under this subsection shall include a statement of the cause of the Outage, the proposed corrective action and the Seller's estimate of the expected duration of the Outage. The Seller shall, except with the Buyer's consent, such consent not to be unreasonably withheld, use best efforts to promptly remove or mitigate any Forced Outage. The Seller shall deliver to the Buyer concurrently with delivery of the statement described in subsection 9.1(a), a report of all Outages during the month for which the statement described in subsection 9.1(a) is issued, including a statement of the cause of each Outage;
- (d) **Interconnection Agreement and Facilities Agreement Defaults** - The Seller shall give promptly to the Buyer a copy of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement, whether given or received by the Seller;
- (e) **Notice of Buyer Termination Event** - The Seller shall notify the Buyer promptly of any Buyer Termination Event or any material risk that a Buyer Termination Event will occur or any default by the Seller under any agreement with a Facility Lender; and
- (f) **Energy Schedules** - After COD the Seller shall either (as elected by the Seller in a notice delivered to the Buyer prior to COD):
 - (i) on each Thursday by 12:00 PPT, deliver to the Buyer a schedule of the expected deliveries of Eligible Energy in each day during the next succeeding week commencing at 00:00 PPT on Monday; or
 - (ii) by 12:00 PPT on each day deliver to the Buyer a schedule of expected deliveries of Eligible Energy for the next succeeding 24 hour period commencing at 00:00 PPT,

provided that such schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer forthwith upon becoming aware of any expected material change in a filed Energy schedule. The Seller may change its election with respect to the delivery of Energy schedules in accordance with subsection (i) or (ii) above at any time on 60 days' prior notice to the Buyer.

6.7 Exemption from Utility Regulation - The Seller shall 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, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

6.8 Compliance with Emissions Requirements

- (a) **GHG Requirements** - Without limiting section 4.3 or section 6.3, the Seller shall comply with all applicable Laws and all Permits regulating GHG emissions from the Seller’s Plant. The Seller shall by each January 31 after COD (or, if alternate reporting dates are established under any Laws or Permits regulating GHG emissions from the Seller’s Plant, then by such alternate reporting dates) deliver to the Buyer a report signed by a senior officer of the Seller, in a form satisfactory to the Buyer acting reasonably, detailing the status of compliance by the Seller with this section during the immediately preceding year (or if an alternate compliance period is established under any Laws or Permits regulating GHG emissions from the Seller’s Plant, then the report shall address such alternate compliance period). If the Seller is not in compliance with any Law or Permit regulating GHG emissions from the Seller’s Plant and the Seller fails to remedy such non-compliance within 30 days after the date of notice from the Buyer to the Seller, the Buyer may, but is not required to, on behalf of the Seller, purchase any Compliance Units required to remedy, in whole or in part, the Seller’s non-compliance with the applicable Law or Permit. The Seller shall cooperate with the Buyer as necessary to enable the Buyer to purchase such Compliance Units. The Seller shall reimburse the Buyer for all costs (including all commissions, charges, brokerage, consulting and legal fees, taxes, duties, transfer and registration fees and all other transaction costs and expenses) incurred by the Buyer in purchasing such Compliance Units, together with an administration fee equal to 15% of such costs within 30 days after receipt of an invoice from the Buyer for such amount.
- (b) **Other Emissions** - Without limiting subsection (a), the Seller is solely responsible at the Seller’s cost for compliance with all applicable Laws and Permits regulating all emissions from the Seller’s Plant, including GHG emissions. The Buyer has no responsibility or liability of any kind whatsoever with respect to any such emissions.

6.9 Disclosure of Information by Transmission Authority - The Seller consents to the Transmission Authority disclosing to the Buyer on request:

- (a) all information with respect to Network Upgrades, including any information provided by the Seller to the Transmission Authority that relates to, or affects, Network Upgrades including any preliminary interconnection application, study and report, and any subsequent applications, studies and reports, that contain information relevant to Network Upgrades;
- (b) all metering data collected by, or provided to, the Transmission Authority with respect to the Seller’s Plant;
- (c) copies of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement given or received by the Transmission Authority; and

- (d) any other information provided by the Seller to the Transmission Authority or by the Transmission Authority to the Seller that is relevant to the administration of this EPA.

The Seller shall promptly on request by the Buyer provide to the Buyer written confirmation of the foregoing consents for delivery by the Buyer to the Transmission Authority.

6.10 Islanding - Subject to the provisions of this section, at any time after the Effective Date and prior to completion by the Seller of the final engineering design for the Seller's Plant, the Seller shall, at the request of the Buyer, provide all information and cooperation required to enable the Buyer to undertake, at the Buyer's cost, any studies the Buyer considers necessary to determine the ability of the Seller's Plant to provide Planned Islanding Capability and the estimated cost of providing, operating and maintaining such Planned Islanding Capability. The Seller shall provide the Buyer with not less than 120 days prior notice of the anticipated date of completion of the final engineering design for the Seller's Plant and the Buyer shall advise the Seller within 60 days after receipt of such notice if the Buyer intends to undertake any studies pursuant to this section. The Buyer shall, within 30 days after receipt of an invoice together with reasonable supporting information, reimburse the Seller for all reasonable costs incurred by the Seller, that the Seller would not otherwise have incurred, to provide the Buyer with information required for any studies pursuant to this section. The Buyer may on notice to the Seller within 30 days after receipt of all studies commissioned by the Buyer under this section advise the Seller that the Buyer wishes to enter into negotiations with the Seller with respect to the Seller's Plant providing Planned Islanding Capability, including any amendments required to this EPA as a result thereof. Upon receipt of such notice the Parties shall negotiate in good faith to determine the terms and conditions on which the Seller will provide such Planned Islanding Capability.

6.11 BC Clean Electricity - If in the CFT process the output from the Seller's Plant was treated as BC Clean Electricity based on a letter from TerraChoice Environmental Marketing confirming eligibility of the Seller's Plant for EcoLogo^M Certification, and if the Seller does not obtain EcoLogo^M Certification by the date that is one year after COD, the Seller shall within 60 days after the first anniversary of COD, provide a letter to the Buyer from the British Columbia Minister of Energy, Mines and Petroleum Resources confirming that the output from the Seller's Plant is BC Clean Electricity together with a copy of all information provided to the Minister to obtain such confirmation. Without limiting section 6.5, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer all information the Buyer requires to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Buyer may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets, its employees and relevant documentation to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller shall promptly provide to the Buyer any consents required to enable the Buyer to make enquiries with any Governmental Authorities concerning the qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller consents to the disclosure by the Buyer to any Person or any Governmental Authority of any Confidential Information with respect to the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as BC Clean Electricity or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as BC Clean Electricity.

7. PURCHASE AND SALE OBLIGATIONS

7.1 Pre-COD Energy - The Buyer shall make commercially reasonable efforts to accept delivery at the POI of all Pre-COD Energy, provided that the Buyer shall not be required to take any steps or to incur any incremental expense to enable the delivery of Pre-COD Energy to the POI prior to 90 days before the Guaranteed COD. Prior to the earlier of COD and the Guaranteed COD the Seller may, on prior notice to

the Buyer, sell any Energy to any Person other than the Buyer, and in that case such Energy shall not be delivered, or be deemed to be delivered, to the Buyer.

7.2 Modification to Monthly Firm Energy Amount - The Seller may at any time prior to the first anniversary of COD, give notice to the Buyer that the Seller elects to increase or decrease the Monthly Firm Energy Amount for one or more months, to take effect on the first day of the month immediately following the giving of such notice, provided that the net change in the annual total of the Monthly Firm Energy Amounts resulting from such increase or decrease in the Monthly Firm Energy Amounts does not exceed 10%. Upon receipt of such notice, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 2 in accordance with the Seller's notice, provided that:

- (a) any such increase or decrease in the Monthly Firm Energy Amounts does not result in the total of the Monthly Firm Energy Amounts for the period from April to July, inclusive, exceeding one-third of the annual total of the Monthly Firm Energy Amounts;
- (b) any such increase or decrease in the Monthly Firm Energy Amounts does not result in the Monthly Firm Energy Amount for any month exceeding the Plant Capacity multiplied by the number of hours in the applicable month;
- (c) the provisions of subsections 4.2(a) and (b) apply to any such increase or decrease in the Monthly Firm Energy Amounts, *mutatis mutandis*; and
- (d) the Seller may give only one notice under this section.

7.3 Post-COD Sale of Energy - Subject to subsection 7.8(a), in each month during the Term after COD, the Seller shall sell and deliver to the Buyer at the POI the Monthly Firm Energy Amount for the applicable month, provided that if COD occurs on any day other than the first day of the month, the Monthly Firm Energy Amount for the month in which COD occurs and for the last month of the Term will be reduced to reflect in the former case, the number of days in the month after COD, and in the latter case, the number of days prior to the expiry of the Term.

7.4 Post-COD Purchase of Energy - Subject to subsection 7.8(b), in each month during the Term after COD, the Buyer shall purchase, and accept delivery from the Seller at the POI of, all Eligible Energy.

7.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy to any Person, other than the Buyer under this EPA, except for:

- (a) Pre-COD Energy sold to third parties in accordance with section 7.1;
- (b) during any period in which the Buyer is in breach of its obligations under section 7.4; and
- (c) during any period in which the Buyer is not accepting deliveries of Energy from the Seller due to Force Majeure invoked by the Buyer.

7.6 Custody, Control and Risk of Energy - Custody, control, risk of, and title to all Pre-COD Energy delivered to the Buyer and all Eligible Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA is free and clear of all liens, claims, charges and encumbrances. The Seller shall be responsible for all transmission losses and costs, if any, relating to the transmission of Energy from the Seller's Plant to the POI.

7.7 Price and Payment Obligation - The Buyer shall pay for all Test Energy in respect of which the Seller has not given a notice under section 7.1 and all Eligible Energy in accordance with Appendix 3.

7.8 Limitations on Delivery and Acceptance Obligations

- (a) **Limitations on Delivery Obligations** - The obligations of the Seller under section 7.3 are subject to:
 - (i) Force Majeure invoked by the Seller in accordance with Article 11;
 - (ii) any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI for reasons that are not attributable to the Seller or the Seller's Plant;
 - (iii) disconnection of the Seller's Plant from the Transmission System by the Transmission Authority for reasons that are not attributable to the Seller or the Seller's Plant;
 - (iv) the right of the Seller to suspend its performance under this EPA in accordance with Article 14; and
 - (v) Authorized Planned Outages.
- (b) **Limitations on Acceptance Obligations** - The obligations of the Buyer under sections 7.1 and 7.4 are subject to:
 - (i) Force Majeure invoked by the Buyer in accordance with Article 11;
 - (ii) disconnection of the Seller's Plant from the Transmission System for reasons not attributable to the Buyer;
 - (iii) any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI for reasons not attributable to the Buyer; and
 - (iv) the right of the Buyer to suspend the Seller's performance under the EPA in accordance with Article 14.

7.9 Deemed Deliveries - If in any month after COD the Seller is unable to deliver Energy at the POI at any time during that month solely as a result of:

- (a) any disconnection of the Seller's Plant from the Transmission System or any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI where:
 - (i) the Transmission Authority is authorized to disconnect the Seller's Plant or suspend firm transmission service under the Interconnection Agreement, Facilities Agreement, any tariff applicable to firm transmission or interconnection service or any other legally enforceable right; and

- (ii) such disconnections, Outages, suspensions, constraints or curtailments exceed in the aggregate 24 hours, whether or not continuous, in that month,

but excluding any disconnection, Outage, suspension, constraint or curtailment attributable to the Seller or the Seller's Plant; or

- (b) a breach by the Buyer of its obligations under section 7.4,

then, notwithstanding that the Buyer is excused under subsection 7.8(b) from its obligations under section 7.4, in the case of an event described in subsection 7.9(a), all or that portion of the applicable Monthly Firm Energy Amount that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed, but for the occurrence of the event described in subsection 7.9(a) will be deemed to be Eligible Energy, and in the case of an event described in subsection 7.9(b), the amount of Energy, not exceeding the Plant Capacity, that could have been generated and delivered at the POI but for the occurrence of the event described in subsection 7.9(b) will be deemed to be Eligible Energy. The amount of Energy that could have been generated and delivered at the POI during an event described in subsection 7.9(a) or (b) will be determined based on the Seller's Energy schedule for the applicable period, meter readings with respect to the Energy Source, if applicable, readings of the Metering Equipment before and after the occurrence of the event described in subsection 7.9(a) or (b) and other available information. There will be no deemed Eligible Energy during any period specified as a Planned Outage in a notice delivered by the Seller under section 6.4. For greater certainty, the provisions of this section 7.9 will not apply during any period when either Party is excused, in accordance with Article 11, from its obligation to deliver, or to accept delivery of, Energy as a result of a Force Majeure.

7.10 Green Attributes - The Buyer acknowledges that the Seller retains title and all right, benefit and interest in, to and arising from the Green Attributes.

8. METERING

8.1 Installation of Metering Equipment - The Seller shall, at its cost, ensure that revenue metering equipment (the "**Metering Equipment**") is installed, operated and maintained in accordance with the requirements of the Transmission Authority and the requirements of this section. The Seller shall ensure that the Seller's Plant is equipped with electronic meters and SCADA capability. The Metering Equipment shall be installed at a location approved by the Buyer, acting reasonably, which location shall be such that the Metering Equipment can measure the Energy generated by the Seller's Plant independent of all other generation equipment or facilities. The Seller shall ensure that the Metering Equipment is: (a) capable of being remotely interrogated; (b) sufficient to accurately meter the quantity of Energy to be purchased and sold hereunder; (c) calibrated to measure the quantity of Energy delivered to the POI, after adjusting for any line losses from the Seller's Plant to the POI; and (d) in compliance with all requirements set out in the *Electricity and Gas Inspection Act* (Canada) and associated regulations.

8.2 Operation of Metering Equipment - The Metering Equipment shall be used for purposes of calculating the amount of Eligible Energy. In the event of any failure of the Metering Equipment, the Parties shall, until such time as the Metering Equipment has been repaired or replaced, rely upon information provided by any back-up meter installed pursuant to section 8.3, or, in the absence of such back-up meter, the Seller's metering equipment, if any, for purposes of calculating payments due under this EPA. If there is any dispute regarding the accuracy of the Metering Equipment, either Party may give notice to the other Party of the dispute, in which case the Buyer and the Seller will proceed to rectify the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Seller shall allow the Buyer to access the Seller's Plant at any time during normal business hours on reasonable advance notice

for purposes of inspecting the Metering Equipment. The Seller shall, on the Buyer's request, cause the Metering Equipment to be inspected, tested and adjusted provided that, except as set out below, the Buyer shall not make such a request more than once in each year during the Term. The Seller shall give the Buyer reasonable prior notice of all inspections, tests and calibrations of the Metering Equipment and shall permit a representative of the Buyer to witness and verify such inspections, tests and calibration. If either Party has reason to believe that the Metering Equipment is inaccurate, the Seller shall cause the Metering Equipment to be tested forthwith upon becoming aware of the potential inaccuracy. The Seller shall provide the Buyer with copies of all meter calibration test results and all other results of any test of the Metering Equipment. If any test of the Metering Equipment discloses an inaccuracy outside the inaccuracies permitted under the *Electricity and Gas Inspection Act* (Canada), any payments or adjustments made or calculated under this EPA that would have been affected by the inaccuracy shall be recalculated to correct for the inaccuracy. For purposes of such correction, if the inaccuracy is traceable to a specific event or occurrence at a reasonably ascertainable time, then the adjustment shall extend back to that time; otherwise, it shall be assumed that the error has existed for a period equal to one half of the time elapsed since COD or one half of the time since the last meter test, whichever is more recent, but in any event shall not extend back more than 36 months. Any amounts which are determined to be payable or subject to refund as a result of such re-computations shall be paid to the Party entitled to such amounts within 20 days after the paying Party is notified of the re-computation.

8.3 Duplicate Metering Equipment - The Buyer may at any time during the Term at the Buyer's sole cost, on not less than 30 days prior notice to the Seller, install a duplicate revenue meter at the Seller's Plant at a location to be agreed upon by the Buyer and the Seller, acting reasonably, and the Seller shall allow the Buyer to access the Seller's Plant for such purpose and for the purpose of inspecting and maintaining such equipment. The Seller shall make transformers, transformer connections and telephone access available to the Buyer, as required, if the Buyer elects to install a duplicate revenue meter. Any duplicate revenue meter and metering equipment installed by the Buyer will remain the property of the Buyer, and the Seller shall not tamper with, remove or move such meter or equipment.

8.4 Energy Source Meters - The Seller shall, at its cost, ensure that meters are installed at the Seller's Plant capable of measuring the Energy Source available to the Seller's Plant.

9. STATEMENTS AND PAYMENT

9.1 Statements

- (a) In each month after the month in which Pre-COD Energy is first delivered to the Buyer, the Seller shall, by the 15th day of the month or the first Business Day thereafter, deliver to the Buyer a statement prepared by the Seller for the preceding month. The statement must comply with any billing guideline issued by the Buyer pursuant to section 9.4 and must indicate, among other things, the amount of Eligible Energy, the price payable for the Eligible Energy, any LDs payable by the Seller to the Buyer and any Final Amounts owing by either Party to the other Party and set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed. To the extent not previously delivered pursuant to the requirements of this EPA, the statement must 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 wilful misstatement 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.

9.2 Payment

- (a) Within 30 days after receipt of a statement delivered pursuant to subsection 9.1(a) and subject to sections 9.5 and 13.6, the Buyer shall 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 in compliance with subsection 9.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) 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 3%, 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.

9.3 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 the Eligible Energy, including GST and PST, which, if applicable, will be borne by the Buyer and added to each statement.

9.4 Billing Guideline - The Seller shall comply with any reasonable written billing guideline (including any requirements with respect to the form of statements pursuant to section 9.1) issued by the Buyer during the Term, provided that any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA will govern.

9.5 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 shall 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 shall pay to the other Party the difference between the amounts owed, provided that:

- (a) this section 9.5 applies only to any purchase price for Eligible Energy owing by the Buyer to the Seller, any LDs owing by the Seller to the Buyer, any Termination Payment or Final Amount owing by either Party to the other Party and any amount owing by the Seller to the Buyer under section 6.8; and
- (b) no LD, Termination Payment, Final Amount or amount owing by the Seller to the Buyer under section 6.8 shall be added to or deducted from the price owing by the Buyer to the Seller for Eligible Energy unless the LD, Termination Payment, Final Amount or amount owing under section 6.8 remains unpaid 30 days after the Party owed the LD, Termination Payment, Final Amount or amount owing under section 6.8 gives notice to the other Party.

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.

10. INSURANCE/DAMAGE AND DESTRUCTION

10.1 Insurance - The Seller shall, by the date specified in section 4.1 for the commencement of the Project activities necessary to construct the Seller's Plant, obtain, maintain and pay for: (a) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$_____ applicable to the Project separate from all other projects and operations of the Seller; and (b) property insurance and Construction 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 requires. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. 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 shall 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 immediately upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

[Note to Bidders: The insurance policy limit of liability set out in section 10.1 of the Awarded EPA will be based on the Plant Capacity as follows:

<i>Greater than 10 MW to 25 MW</i>	<i>-</i>	<i>\$ 3,000,000</i>
<i>Greater than 25 MW to 50 MW</i>	<i>-</i>	<i>\$ 5,000,000</i>
<i>Greater than 50 MW to 100 MW</i>	<i>-</i>	<i>\$10,000,000</i>
<i>Greater than 100 MW</i>	<i>-</i>	<i>\$20,000,000]</i>

10.2 Damage or Destruction of the Seller's Plant

- (a) **Major Damage** - If the Seller's Plant suffers Major Damage caused by a Force Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, then the Seller may at its option exercisable by notice to the Buyer within 120 days after the occurrence thereof, either: (i) proceed to diligently and expeditiously and at its own cost repair the Major Damage and restore the Seller's Plant to at least the condition in which it was in immediately prior to the Major Damage and resume deliveries of Energy hereunder; or (ii) terminate this EPA, and in that event, the provisions of section 15.3 and subsection 15.5(c) apply. If the Seller fails to give notice exercising its option within such 120 day period, it will be deemed to have exercised the option described in (i) above. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.
- (b) **Non-Major Damage** - If the Seller's Plant is damaged or destroyed, in whole or in part, by any cause or peril, then, except in the case of Major Damage caused by a Force Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, the Seller shall within 30 days after the date of the damage or destruction provide notice to the Buyer setting out the date by which the Seller, acting reasonably, can resume delivering Energy to the Buyer which date shall be not more than 365 days after

the date of occurrence of the damage or destruction. The Seller shall diligently and expeditiously, and at its own cost, repair the Seller's Plant and restore the same to at least the condition in which it was in immediately prior to the damage or destruction and shall complete such work not later than the date specified in the notice delivered by the Seller to the Buyer under this section. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.

- (c) **Extension of Term** - Provided the Seller complies with its obligations under this section 10.2, the Term shall be extended by the number of days from the date of the event of damage or destruction to the date on which the Seller resumes delivering Energy to the Buyer.

11. FORCE MAJEURE

11.1 Invoking Force Majeure and Notice

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given as required in this section 11.1 and, 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.
- (b) If there is a Force Majeure preventing a Party from performing an obligation under this EPA, that Party shall promptly notify the other Party of the Force Majeure. The notice must identify the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. The affected Party shall provide reports to the other Party with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. A Party will be deemed to have invoked Force Majeure from the date when that Party gives notice of the Force Majeure in accordance with this subsection 11.1(b), provided that if such notice is given within 24 hours after the later of: (i) the occurrence of the Force Majeure; and (ii) the time 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. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure. The Party invoking Force Majeure shall give prompt notice of the end of the Force Majeure.

11.2 Exclusions - A Party may not invoke Force Majeure:

- (a) for any economic hardship, or for lack of money, credit or markets; or
- (b) if the Force Majeure is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws; or
- (c) for a mechanical breakdown, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the mechanical breakdown was caused by a latent defect in the design or manufacture of the equipment which could not reasonably have been identified by normal inspection or testing of the equipment; or

- (d) if the Force Majeure was 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; or
- (e) for any acts or omissions of third parties, including any Affiliate of the Seller, or any vendor, supplier, contractor or customer of a Party, but excluding Governmental Authorities, unless such acts or omissions are themselves excused by reason of Force Majeure as defined in this EPA; or
- (f) for any disconnection of the Seller's Plant from the Transmission System, or any Outage, suspension, constraint or curtailment in the operation of the Transmission System; or
- (g) based on the cost or unavailability of the Energy Source for any reason, including natural causes, unless: (i) transport of the Energy Source to the Seller's Plant is prevented by an event or circumstance that constitutes Force Majeure (as defined in this EPA); or (ii) if the Energy Source is water, wind or solar, the Seller can demonstrate by clear and convincing evidence that the unavailability of the Energy Source is caused by a significant landslide, earthquake or volcanic eruption resulting in a significant reduction in the flow of the Energy Source to the Seller's Plant.

12. LIQUIDATED DAMAGES

12.1 COD Delay - If the Seller's Plant fails to achieve COD by the date that is the earlier of:

- (a) 185 days after the Guaranteed COD plus Force Majeure Days, and
- (b) the COD Deadline plus Force Majeure Days,

the Seller shall pay COD Delay LDs to the Buyer in an amount equal to the amount determined in accordance with subsection (b) of the definition of "Performance Security" divided by 180 for each day COD is delayed to a maximum of 180 days. The Seller shall pay any COD Delay LDs owing by the Seller to the Buyer in respect of the immediately preceding month on the 30th day after the last day of that month.

12.2 Delivery Shortfalls - If in any month after the first anniversary of COD, the Delivered Eligible Energy during the month is less than 90% of the Monthly Firm Energy Amount for that month, the Seller shall pay LDs to the Buyer calculated as follows:

$$\text{LD Amount} = \text{LD Factor} * ((0.9 * \text{Monthly Firm Energy Amount}) - \text{Delivered Eligible Energy})$$

Where:

- (a) the Monthly Firm Energy Amount is the amount set out in Appendix 2 for the relevant month less an amount equal to the Monthly Firm Energy Amount divided by the number of minutes in the month for each minute in which the Seller is excused under subsection 7.8(a) from the obligation to deliver Energy; and
- (b) "Delivered Eligible Energy" means in each month the amount of Eligible Energy determined pursuant to subsection (a) of the definition of Eligible Energy for that month, but excluding any Energy delivered after the start time and prior to the end time for an

Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4;

- (c) LD Factor = the greater of: (i) zero and (ii) $A - [(EBP / (1 - L)) + EBPA]$

Where:

- (i) A = the lesser of:

(I) the LD Cap; and

(II) the Mid-C Index;

- (ii) $L = \text{_____} \%$

- (iii) EBP = Escalated Bid Price

- (iv) $EBPA \text{ (Escalated Bid Price Adjuster)}_n = \$\text{_____} / \text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 2006}}$

Where:

n = the year for which the Escalated Bid Price Adjuster is being calculated

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately preceding the year for which the Escalated Bid Price Adjuster is being calculated.

[Note to Bidders – L will be the greater of (i) zero and (ii) an amount determined from the energy loss information used in the CFT evaluation. EBPA will be the sum of the following: -3.00 if the Green Attributes are transferred to BC Hydro; -3.00 if the Bidder tendered an Hourly Firm Energy Profile; and X if GHG emission offset obligations are transferred to BC Hydro where “X” is the amount determined from the GHG Adjustment Table (CFT Reference Document), based on the Bidder’s tendered Guaranteed GHG Intensity.]

- (v) Mid-C means the mid-Columbia electricity region;

- (vi) “Mid-C Index” means the weighted average for the relevant month of the Dow Jones Mid-C daily firm On-Peak Index and the Dow Jones Mid-C daily firm Off-Peak Index weighted based on the number of on-peak and off-peak hours (as defined in the Mid-C index) in the relevant month. Amounts quoted in U.S. dollars will be converted to Canadian dollars using the average of the Bank of Canada daily “noon rates” for the applicable month;

- (vii) “LD Cap” means \$100/MWh adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{LD Cap}_n = \$100 / \text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 2006}}$$

Where:

n = the year for which the escalated LD Cap is being calculated

$CPI_{January\ 1\ n}$ = the CPI for December in the year immediately preceding the year for which the escalated LD Cap is being calculated.

Any LDs owing by the Seller to the Buyer pursuant to this section 12.2 shall be payable on 15th day of the month following the month in which the delivery shortfall occurred.

12.3 Exclusive Remedies for Buyer - Except in the case of Deliberate Breach, payment by the Seller of the LDs in this Article 12 is the exclusive remedy to which the Buyer is entitled for: (i) the Seller's failure to achieve COD by the Guaranteed COD; (ii) the Seller's failure to deliver the Monthly Firm Energy Amount; or (iii) any other failure to comply with section 7.3 or the last sentence of section 6.3, provided that the foregoing does not limit or otherwise affect any right to receive interest on LDs or any right to terminate the EPA, or any right to receive a Termination Payment, in each case as expressly set out in this EPA, or the exercise of any other right or remedy expressly set out in this EPA, including any rights under section 9.5, or Article 13, or any right to apply any invoice adjustments in accordance with Appendix 3.

12.4 Exclusive Remedies for Seller - The Seller's exclusive remedy for the Buyer's failure to take or pay for Eligible Energy is a claim for the price payable by the Buyer for Eligible Energy pursuant to Appendix 3 and any interest on any such amount owing by the Buyer to the Seller, provided that the foregoing does not limit or otherwise affect any right to terminate the EPA, any rights under section 9.5, or any right to receive a Termination Payment expressly set out in this EPA.

12.5 Limits of Liability - Except in the case of Deliberate Breach, in each year during the Term the Seller's liability for damages for all breaches of, or defaults under, this EPA in that year is limited to an amount equal to 200% of the required amount of the Performance Security for the relevant year, provided that the foregoing does not apply to: (i) any liability under any of sections 4.2, 4.5, 5.7, or 6.8; (ii) any liability under section 19.1; (iii) interest on any amount owing under this EPA; (iv) any right to receive a Termination Payment expressly set out in this EPA; or (v) any other provision in this EPA that is expressly excluded from the limits of liability in this section.

12.6 Consequential Damages - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages arising out of a Party's performance or non-performance under this EPA, whether based on or claimed under contract, tort, strict liability or any other theory at law or in equity.

13. PERFORMANCE SECURITY

13.1 Delivery - The Parties acknowledge that the Seller has delivered the Performance Security, in the form required pursuant to section 13.4, to the Buyer concurrently with execution and delivery of this EPA. The Seller shall maintain the Performance Security until the time provided in section 13.2. The Performance Security secures the obligations of the Seller under this EPA, but is not a limitation of the Seller's liability in respect of any breach of, or default under, this EPA.

13.2 Return - The Buyer shall return or release the Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder on the earlier of:

- (a) upon termination of this EPA under section 3.1, by the date specified in subsection 3.5(a); or
- (b) 10 Business Days after termination of this EPA under subsection 10.2(a), section 15.1 or section 15.2 and discharge of all obligations and liabilities of the Seller to the Buyer under this EPA.

13.3 Enforcement - If:

- (a) the Seller fails to pay amounts owing by the Seller to the Buyer pursuant to any of sections 4.2, 4.5, 5.7, or 6.8; or
- (b) the Seller fails to pay any Final Amount owing by the Seller to the Buyer; or
- (c) the Seller fails to pay any LDs owing by the Seller to the Buyer; or
- (d) the Seller fails to pay any Termination Payment owing by the Seller to the Buyer,

and, in each case, the Seller fails to cure such failure to pay within 15 days after notice from the Buyer to the Seller, then the Buyer may enforce the Performance Security and apply the proceeds thereof on account of amounts owing to the Buyer in respect of any or all of the foregoing.

13.4 Form - The Seller shall maintain the Performance Security in the form of a letter of credit that is:

- (a) issued or advised by a branch in Vancouver, Canada of a bank or financial institution where the issuing bank or financial institution has a credit rating not less than Standard & Poor's A-, Moody's A3 or Dominion Bond Rating Service A (low) and if such credit rating agencies publish differing credit ratings for the same bank or financial institution, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section;
- (b) in the form set out in Appendix 6, or in such other form as agreed to by the Buyer; and
- (c) for a term of not less than one year and must provide that it is renewed automatically, unless the issuing or confirming bank advises otherwise by the date specified in Appendix 6.

13.5 Replenishment - If the Buyer draws on the Performance Security, as permitted hereunder, then the Seller shall within 3 Business Days after such draw provide additional security in the form specified in section 13.4 sufficient to replenish or maintain the aggregate amount of the Performance Security at the amount required hereunder.

13.6 Right to Withhold Payment - If the Seller has failed to maintain the Performance Security at the level required hereunder (subject to the cure period specified in section 13.5), the Buyer shall be entitled to withhold payment of any amount owing by the Buyer to the Seller under this EPA until 5 days after the date when the Seller has delivered the required amount of Performance Security to the Buyer. Any amounts withheld by the Buyer in accordance with this section 13.6 will not bear interest.

13.7 Letter of Credit Failure - The Buyer shall be entitled to enforce the Performance Security in the event of a Letter of Credit Failure and the Buyer shall be entitled to hold the proceeds of such enforcement until such time as the Seller delivers replacement Performance Security in the amount and in the form required under this EPA. Upon receipt of such replacement security, the Buyer shall return the proceeds of enforcement of the original Performance Security to the Seller without interest after deducting any amounts the Buyer is entitled to deduct under this EPA. The Seller shall notify the Buyer promptly of any Letter of Credit Failure.

14. SUSPENSION

14.1 Buyer Suspension - If a Buyer Termination Event has occurred and is continuing, the Buyer may, upon notice to the Seller, suspend performance under this EPA provided that in no event shall any such suspension continue for longer than 90 days and further provided that such right shall not affect the Buyer's obligation to make any payment owing to the Seller in respect of performance by the Seller of its obligations under this EPA prior to the date of suspension by the Buyer.

14.2 Seller Suspension - If a Seller Termination Event has occurred and is continuing, the Seller may, upon notice to the Buyer, suspend performance under this EPA, provided that such right shall not affect the Seller's obligation to pay any amount owing by the Seller to the Buyer in respect of performance of, or failure to perform, the Seller's obligations under this EPA prior to the date of suspension by the Seller.

14.3 Resuming Deliveries - The non-defaulting Party's right to suspend performance pursuant to this Article 14 shall cease when the defaulting Party has demonstrated to the satisfaction of the non-defaulting Party, acting reasonably, that the defaulting Party has cured the cause for the suspension.

15. TERMINATION

15.1 Termination by the Buyer - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Buyer may terminate this EPA, by notice to the Seller if:

- (a) the Seller has failed to obtain all Material Permits by the date that is 365 days prior to the Guaranteed COD, provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to the date on which the Seller has secured all Material Permits; or
- (b) COD does not occur by the earlier of:
 - (i) the Guaranteed COD plus 365 days plus all Force Majeure Days (not exceeding 365 Force Majeure Days); and
 - (ii) the COD Deadline plus 180 days plus all Force Majeure Days (not exceeding 185 Force Majeure Days),

provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to COD, and further provided that if the Buyer has not exercised its right to terminate the EPA within 30 days after the right to terminate arises under this subsection, the Seller may deliver a notice to the Buyer setting out a new date by which the Seller, acting reasonably, expects to achieve COD. If the Buyer does not elect to terminate the EPA within 60 days after receipt of such a notice,

the Buyer shall only be entitled to terminate this EPA under this provision if the Seller does not achieve COD by the date specified in such notice; or

- (c) at any time after COD, the Buyer has received a notice from the Seller invoking Force Majeure and:
 - (i) the Force Majeure has not been removed by the date that is 365 days after the date of the notice invoking Force Majeure; or
 - (ii) if the Force Majeure cannot be removed within that 365 day period, by the date that is 730 days after the date of the notice invoking Force Majeure, provided that the Seller is working diligently and expeditiously to remove the Force Majeure.

The Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to the end of the Force Majeure; or

- (d) a Buyer Termination Event occurs.

Any termination pursuant to this section 15.1 shall be effective immediately upon delivery of the notice of termination to the Seller.

15.2 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Seller may terminate this EPA by notice to the Buyer if:

- (a) the Seller, after using commercially reasonable efforts, has failed to obtain all Material Permits on terms satisfactory to the Seller, acting reasonably, on or before the date that is 545 days before the Guaranteed COD, provided that if the Seller has not given notice of termination pursuant to this subsection 15.2(a) by the date that is 15 days after the Seller's right to terminate arises under this subsection 15.2(a), the Seller will be deemed to have elected not to terminate this EPA and will not thereafter be entitled to terminate this EPA under this subsection 15.2(a); or

[Note to Bidders: The foregoing subsection will not be included in any EPA where this right to terminate has expired prior to execution of the EPA]

- (b) the Seller has received a notice from the Buyer invoking Force Majeure and the Force Majeure has not been removed by the date that is 365 days after the date of notice invoking Force Majeure, provided that the Seller shall only be entitled to terminate the EPA under this provision if the Seller delivers a termination notice prior to the end of the Force Majeure; or
- (c) a Seller Termination Event occurs.

Any termination pursuant to this section 15.2 shall be effective immediately upon delivery of the notice of termination to the Buyer.

15.3 Effect of Termination - Upon expiry of the Term or if this EPA is terminated pursuant to section 3.1, subsection 10.2(a) or this Article 15:

- (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 the 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 (including any claims by the Buyer for amounts that would have been payable by the Seller under any of sections 4.2, 4.5, 5.7 or 6.8 but for the expiry or termination of the EPA), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and
- (b)
 - (i) with respect to a termination under section 3.1 only, both Parties will remain bound by (A) Article 19 and sections 20.7 and 20.8, and (B) sections 3.3, 3.5, 13.2 and 13.3, in respect of the satisfaction of residual obligations specified to arise on termination only;
 - (ii) upon expiry of the Term or upon any termination other than a termination under section 3.1:
 - (A) both Parties will remain bound by: (I) section 7.10; (II) Article 9 in respect of any final billing and resolution of disputed amounts only, (III) Article 13 and Article 15, in respect of the satisfaction of residual obligations specified to arise on termination only; and (IV) Article 19 and sections 20.7 and 20.8; and
 - (B) the Seller will remain bound by: (I) section 6.5; and (II) for a period of 36 months following expiry of the Term or termination of this EPA, Article 17, with respect to records only,

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

15.4 Payment on Termination by the Buyer

- (a) If the Buyer terminates this EPA under section 15.1, except for a termination pursuant to subsection 15.1(c), the Seller shall pay to the Buyer an amount equal to \$60,000/MW multiplied by the Plant Capacity where termination occurs prior to the first anniversary of COD, or, where termination occurs on or after the first anniversary of COD, an amount equal to \$40,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.
- (b) If the Buyer terminates this EPA under subsection 15.1(c), no Termination Payment is payable by the Seller to the Buyer, except as set out in subsection 15.4(c).
- (c) If the Buyer terminates this EPA under subsection 15.1(c) prior to the first anniversary of COD, the Seller shall reimburse the Buyer, within 30 days after the date of delivery by the Buyer to the Seller of an invoice therefor (which invoice shall be delivered not later than 60 days after the date of termination of the EPA), for an amount, not exceeding the amount of the Performance Security required hereunder, equal to the Network Upgrade Costs.

15.5 Payment on Termination by the Seller

- (a) If the Seller terminates this EPA under subsection 15.2(a), the Seller shall pay to the Buyer an amount equal to \$20,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.
- (b) If the Seller terminates this EPA under subsection 15.2(b), no Termination Payment is payable by the Buyer to the Seller.
- (c) If the Seller terminates this EPA under subsection 10.2(a), no Termination Payment is payable by the Seller to the Buyer except that if the Seller terminates the EPA under subsection 10.2(a) prior to the first anniversary of COD, subsection 15.4(c) applies.
- (d) If the Seller terminates this EPA under subsection 15.2(c) prior to COD, the Buyer shall pay to the Seller an amount equal to the lesser of:
 - (i) 115% of the Development Costs; and
 - (ii) the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (e) If the Seller terminates this EPA under subsection 15.2(c) after COD, the Buyer shall pay to the Seller an amount equal to the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (f) The Buyer may audit the Seller's Development Costs and in that event, the Seller shall provide all reasonable cooperation to the Buyer or its designated representative, including access to all original records related to Development Costs.
- (g) The Seller's Gains, Losses and Costs shall be determined by comparing the value of the remaining Term, contract quantities and price payable under this EPA had it not been terminated to the relevant market prices for equivalent quantities for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and the product specified under this EPA including with respect to quantity, place of delivery and length of term.
- (h) The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer pursuant to subsection 15.5(d) or (e).
- (i) The Seller shall determine the amount of any Termination Payment owed by the Buyer pursuant to subsection 15.5(d) or (e) as applicable and shall notify the Buyer of such amount and provide reasonable particulars with respect to its determination within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any Termination Payment under this section.
- (j) If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the Termination Payment shall be zero.

- (k) The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate applicable at the effective date of termination of the EPA, where the "Present Value Rate" means the annual yield on a Government of Canada Bond having a maturity date that most closely matches the date on which the Term would have expired but for the termination of the EPA, plus 3%.

15.6 Termination Payment Date - A Party required to make a Termination Payment to the other Party shall, except in the case of a Termination Payment payable pursuant to subsection 15.5(d) or (e), pay the Termination Payment within 5 Business Days after the effective date of termination of this EPA. The Buyer shall pay any Termination Payment owing by the Buyer pursuant to subsection 15.5(d) or (e) within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer pursuant to subsection 15.5(d) or (e) as applicable. At the time for payment of the Termination Payment, each Party shall pay to the other Party all additional amounts payable by it pursuant to this EPA, but all such amounts will be netted and aggregated with any Termination Payment.

15.7 Exclusive Remedies - Subject to section 15.3, the payments and actions contemplated by section 3.5 shall be the exclusive remedy to which the Parties are entitled for termination of this EPA pursuant to section 3.1. Except in the case of Deliberate Breach or as otherwise expressly set out in this EPA, and subject to section 15.3: (a) payment by the Seller of the Termination Payment is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsections 15.1(a), (b) or (d) or 15.2(a); and (b) payment by the Seller of any amount payable pursuant to subsection 15.4(c) is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsection 15.1(c). Payment by the Buyer of the Termination Payment is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 15.2(c). Termination of this EPA is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 15.2(b).

16. ASSIGNMENT

16.1 Assignment - A Party may not 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, except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) to an Affiliate, on notice to, but without the consent of, the other Party, provided that the assignor will remain liable for the obligations of the assignee under this EPA, unless otherwise agreed in writing by the other Party.

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignor to the other Party not less than 30 days before the date of assignment, and, except in the case of assignment to a Facility Lender, must be accompanied by a proposed form of assignment and assumption agreement, and, in the case of an assignment pursuant to subsection 16.1(a), other than to a Facility Lender, evidence of the capability of the assignee as required by subsection 16.2(b). Consent to an assignment to a Facility Lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by section 16.3. Any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller

in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 16, including section 16.2, provided that where Control is transferred to an Affiliate or where the Seller merges or amalgamates with an Affiliate or enters into a reorganization with an Affiliate, subsection 16.1(b) shall apply.

16.2 Preconditions to Assignment - Without limiting subsection 16.1(a), any assignment pursuant to section 16.1 (other than an assignment to a Facility Lender) is subject to:

- (a) the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the assignor under the EPA arising both before and after the assignment of the EPA, providing any Performance Security, as applicable at the time of assignment and providing the representations and warranties set out in section 18.1 effective as at the time of assignment; and
- (b) except for an assignment under subsection 16.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial, technical and otherwise) to fulfil the obligations of the assignor under this EPA or, in the case of a change of Control, merger, amalgamation or reorganization of the Seller, the parties to that transaction demonstrating to the reasonable satisfaction of the Buyer, the continued ability of the Seller to perform its obligations under this EPA and, in the case only of an assignment of 100% of the assignor's interest in the Project Assets, the Seller's Plant, or this EPA or revenue derived from this EPA, upon such demonstration and concurrently with the agreement providing for the assumption of liabilities and obligations and the provision of Performance Security required under subsection 16.2(a), the assignor shall be released from all future obligations and liabilities under the EPA and the Performance Security provided by it will be returned or released.

16.3 Assignment to Facility Lender - If the Seller seeks consent to assign this EPA to a Facility Lender or Facility Lenders, the Seller acknowledges that the Buyer is entitled to require, as a condition of the Buyer's consent to such assignment, that the Seller and the Facility Lender enter into an agreement with the Buyer substantially in the form attached as Appendix 7.

16.4 No Implied Consent to Exercise of Rights - No consent to any assignment given by the Buyer under this Article 16 implies or constitutes a consent to the exercise by the assignee, or any Affiliate of the assignee, whether or not a Facility Lender, of any right if the exercise of that right, at the time it was acquired, would require the consent of the Buyer under this Article 16, and the exercise of any such right will require the further consent of the Buyer.

16.5 Costs - The assignor shall reimburse the other Party for all costs reasonably incurred in connection with an assignment.

16.6 No Assignment Before COD - Notwithstanding subsection 16.1(a), the Seller shall not assign (including any event or action that is deemed under section 16.1 to be an assignment) or otherwise dispose of any interest in this EPA prior to COD, except: (i) to an Affiliate as permitted under subsection 16.1(b); (ii) to a Facility Lender as permitted under subsection 16.1(a) and section 16.3; or (iii) with the prior consent of the Buyer, which consent may be given, withheld or conditioned in the unfettered discretion of the Buyer.

17. INSPECTION

For the sole purpose of verifying compliance with this EPA, of verifying the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA and of verifying the Seller's right to rely on any relief claimed by the Seller under this EPA, on reasonable prior notice to the Seller, the Seller shall provide the Buyer and the Buyer's representatives and advisors with prompt access during normal business hours to the Seller's Plant and to the records relating to the Seller's Plant including all records required to be maintained by the Seller under section 6.5 and the Seller shall promptly provide copies of any such records to the Buyer on request by the Buyer at any time. The Buyer and the Buyer's representatives and advisors may take copies of all such records. All such records that contain confidential technical or proprietary information are Confidential Information under section 20.8. The Buyer shall exercise any access under this Article 17 at the Buyer's cost and in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by the Buyer of the Seller's Plant, its design, construction, operation, maintenance, repair, records or other activities of the Seller may not be relied upon by the Seller, or others, as confirming or approving those matters.

18. REPRESENTATIONS AND WARRANTIES

18.1 By Seller - The Seller 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 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 its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) **Assets** - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA, nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its 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 enforceable against the Seller in accordance with its terms;

- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Seller;
- (g) **Bid Documents** - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
- (h) **Exemption From Regulation** - The Seller is exempt from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.

18.2 By Buyer - 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 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;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Buyer or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Buyer or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Buyer;
- (c) **Assets** - There is no appropriation, expropriation or seizure of any of the material assets of the Buyer pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA nor the carrying out of the Buyer’s obligations under this EPA will constitute or cause a breach of, default under, or violation of, the *Hydro and Power Authority Act* (British Columbia), any permit, franchise, lease, license, approval or agreement to which the Buyer is a party, or any other covenant or obligation binding on the Buyer or affecting any of its properties;
- (e) **Binding Obligation** - This EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Buyer.

19. INDEMNITIES

19.1 Seller Indemnity - The Seller shall indemnify, defend and hold harmless the Buyer and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (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, any contractor or subcontractor or supplier to the Seller or any director, officer, employee or agent of the Seller or any other Person for whom the Seller 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.

19.2 Buyer Indemnity - The Buyer shall indemnify, defend and hold harmless the Seller and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (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.

19.3 Indemnification Conditions - The right of a Party ("**Indemnitee**") 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 Indemnitee 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 Indemnitee, in the defence or settlement of the claim; and
- (b) the Indemnitee does not compromise or settle the claim without the prior written consent of the Indemnitor.

20. GENERAL PROVISIONS

20.1 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, and not under this EPA.

20.2 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.

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

20.4 Notices - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill (a "**notice**") 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 stated in subsection 20.4(c) or (d) and:

- (a) may be delivered by hand or by a courier service during normal business hours on a Business Day, in which case the notice will be deemed to have been delivered on that Business Day;

- (b) notices, other than notices under section 3.4, 4.2, or 7.2 or any of Articles 11, 13, 14, 15 or 16, may be sent by email during normal business hours on a Business Day, in which case provided that the Party delivering the notice obtains a confirmation of delivery, the notice will be deemed to have been delivered on that Business Day;
- (c) subject to subsection 20.4(e), the address of the Buyer for notices is as set out in Appendix 9;
- (d) subject to subsection 20.4(e), the address of the Seller for notices is as set out in Appendix 9 and the Buyer may, but is not required to (except as otherwise provided in a Lender Consent Agreement, if any) provide a copy of any such notice to the Facility Lender; and
- (e) either Party may change its address or fax number for notices under this EPA by notice to the other Party.

20.5 Entire Agreement and Amendment - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the Call for Tenders issued by the Buyer on 8 December 2005 and all Addenda, questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto. 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. This EPA may not be amended, except by an agreement in writing signed by both Parties.

20.6 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.

20.7 Dispute Resolution - If any dispute arises under or in relation to this EPA, that dispute will be referred to and finally resolved by arbitration by a single arbitrator. The arbitration will be administered by the British Columbia International Commercial Arbitration Centre (“**BCICAC**”) pursuant to its rules. The place of arbitration will be Vancouver, British Columbia. If at the time a dispute arises the BCICAC does not exist, the dispute will be finally settled by arbitration by a single arbitrator who, failing agreement of the parties, shall be appointed under the *Commercial Arbitration Act (British Columbia)* or under the *International Commercial Arbitration Act (British Columbia)*, as applicable, and the arbitrator shall conduct the arbitration in accordance with such rules as the Parties may agree in writing, or failing agreement, such rules as may be determined or adopted by the arbitrator. The decision of the arbitrator will be final and binding on the Parties. The arbitrator will have jurisdiction and power to make interim, partial or final awards ordering specific performance, injunction and any other equitable remedy. The Parties are entitled to seek interim measures of protection from the courts pending completion of any arbitration. All performance required under this EPA by the Parties and payments required under this EPA will continue during the dispute resolution proceedings contemplated by this section 20.7, provided that this section may not be interpreted or applied to delay or restrict the exercise of any right to suspend performance under or terminate this EPA pursuant to the express terms hereof. Any payments or reimbursements required by an arbitration award will be due as of the date determined in accordance with section 9.2 or, where section 9.2 is not applicable, as of the date determined in the award, and, without duplication with subsection 9.2(b), will bear interest at an annual rate equal to the Prime Rate plus 3%

compounded monthly, from the date such payment was due until the amount is paid. To the fullest extent permitted by law, the Parties shall 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 arbitrators' award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors, shareholders and employees, its professional advisors and other representatives, and may make such disclosures in the course of any Proceedings required to pursue any legal right arising out of or in connection with the arbitration and may make such disclosures as are required by law or for regulatory purposes. Nothing in this EPA precludes either Party from bringing a Proceeding in any jurisdiction to enforce an arbitration award or any judgement enforcing an arbitration award, nor will the bringing of such Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction. In connection with any court proceedings, each Party waives its respective rights to any jury trial.

20.8 Confidentiality

- (a) Without limiting any other confidentiality agreement between the Parties, during the Term and for 5 years thereafter, the Buyer shall treat as confidential and will not cause or permit the publication, release or disclosure of any Confidential Information received by the Buyer from the Seller, except to the extent that publication, release or disclosure: (i) is expressly authorized under any section of this EPA; (ii) is necessary to enable the Buyer to fulfil its obligations under this EPA, including under section 3.3; (iii) is required by law or for regulatory purposes; (iv) is made with the prior consent of the Seller; or if (v) such information has entered the public domain other than through the actions of the Buyer. The Buyer may also disclose Confidential Information: (vi) to consultants and advisors to the Buyer and representatives of the Government of British Columbia who have a need to know the Confidential Information and who have been informed by the Buyer of the need to maintain the confidentiality of the Confidential Information disclosed to them; (vii) as may be necessary for the Buyer to adequately pursue or defend any legal or regulatory proceeding relating to the CFT or this EPA or any EPA awarded under the CFT process; and (viii) as otherwise set out in this EPA.
- (b) 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.
- (c) The Parties confirm that 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 all Confidential Information disclosed by the Seller to the Buyer shall 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.

20.9 Distribution Authority - This EPA shall be interpreted and applied as though the Distribution Authority were a third party, including for purposes of determining whether or not a Force Majeure has occurred.

20.10 Commodity Contract/Forward Contract - The Parties agree and intend that this EPA constitutes a commodity contract for the purposes of subsection (h) of the definition of "eligible financial

contract” in section 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada) and in Section 11.1(1) of the *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.

20.11 Further Assurances - Each Party shall, 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.

20.12 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.

20.13 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 as of the date set out on page 1 of this EPA.

For ●

Authorized Representative

Print Name and Office

Date

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

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS

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

1. **“Affiliate”** means, with respect to the Seller, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.
2. **“Annual Operating Plan”** means each plan delivered by the Seller to the Buyer under subsection 6.6(b) and all amendments to such plan in accordance with subsection 6.6(b).
3. **“Authorized Planned Outage”** means a Planned Outage that is scheduled in accordance with Good Utility Practice, complies with the requirements of section 6.4 and does not exceed the duration of the Planned Outage set out in the notice of the Planned Outage delivered by the Seller under section 6.4.
4. **“Bankrupt or Insolvent”** means, with respect to a Person:
 - (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 has issued an order declaring the Person bankrupt or insolvent.
5. **“BCUC”** means the British Columbia Utilities Commission or any successor thereto.
6. **“BCUC Acceptance”** has the meaning given in section 3.1.
7. **“BC Clean Electricity”** means electricity that meets the requirements set out in the “BC Clean Electricity Guidelines” issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources” dated 15 September, 2005, as amended at any time prior to the first anniversary of COD.
8. **“Bid Documents”** means the Tender and all documents and information provided by the Seller to the Buyer in connection with such Tender, whether concurrently with or after the date of submission of the Tender to the Buyer.

9. **“Business Day”** means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia.
10. **“Buyer”** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
11. **“Buyer Termination Event”** means any one of the following:
 - (a) the Seller is Bankrupt or Insolvent;
 - (b) a Letter of Credit Failure has occurred and the Seller has failed to deliver a replacement Performance Security within 5 Business Days after the Letter of Credit Failure occurred;
 - (c) the Seller has not, by the date that is the earlier of: (i) 60 days after the date of award of this EPA under the CFT; and (ii) 240 days after the date of issuance by the Transmission Authority to the Seller of the F2006 CFT Preliminary Interconnection Study Report, executed and delivered to, or caused to be executed and delivered to, the Transmission Authority a Combined Study Agreement for the Seller’s Plant together with the applicable fee, in the form and amount prescribed by the Transmission Authority;
 - (d) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
 - (e) the Seller 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 failure by the Seller to comply with subsection 6.3(f) or any of sections 6.8, 6.11 or 7.5, any Deliberate Breach by the Seller of its obligations under section 7.3, and any purported assignment of this EPA without the consent of the Buyer where such consent is required under Article 16. A “material default” does not include any failure, other than a failure resulting from a Deliberate Breach, to deliver the Monthly Firm Energy Amount in respect of which failure the Seller has paid any LDs owing under section 12.2.
12. **“CFT ”** means the “F2006 Open Call for Power - Call for Tenders” issued by the Buyer on 8 December 2005, together with all Addenda thereto, and all other documents and forms referenced therein as forming part of the CFT.
13. **“COD”** or “Commercial Operation Date” means the time when the Seller’s Plant achieves COD pursuant to section 5.2.
14. **“COD Certificate”** means a certificate in the form set out in Appendix 4 signed by a senior officer of the Seller.
15. **“COD Deadline”** means _____. *[Note to Bidders: For bidders with a Guaranteed COD on or before 1 November 2009, the COD Deadline is 1 November 2009. For*

bidders with a Guaranteed COD after 1 November 2009, the COD Deadline is 1 November 2010]

16. **“COD Delay LDs”** means the LDs specified in section 12.1.
17. **“Combined Study Agreement”** means an agreement, in prescribed form, between the Seller and the Transmission Authority wherein the Seller contracts with the Transmission Authority for an interconnection impact study and interconnection facility study.
18. **“Compliance Units”** means any credit, offset, unit, allowance or other instrument that may be used to achieve compliance with emission limitation or intensity obligations as prescribed under Laws and Permits regulating GHG emissions from the Seller’s Plant.
19. **“Confidential Information”** means: (i) information that is described as confidential information in any section of this EPA; and (ii) information disclosed by the Seller to the Buyer in the CFT process and that is described in the CFT as confidential.
20. **“Construction Insurance”** means all insurance generally accepted in the insurance industry as being required to construct a facility similar to the Seller’s Plant, including course of construction insurance.
21. **“Control”** of any Person means: (i) 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; (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
22. **“Costs”** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA, and legal fees, if any, incurred in connection with enforcing the Seller’s rights under this EPA.
23. **“Deliberate Breach”** means:
 - (a) any failure by the Seller to achieve COD by the earlier of: (i) Guaranteed COD plus 365 days plus all Force Majeure Days (not exceeding 365 Force Majeure Days); and (ii) the COD Deadline plus 180 days plus all Force Majeure Days (not exceeding 185 Force Majeure Days), resulting from any wilful or grossly negligent act or omission of the Seller;
 - (b) any breach of or default under any provision of this EPA by the Seller resulting from any wilful or grossly negligent act or omission by the Seller;
 - (c) a Buyer Termination Event constituting a repudiation of the EPA by the Seller; or
 - (d) any sale or transfer by the Seller of Energy to any Person, other than the Buyer, except where such sale or transfer is expressly permitted under this EPA.
24. **“Development Costs”** means all costs reasonably incurred or committed by the Seller, after the date of issuance of the CFT, for the Project and all costs reasonably incurred, or that are

reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the Project and to otherwise cease development of the Project, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.

25. **“Direct Assignment Costs”** means all costs of design, engineering, procurement, construction, installation and commissioning of Direct Assignment Facilities incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System).
26. **“Direct Assignment Facilities”** means modifications or additions to transmission, or distribution, related facilities that are integrated with the Transmission System or the Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller’s Plant and are for the sole benefit of the Seller’s Plant, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).
27. **“Distribution Authority”** means the Person or Persons who is or are responsible for the planning, asset management, and operation of the Distribution System, in whole or in part, including an independent system operator.
28. **“Distribution System”** means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35kV or less, and includes all additions and modifications thereto and repairs or replacements thereof.
29. **“EcoLogo^M Certification”** means certification pursuant to Environment Canada’s Environmental Choice^M program confirming that the Seller’s Plant and all or part of the Energy complies with the “Guideline on Renewable Low-Impact Electricity”, as amended from time to time and is therefore entitled to the EcoLogo^M designation.
30. **“Effective Date”** means the date set out on page one hereof.
31. **“Eligible Energy”** means in each month after COD:
 - (a) the amount of Metered Energy delivered by the Seller at the POI in that month, but excluding any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) Energy that is deemed to be “Eligible Energy” in that month pursuant to section 7.9.
32. **“Energy”** means electric energy expressed in MWh generated by the Seller’s Plant excluding Station Service.
33. **“Energy Source”** means the source of energy used to generate Energy at the Seller’s Plant as specified in Appendix 5.
34. **“Escalated Bid Price”** has the meaning given in Appendix 3.
35. **“F2006 CFT Preliminary Interconnection Study Report”** means the report referenced in section 7 of Appendix 5.

36. **“Facilities Agreement”** means the agreement between the Seller and the Transmission Authority setting out the commercial terms and conditions applicable to the construction of the Direct Assignment Facilities and Network Upgrades as amended or replaced from time to time.
37. **“Facility Lender”** means any lender(s) providing any debt financing for the Project and any successors or assigns thereto.
38. **“Final Amount”** means an amount owing by either Party to the other Party pursuant to 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 pursuant to section 20.7 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
39. **“Firm Energy”** has the meaning given in Appendix 3.
40. **“Force Majeure”** means, subject to the exclusions in section 11.2, any event or circumstance not within the control of the Party claiming Force Majeure and, to the extent not within that Party’s control, includes:
- (a) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides;
 - (b) strikes, lockouts and other industrial disturbances, provided that settlement of strikes, lockouts and other labour disturbances will be wholly within the discretion of the Party involved;
 - (c) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience;
 - (d) acts or omissions of Governmental Authorities, including delays in regulatory process and orders of a regulatory authority or court of competent jurisdiction;
 - (e) explosions and fires; and
 - (f) notwithstanding subsection 11.2(f), an inability of the Seller to achieve COD solely as a result of a delay by the Transmission Authority in completion of Direct Assignment Facilities or Network Upgrades and such delay is not attributable to the Seller or the Seller’s Plant, including any change to the point of interconnection with the Transmission System or other Project change made by the Seller under section 4.5,
- but does not include:
- (g) any refusal, failure or delay of any Governmental Authority in granting any Material Permit to the Seller, whether or not on terms and conditions that permit the Seller to perform its obligations under this EPA, except where such failure or delay is a result of an event described in paragraph (a), (b), (c) or (e) above.
41. **“Force Majeure Days”** means the number of days the Seller is delayed in achieving COD as a result of Force Majeure invoked by the Seller in accordance with Article 11.

42. **“Forced Outage”** means a partial or total interruption in the delivery of, or ability to deliver, Energy that is not a result of an Authorized Planned Outage or a Force Majeure.
43. **“Gains”** means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
44. **“GHG”** or **“Greenhouse Gas(es)”** means: (i) one or more of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride; and (ii) any other gas that is identified as having significant global warming potential and is added, at any time before the expiry of the Term, to Schedule 1 to the *Canadian Environmental Protection Act, 1999* or to any other regulation(s) governing the emission of the gases noted in (i) from the Seller’s Plant.
45. **“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 judgement 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 WECC region.
46. **“Governmental Authorities”** means any federal, provincial, local or foreign governments 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.
47. **“Green Attributes”** means:
- (a) all attributes associated with, or that may be derived from, the Energy and/or the Seller’s Plant having decreased environmental impacts, 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, resulting from the Energy during the Term;
 - (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: (i) 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 Energy; or (ii) the reduction, removal, avoidance, sequestration or mitigation of emissions at or from the Seller’s Plant; and
 - (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.
48. **“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.
49. **“Guaranteed COD”** means _____ TO#1 _____.

50. **“Interconnection”** means the facilities and procedures that permit the flow of electric power from the Seller’s Plant to the Transmission System and vice versa.
51. **“Interconnection Agreement”** means the agreement between the Seller and the Transmission Authority which provides for the implementation and operation of the Interconnection, as amended or replaced from time to time.
52. **“kV”** means kilovolts.
53. **“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.
54. **“LDs”** means liquidated damages payable by the Seller to the Buyer under Article 12.
55. **“Lender Consent Agreement”** means an agreement referred to in section 16.3.
56. **“Letter of Credit Failure”** means:
 - (a) a failure to renew or substitute the Performance Security by no later than 60 days prior to the expiry thereof;
 - (b) the issuer of the Performance Security fails to maintain a credit rating of at least the minimum rating specified in section 13.4;
 - (c) the issuer of the Performance Security fails to comply with or perform its obligations under the Performance Security;
 - (d) the issuer of the Performance Security disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Performance Security; or
 - (e) the Performance Security fails or ceases to be in full force and effect for purposes of this EPA (whether or not in accordance with its terms) prior to the date specified in Article 13 for return of the Performance Security to the Seller.
57. **“Long Term Operating Plan”** means the plan referred to in subsection 6.6(a) as amended by the Seller from time to time.
58. **“Losses”** means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
59. **“Major Damage”** means damage where the cost to repair the damage exceeds the present value (using the Present Value Rate) of (a) the projected Energy deliveries from the Seller’s Plant for the remainder of the Term, multiplied by (b) the projected payments under this EPA for that Energy, (calculated on the basis that the Tier 2 Non-Firm Energy Price will be equal to the Tier 1 Non-Firm Energy Price), less a \$/MWh amount representing the estimated operating and maintenance costs for the Seller’s Plant (including costs of the Energy Source).
60. **“Material Permits”** means all of the following if and as required for the Seller’s Plant:
 - (a) environmental assessment certificate;

- (b) air emissions permit;
- (c) any permits, licenses or approvals required with respect to the discharge of any type of waste liquids from the Seller's Plant;
- (d) water licence;
- (e) zoning appropriate for the Seller's Plant;
- (f) any subdivision approvals required to create the site on which the Seller's Plant is or will be located as a separate legal parcel;
- (g) any permits or approvals required with respect to the storage of the Energy Source at the Seller's Plant; and
- (h) any lease, license or occupation or similar agreement required with respect to the Seller's Plant including all access roads to the Seller's Plant,

on terms and conditions that permit the Seller to comply with its obligations under this EPA.

- 61. **"Metered Energy"** means Energy recorded by the Metering Equipment.
- 62. **"Metering Equipment"** means the metering equipment described in section 8.1.
- 63. **"Monthly Firm Energy Amount"** means the amount of Energy the Seller is required to deliver to the Buyer at the POI in each month of the Term after COD as set out in Appendix 2.
- 64. **"Monthly Firm Energy Delivery Rate"** means the Monthly Firm Energy Amount for the relevant month as set out in Appendix 2 divided by the number of hours in that month.
- 65. **"MW"** means megawatt.
- 66. **"MWh"** means megawatt-hour.
- 67. **"NERC"** means the North American Electric Reliability Council or a successor organization.
- 68. **"Network Upgrades"** means modifications or additions to transmission, or distribution, related facilities that are integrated with and support the overall Transmission System or Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller's Plant to the system and to transmit the electricity from the Seller's Plant through the system to the Buyer's network loads, but which benefit all users of the system, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).
- 69. **"Network Upgrade Costs"** means all costs incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System) for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades.
- 70. **"Outage"** means:

- (a) in the case of the Seller's Plant, a partial or total interruption in the delivery of, or ability to deliver, Energy; and
 - (b) in the case of the Transmission System, a partial or total interruption in the transmission of, or ability to transmit, Energy from the Seller's Plant.
71. **"Party"** means: (i) the Buyer and its successors and permitted assigns; or (ii) the Seller and its successors and permitted assigns, and **"Parties"** means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority shall be deemed not to be a **"Party"**, whether or not owned or operated by British Columbia Hydro and Power Authority.
72. **"Peak Demand Months"** means January, February, March, November and December.
73. **"Performance Security"** means a letter of credit in the form specified in section 13.4 in an amount equal to:
- (a) prior to the first anniversary of COD, \$60,000/MW multiplied by the Plant Capacity; or
 - (b) from and after the first anniversary of COD, \$40,000/MW multiplied by the total of the Monthly Firm Energy Amounts set out in Appendix 2 divided by 8760.
74. **"Permits"** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation and maintenance of the Seller's Plant and the delivery of Eligible Energy at the POI, including all Material Permits.
75. **"Person"** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
76. **"Planned Islanding Capability"** means the ability of a generator to electrically energize, in a safe, controlled and reliable manner, a portion of the Transmission System or Distribution System, including loads, that is separated from the rest of the Transmission System or Distribution System.
77. **"Planned Outage"** means an Outage for purposes of inspection and/or general overhaul of equipment in the Seller's Plant.
78. **"Plant Capacity"** means the electrical capacity of the Seller's Plant expressed in MW, determined as the nameplate capacity if expressed in MW, or as the nameplate capacity if expressed in MVA multiplied by a power factor of 0.95, as set out in Appendix 5, as amended in accordance with section 4.2.
79. **"POI"** or **"Point of Interconnection"** means the point at which the Seller's Plant interconnects with the Transmission System as more particularly defined in the Interconnection Agreement.
80. **"PPT"** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
81. **"Pre-COD Energy"** means that amount of Metered Energy delivered by the Seller at the POI prior to COD including Test Energy, but excluding:

- (a) any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) that portion of the Metered Energy that is sold to third parties in accordance with section 7.1.
82. **“Present Value Rate”** has the meaning given in subsection 15.5(k).
83. **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, 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.
84. **“Proceeding”** has the meaning given in section 1.5.
85. **“Project”** means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
86. **“Project Assets”** means the Seller’s Plant and all rights, property, assets, equipment, materials and contracts required to design, engineer, procure, construct, commission, operate and maintain the Seller’s Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller’s Plant is commonly known, the books, records and accounts with respect to the Seller’s Plant, and all land tenure and land tenure agreements with respect to the Seller’s Plant.
87. **“PST”** means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
88. **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
89. **“Seller Termination Event”** means:
- (a) the Buyer is Bankrupt or Insolvent;
 - (b) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
 - (c) 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.

- 90. **“Seller’s Plant”** means the Seller’s plant described in Appendix 5 and all facilities and equipment required to construct, operate and maintain the plant described in Appendix 5 and to interconnect that plant to the Transmission System.
- 91. **“Station Service”** means electricity required to service the Seller’s Plant, including electricity required for fuel processing.
- 92. **“Tender”** means the Tender submitted by the Seller pursuant to the CFT.
- 93. **“Term”** has the meaning given in section 2.1.
- 94. **“Termination Payment”** means the amount payable by the Seller to the Buyer or the amount payable by the Buyer to the Seller pursuant to section 15.4 or section 15.5, as the case may be.
- 95. **“Test Energy”** means Metered Energy delivered at the POI during any successful test pursuant to subsection 5.2(b), but excluding all Metered Energy that at any time exceeds 120% of the Plant Capacity.
- 96. **“Transmission Authority”** means the British Columbia Transmission Corporation or any successor thereto.
- 97. **“Transmission System”** means the transmission, substation, protection, control and communication facilities: (i) owned by the Buyer or by the Transmission Authority; and (ii) operated by the Transmission Authority in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
- 98. **“UCA”** means the *Utilities Commission Act* (British Columbia).
- 99. **“WECC”** means the Western Electricity Coordinating Council or any successor organization of which the Buyer is a member.

APPENDIX 2**ENERGY PROFILE**

[To be inserted from the Seller's Tender]

*For leap years, the Monthly Firm Energy Amount for the month of February will be multiplied by 29/28.

[Note to Bidders: For Bidders that elect to tender an Hourly Firm Energy Profile, the table set out in Section 11 of the CFT in the bullet titled "Energy Profile" will be inserted in Appendix 2 as Part 2 of Appendix 2.]

APPENDIX 3

ENERGY PRICE

1. Definitions and Interpretation

1.1 **Definitions** - In this Appendix 3 or elsewhere in the EPA, the following words and expressions have the following meanings:

- (a) **“BPP” or “Bid Price Percentage”** means BP#5%, which is the percentage of the Initial Period Bid Price and the Remainder Period Bid Price that is subject to escalation pursuant to section 3.3 of this Appendix.
- (b) **“CPI”** means the Consumer Price Index for Canada, All Items (Not Seasonally Adjusted) as published by Statistics Canada, adjusted or replaced in accordance with subsection 1.2(d) of this Appendix.
- (c) **“Discount Amount”** means \$8.00/MWh.
- (d) **“Escalated Bid Price”** means:
 - (i) for the period from COD to the hour ending at 24:00 PPT on the day immediately prior to the first day of the month following the BP#2 anniversary of COD, the Initial Period Bid Price, as adjusted pursuant to section 3.3 of this Appendix; and
 - (ii) for the period from the hour commencing at 00:00 PPT on the first day of the month following the BP#2 anniversary of COD for the remainder of the Term, the Remainder Period Bid Price, as adjusted pursuant to section 3.3 of this Appendix.

[Note to Bidders: If there is only one Bid Price for the Term, the above section will be revised to read ““Escalated Bid Price” means the Bid Price \$ BP#4 /MWh as adjusted pursuant to section 3.3 of this Appendix.”]

- (e) **“Escalated Discount Amount”** means the Discount Amount as adjusted pursuant to section 3.3 of this Appendix.
- (f) **“Firm Energy”** means in each month of the Term after COD, all Eligible Energy in that month not exceeding the Monthly Firm Energy Amount for that month, but excluding any Eligible Energy delivered after the start time and prior to the end time for an Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4 and all such Eligible Energy will be considered Non-Firm Energy.
- (g) **“Firm Energy Price”** means the Escalated Bid Price as adjusted pursuant to section 3.4 of this Appendix.
- (h) **“HLH” or “Heavy Load Hours”** means the hours commencing at 06:00 PPT and ending at 22:00 PPT Monday through Saturday inclusive but excluding British Columbia statutory holidays.

- (i) “**Initial Period Bid Price**” means \$ BP#3 / MWh.

*[Note to Bidders: If there is only one Bid Price for the Term, the above definition will be revised to read “**Bid Price means \$ BP#4 /MWh**”.]*

- (j) “**LLH**” or “**Light Load Hours**” means all hours other than Heavy Load Hours.
- (k) “**Mid-C**” means the Mid-Columbia electricity region.
- (l) “**Non-Firm Energy**” means in each month of the Term after COD all Eligible Energy in that month in excess of the Monthly Firm Energy Amount for that month and all Eligible Energy deemed to be Non-Firm Energy pursuant to subsection 1.1(f) of this Appendix.
- (m) “**Non-Firm Energy Discount**” means the Escalated Discount Amount as adjusted pursuant to section 3.4 of this Appendix.
- (n) “**Off-Peak Index**” means the Dow Jones Mid-C daily firm Off-Peak Index.
- (o) “**Remainder Period Bid Price**” means \$ BP#3 / MWh.

[Note to Bidders: If there is only one Bid Price for the Term, the above definition will be deleted.]

- (p) “**Tier 1 Non-Firm Energy**” means in each month during the Term after COD all Non-Firm Energy not exceeding an amount equal to the Monthly Firm Energy Amount for the month.
- (q) “**Tier 1 Non-Firm Energy Price**” means the Firm Energy Price minus the Non-Firm Energy Discount.
- (r) “**Tier 2 Non-Firm Energy**” means in each month during the Term after COD all Non-Firm Energy in excess of the Tier 1 Non-Firm Energy for that month.
- (s) “**Tier 2 Non-Firm Energy Price**” means the lesser of:
- (i) the Tier 1 Non-Firm Energy Price; and
 - (ii) an amount equal to 70% of the average of the daily non-firm Mid-C Off-Peak Index prices in the applicable month. Amounts quoted in U.S. dollars will be converted to Canadian dollars using the average of the Bank of Canada daily “noon rates” for that month.

1.2 Interpretation - All payments 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;
- (c) any escalators or percentages will be expressed as a percentage and will be rounded to four decimal places (i.e. 0.0000%); and
- (d) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):

- (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 Canadian Government);
- (ii) at any time ceases to publish or provide the CPI, then the provisions of section 1.9 of this EPA 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 shall 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 shall recalculate the invoice amounts in the next succeeding invoice and shall 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 shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2. Pre-COD Energy

2.1 No price is payable by the Buyer for Energy, if any, delivered to the Buyer before COD, except as set out in section 2.2 of this Appendix.

2.2 The price payable by the Buyer for Test Energy in respect of which the Seller has not given a notice under section 7.1 is \$25.00/MWh. If the Seller's Plant does not satisfy the requirements of section 5.2, no price is payable by the Buyer for any Energy generated during the period specified in subsection 5.2(b).

3. Post-COD Energy

3.1 **Firm Energy** - The price payable by the Buyer for each MWh of Firm Energy is the Firm Energy Price.

3.2 **Non-Firm Energy** - The price payable by the Buyer for each MWh of Tier 1 Non-Firm Energy is the Tier 1 Non-Firm Energy Price. The price payable by the Buyer for each MWh of Tier 2 Non-Firm Energy is the Tier 2 Non-Firm Energy Price.

3.3 **CPI Adjustment** - The Initial Period Bid Price ("IPBP"), the Remainder Period Bid Price ("RPBP") and the Discount Amount ("DA") will be adjusted effective as of January 1 in each year after the Effective Date in accordance with the following applicable formula:

$$IPBP_n = IPBP_{\text{January 1 2006}} * [(BPP * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}) + (1 - BPP)]$$

$$RPBP_n = RPBP_{\text{January 1 2006}} * [(BPP * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}) + (1 - BPP)]$$

$$DA_n = DA_{\text{January 1 2006}} * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}$$

Where:

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

$CPI_{January\ 1\ n}$ = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted.

3.4 Delivery Time Adjustment - For each hour during the Term, the Escalated Bid Price and the Escalated Discount Amount will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of the Escalated Bid Price or the Escalated Discount Amount, as applicable, expressed in the following table:

Month	Escalated Bid Price Adjustment		Escalated Discount Amount Adjustment	
	HLH	LLH	HLH	LLH
January	113%	97%	88%	103%
February	109%	102%	92%	98%
March	105%	100%	95%	100%
April	103%	88%	97%	114%
May	104%	73%	96%	137%
June	104%	71%	96%	141%
July	104%	77%	96%	130%
August	104%	97%	96%	103%
September	105%	98%	95%	102%
October	103%	89%	97%	112%
November	106%	104%	94%	96%
December	117%	101%	85%	99%

3.5 Calculation of Firm and Non-Firm Energy Amounts - If in any month after COD the Eligible Energy for the month exceeds the Monthly Firm Energy Amount for that month, the amount of Firm Energy and Non-Firm Energy delivered during Heavy Load Hours is determined by multiplying the total Firm Energy or Non-Firm Energy amount for that month, as applicable, by the proportion of total Eligible Energy delivered during Heavy Load Hours in that month. The remainder of the Energy in each case will be deemed to have been delivered in Light Load Hours. The following provides an illustration of the application of this section:

	HLH	LLH	Total
Tendered Firm Energy	N/A	N/A	20
Total Eligible Energy delivered <i>as a % of total</i>	30 <i>60%</i>	20 <i>40%</i>	50 <i>100%</i>
Firm Energy delivered	12	8	20
Tier 1 Non-Firm Energy delivered	12	8	20
Tier 2 Non-Firm Energy delivered	6	4	10

3.6 Third Person Sales - Where the Seller has sold Energy to a third Person in accordance with section 7.5, there shall be deducted from the amount otherwise payable by the Buyer to the Seller in respect of the Energy that is deemed to be Eligible Energy pursuant to section 7.9 an amount equal to any revenue received by the Seller from the third Person for that Energy.

4. Property Tax Flow Through

In each year during the Term after COD, provided that the taxes payable in respect of the Seller's Plant in that year exceed the taxes payable in respect of the Seller's Plant during the year in which COD occurred determined in accordance with the following formula (where the definitions applicable to such formula have the meaning given below):

$$[(TRI_n * AVI_n) + (TRi_n * AVi_n)] > [(TRI_{COD} * AVI_{COD}) + (TRi_{COD} * AVi_{COD})],$$

then, the Buyer shall pay the Seller an amount determined in accordance with the following formula:

Payment Amount = (the greater of (i) zero and (ii) the amount determined in accordance with the following formula):

$$\{[(TRI_n - TRI_{COD}) * AVI_n] + [(TRi_n - TRi_{COD}) * AVi_n]\} * 0.5$$

Where:

TRI	=	Tax rates for the land on which the Seller's Plant is located
TRi	=	Tax rates for the improvements
AVI	=	Assessed value of the land on which the Seller's Plant is located
AVi	=	Assessed value of the improvements
n	=	the year in which the tax invoice is received by the Seller

"tax" means any ad valorem tax imposed by any Governmental Authority with respect to the Seller's Plant, including the associated land, as shown on the annual property tax notice for the Seller's Plant.

"improvements" means those improvements forming part of the Seller's Plant at COD.

Notwithstanding the foregoing, the Buyer will only be required to pay a portion of the amount determined in accordance with the foregoing formula based on the portion of the year following COD or the portion of the year prior to termination, as applicable. In addition, the amount payable by the Buyer will be reduced on a proportionate basis for each day in which the Seller does not deliver Eligible Energy to the Buyer, except where the Seller is excused from its delivery obligation under subsection 7.8(a).

The Seller shall have the burden of proving which improvements formed part of the Seller's Plant at COD. In each year during the Term after COD, within 60 days after receipt of the tax statement for the Seller's Plant, the Seller shall provide an invoice to the Buyer for any amount owing by the Buyer to the Seller pursuant to this section, together with all information and documents reasonably required to support the invoice. The Buyer shall pay any amount owing by the Buyer to the Seller under this section within 60 days after receipt from the Seller of an invoice in accordance with this section.

5. No Further Payment

5.1 The amounts payable by the Buyer as specified in this Appendix 3 are the full and complete payment and consideration payable by the Buyer for all Eligible Energy under this EPA.

APPENDIX 4

COD CERTIFICATE

_____ PROJECT

TO: British Columbia Hydro and Power Authority (the “**Buyer**”)RE: Electricity Purchase Agreement (“**EPA**”) made as of ●, 2006 between the Buyer and ●
(the “**Seller**”) for _____ Project

I, [name of senior officer], in my capacity as [title of senior officer] of the Seller, and not in my personal capacity, certify on behalf of the Seller that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this Certificate have the meanings given in the EPA.
2. **COD Requirements** - The Seller has satisfied the requirements for COD as set out in section 5.2 of the EPA. Attached to this Certificate is all evidence required to demonstrate that the Seller has satisfied all such requirements.
3. **No Material Default** - No event which constitutes a Buyer Termination Event under subsection (a) or (e) of the definition of “Buyer Termination Event” in Appendix 1 to the EPA has occurred. The Seller has obtained all Material Permits and is not in material default under any Material Permit (and all Material Permits are in full force and effect), any tenure agreement for the site on which the Seller’s Plant is located, the Interconnection Agreement or the Facilities Agreement.

Dated this _____ day of _____, 200____.

[name of senior officer]

[title of senior officer]

[Attach to the Certificate in tabbed format all documents and evidence required under section 5.2 of the EPA. Where documents have previously been provided to the Buyer, so indicate and attach a copy of the letter transmitting such documents to the Buyer.]

APPENDIX 5

SELLER'S PLANT DESCRIPTION

[Note to Bidders: To be inserted from the Seller's Tender - See CFT Form #2]

APPENDIX 6

SAMPLE FORM STANDBY LETTER OF CREDIT

*[Issuing Bank Name & Address]***Date of Issue:** [Date]

Irrevocable Standby Letter of Credit

[Number]

Applicant:

Beneficiary:*[Seller Name and Address]*

British Columbia Hydro and Power Authority

At the request and for the account of the Applicant, we hereby establish in favour of the Beneficiary our irrevocable standby Letter Of Credit No. (*[Number]*) (hereinafter called the “**Letter of Credit**”) for an amount not exceeding *[Currency and Amount both in letters and numbers]*.

We, *[Bank Name and Address]* hereby unconditionally and irrevocably undertake and bind ourselves, and our successors and assigns, to pay you immediately, the sum, which you claim upon receipt of the following documents:

- (1) your signed written demand specifying the amount claimed (not exceeding *[Dollar Amount]*), and certifying that such amount is due to you by the Applicant under the terms of an Electricity Purchase Agreement between you and the Applicant made as of *[Date]*; and
- (2) this original Letter of Credit must be presented with your demand for payment for endorsement purposes.

Partial drawings are allowed. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

This Letter of Credit takes effect from the date of issue set forth above, and shall remain valid until [] However, it is a condition of this Letter of Credit that it will be automatically extended without notice for a further one year period from the present or any future expiry date unless at least ninety (90) days prior to such expiry date we notify you in writing by courier or registered mail at your address above that we elect not to consider this Letter of Credit to be extended for any additional period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, (Publication No. 500). This Letter of Credit is governed by the laws applicable in the Province of British Columbia. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby. Notwithstanding Article 17 of said publication, if this Letter of

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Credit expires during an interruption of business as described in Article 17, we agree to effect payment if this Letter of Credit is drawn within 15 days after resumption of normal business.

Authorized Signing Officer

[Bank Name]

Authorized Signing Officer

[Bank Name]

APPENDIX 7

SAMPLE FORM LENDER CONSENT AGREEMENT

(See section 16.3)

THIS AGREEMENT is made as of _____, 200_,

AMONG:

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

(the “**Buyer**”)

AND:

[**COMPANY**], a company under the laws of _____ having an address at _____,

(the “**Company**”)

AND:

[**LENDER**], a _____ under the laws of _____ having an address at _____,

(the “**Lender**”).

WHEREAS:

- A. The Buyer and the Company entered into an Electricity Purchase Agreement made as of _____ (as amended from time to time, the “EPA”);
- B. The Company has obtained certain credit facilities (the “Credit”) from the Lender for the purposes of financing the design, construction, operation and maintenance of the Seller’s Plant (as defined in the EPA);
- C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations of the Company under the Credit, the Company has granted certain security to and in favour of the Lender, including an assignment of the right, title and interest of the Company under the EPA and security on the Seller’s Plant (collectively, the “Lender Security”); and
- D. The Lender has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Company and the Lender

to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:
 - (a) **“Assumption Notice”** means a notice given by the Lender to the Buyer pursuant to subsection 6.1(a) of this Agreement;
 - (b) **“Default or Termination Notice”** means a notice given to the Company by the Buyer under the EPA that, with or without the lapse of time, entitles, or will entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Company to cure the default or other circumstance in respect of which the notice is given;
 - (c) **“Receiver”** means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender; and
 - (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.
2. **EPA Amendments:** The Buyer and the Company acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has been amended only by the documents attached hereto as Schedule A.
3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Lender that:
 - (a) the EPA has been duly authorized, executed and delivered by the Buyer;
 - (b) the Buyer has not received any notice of assignment by the Company of all or any part of their right, title and interest in and to the EPA, except to the Lender;
 - (c) the Buyer has not given any Default or Termination Notice;
 - (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
 - (e) the Buyer shall not enter into any agreement with the Company to materially amend the EPA, or enter into any agreement with the Company to terminate the EPA, without giving the Lender not less than 30 days' prior written notice.
4. **Assignment of EPA to Lender:**
 - 4.1 ***Buyer Acknowledgement:*** The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Company to the Lender of all the right, title and interest of the Company in and to the EPA made pursuant to and in accordance with the Lender Security.
 - 4.2 ***Lender Acknowledgement:*** The Lender acknowledges that:
 - (a) it has received a copy of the EPA; and

- (b) the assignment by the Company to the Lender of the EPA pursuant to the Lender Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.3 *Confidentiality:* The Lender covenants and agrees with the Buyer to be bound by the provisions of section 20.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.4 *Company Representation:* The Company represents and warrants to the Buyer that the Lender is the only person, other than the Buyer, to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Lender that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Lender a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Company;
- (b) shall not exercise any right it may have to terminate the EPA or any right pursuant to Article 14 of the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Lender a copy of the Default or Termination Notice entitling the Buyer to terminate or exercise any right pursuant to Article 14 of the EPA; and (ii) the date on which the Buyer is entitled to terminate or exercise any right pursuant to Article 14 of the EPA;
- (c) shall not, provided that there is no other Buyer Termination Event under the EPA, terminate the EPA based on the Bankruptcy or Insolvency of the Seller if the Lender is promptly and diligently prosecuting to completion enforcement proceedings under the Lender Security until 30 days after the expiry of any court ordered period restricting the termination of the EPA; and
- (d) shall not exercise any right it may have under section 9.5 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Lender with a copy of the notice delivered by the Buyer to the Seller under section 9.5 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Lender to cure, or cause the cure of, any default of the Company under the EPA that would be curable by the Company, whether or not an Assumption Notice is given.

6. **Realization by Lender:**

6.1 *Assumption Notice and/or Sale:* If the Company has defaulted under the Credit or the Lender Security and the Lender has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Lender shall either:

- (a) give the Buyer written notice (an "**Assumption Notice**") stating that the Lender is assuming the EPA, whereupon:
 - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the

Company under the EPA, and the Lender shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Company;

- (ii) notwithstanding subparagraph (i), the Lender shall not be liable to the Buyer for defaults of the Company occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Lender wishes to cause the Company to assign all of the Company's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Company and the assignee complying with all provisions of the EPA relative to such assignment.

The Buyer agrees that if the Lender enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 Lender Liability and Release: The Lender assumes no liability to the Buyer under the EPA unless and until the Lender gives an Assumption Notice. Thereafter, if the Lender completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Lender shall be released from all liability and obligations of the Company to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 Company not Released: Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to subsection 6.1(b) of this Agreement releases the Company from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 Receiver Included: References in this section 6 to the Lender include a Receiver.

7. Notices: Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

- (a) Buyer at:

British Columbia Hydro and Power Authority

Attention: _____

Facsimile No.: _____

- (b) [Company] at:

Attention: _____

Facsimile No.: _____

(c) **[Lender]** at:

 Attention: _____
 Facsimile No.: _____

Notices given by facsimile shall be deemed to be received on the business day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Lender acknowledges that upon an Assumption Notice being given, the Lender will become party to, and bound by, the agreements to arbitrate contained in section 20.7 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Lender Security. The Lender shall give the Buyer prompt notice of the full and final discharge of all of the Lender Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.

13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.

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

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

[COMPANY]

By: _____
 (Signature)

By: _____
 (Signature)

Name: _____

Name: _____

Title: _____

Title: _____

[LENDER]

By: _____
(Signature)

Name: _____

Title: _____

APPENDIX 8

SAMPLE FORM DEVELOPMENT PROGRESS REPORT

BC Hydro Quarterly Development Report

For the quarter ending: _____

Report Number: _____

Project Name: _____

Tasks:	Percentage of Completion					Comments
	5%	25%	50%	75%	100%	
Permitting:						
Water Licence <i>[Note to Bidders: This section will be expanded in the Awarded EPA to contain a list of Permits relevant to the Bidder's Project based on the information in the Bidder's Project Submission.]</i>						
Zoning Approval						
Subdivision Approval						
Leave to Construct						
Other Permits						
Financing:						
Construction						
Project Equity						
Long Term Financing						
Project Design:						
Preliminary						
Final						
Interconnection:						
Studies (Please describe the status of each interconnection study)						
Construction						
Major Equipment:						
Ordering						
Delivery						
Installation						
Construction:						
Road						
Powerhouse						
Other						

Key Project Tasks:	Target	Actual
Permitting Complete		
Financing Complete		
Interconnection/Facilities		

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Agreements Signed		
Major Equipment Ordered		
Commence Construction		
Begin Commissioning		

COD:

Current Estimate: _____

Prepared by: _____

Submitted by: _____

APPENDIX 9

ADDRESSES FOR DELIVERY OF NOTICES

Subject to subsection 20.4(e), the address for each of the Parties for notices is as follows:

Buyer: BC Hydro	Seller:
All Notices (Except as set out below)	
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	To: Address: Email:
Development Reports	
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	N/A
Planned Outages, Operating Plans, Notice of Outages, Energy Schedules	
To: Resource Coordinator, Plant Operations Group, Generation Address: 6911 Southpoint Drive, E15 Burnaby, B. C. V3N 4X8 Attention: (name to be inserted in Awarded EPA) Email: (to be inserted in Awarded EPA) Copy to: Contract Management, as per all Notices address	To: Address: Email:
GHG Compliance Reports	
To: Triple Bottom Line Strategy Address: 333 Dunsmuir Street, 9 th floor Vancouver, B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: (to be inserted in Awarded EPA) Copy to: Contract Management, as per all Notices address	To: Address: Email:

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Buyer: BC Hydro	Seller:
Invoices and Statements	
To: IPP Invoicing Address: 333 Dunsmuir Street, 16 th floor Vancouver, B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Invoicing@bchydro.com	To: Address: Email:
Performance Security	
To: Distribution Line of Business, Finance Address: 6911 Southpoint Drive, E16 Burnaby, B.C. V3N 4X8 Attention: (name to be inserted in Awarded EPA) Copy to: Contract Management, as per all Notices address	To: Address: Email:
Insurance	
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	To: Address: Email:

If the Seller is a joint venture, general partnership or limited partnership, a notice given in accordance with the foregoing provisions is deemed to have been given to the Seller and to each joint venturer and/or partner as applicable.

APPENDIX 10

SPECIAL TERMS AND CONDITIONS

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PART A - HOURLY FIRM PROJECTS

This Part applies to Sellers that submitted an Hourly Firm Energy Profile in the CFT process.

1. Subsection 5.2(b) is deleted and replaced with the following:
 - (b) the Seller's Plant has generated Energy in compliance with all Material Permits for 72 continuous hours in an amount not less than the greater of: (i) 95% of the Hourly Firm Energy Amount for each such hour; and (ii) 20% of the Plant Capacity multiplied by 1 hour;
2. Section 5.6 is amended by deleting the words "Monthly Firm Energy Amount" wherever those words appear in that section and replacing them with "Hourly Firm Energy Amount".
3. Subsection 6.4(a) is deleted and replaced with the following:

"(a) ensure that no Planned Outage occurs during the Peak Demand Months except with the consent of the Buyer, which consent will not be unreasonably withheld where the Seller is required to conduct a Planned Outage during Peak Demand Months by reason of Law, Permits or contracts and where, in the case of a contractual requirement, the Seller has used commercially reasonable efforts to avoid inclusion of such requirement in the contract. Where the Seller is authorized under this section to conduct a Planned Outage or Planned Outages during Peak Demand Months, the total number of hours of such Planned Outages in any November to March period shall not exceed 180;"
4. Subsection 6.6(f) is deleted and replaced with the following:

"(f) **Energy Schedules** - After COD on each Thursday by 12:00 PPT, the Seller shall deliver to the Buyer a schedule of the expected deliveries of Eligible Energy in each hour of each day for the next succeeding week commencing at 00:00 PPT on Monday, provided that such schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer forthwith upon becoming aware of any expected material change in a filed Energy schedule."
5. Section 7.2 is deleted and replaced with the following:

"7.2 **Modification to Hourly Firm Energy Amount** - The Seller may at any time prior to the first anniversary of COD, give notice to the Buyer that the Seller elects to increase or decrease any Hourly Firm Energy Amount to take effect on the first day of the month immediately following the giving of such notice, provided that the net change in the annual total of the Monthly Firm Energy Amounts resulting from such increases or decreases in any Hourly Firm Energy Amount does not exceed 10%. Upon receipt of such notice, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 2 in accordance with the Seller's notice, provided that:

 - (a) any such increase or decrease in any of the Hourly Firm Energy Amounts does not result in the total of the Monthly Firm Energy Amounts for the period from April to July, inclusive, exceeding one-third of the annual total of the Monthly Firm Energy Amounts;

- (b) any such increase or decrease in the Hourly Firm Energy Amounts does not result in any Hourly Firm Energy Amount exceeding the Plant Capacity multiplied by 1 hour; and
 - (c) the provisions of subsections 4.2(a) and (b) apply to any such increase or decrease in the Hourly Firm Energy Amounts, *mutatis mutandis*; and
 - (d) the Seller may give only one notice under this section.
- 6. Section 7.3 is deleted and replaced with the following:

“7.3 **Post-COD Sale of Energy** - Subject to subsection 7.8(a), in each hour during the Term after COD, the Seller shall sell and deliver to the Buyer at the POI, the Hourly Firm Energy Amount for the applicable hour.”
- 7. Section 7.4 is amended by deleting the word “month” and replacing it with “hour”.
- 8. Section 7.9 is amended by:
 - (a) deleting the word “month” wherever it appears in that section, except in subsection 7.9(a)(ii), and replacing it with “hour”; and
 - (b) deleting the words “in that month” in subsection 7.9(a)(ii) and replacing them with “in the month for which the amount of Eligible Energy is being calculated”; and
 - (c) deleting the balance of the section after subsection (b) and replacing it with the following:

“then, notwithstanding that the Buyer is excused under subsection 7.8(b) from its obligations under section 7.4, in the case of an event described in subsection 7.9(a), that portion of the applicable Hourly Firm Energy Amount that could have been generated and delivered to the POI in each hour after the 24 hours has elapsed but for the occurrence of the event described in subsection 7.9(a), will be deemed to be Eligible Energy, and in the case of an event described in subsection 7.9(b), the amount of Energy, not exceeding the Plant Capacity, that could have been generated and delivered to the POI but for the occurrence of the event described in subsection 7.9(b) will be deemed to be Eligible Energy. The amount of Energy that could have been generated and delivered to the POI during an event described in subsection 7.9(a) or (b), will be determined based on the Seller’s Energy schedule for each hour in the applicable period, meter readings with respect to the Energy Source, if applicable, readings of the Metering Equipment before and after the occurrence of the event described in subsection 7.9(a) or (b) and other available information. There will be no deemed Eligible Energy during any period specified as a Planned Outage period in a notice delivered by the Seller under section 6.4. For greater certainty, the provisions of section 7.9 will not apply during any period when either Party is excused, in accordance with Article 11, from its obligation to deliver, or to accept delivery of, Energy as a result of a Force Majeure.
- 9. Section 12.2 is deleted and replaced with the following:

“12.2 **Delivery Shortfalls** - If in any hour after the first anniversary of COD, the Delivered Eligible Energy in that hour is less than 90% of the Hourly Firm Energy Amount for that hour, the Seller shall pay LDs to the Buyer calculated as follows:

$$\text{LD Amount} = \text{LD Factor} * ((0.9 * \text{Hourly Firm Energy Amount}) - \text{Delivered Eligible Energy})$$

Where:

- (a) the Hourly Firm Energy Amount is the amount set out in Appendix 2 for the relevant hour less an amount equal to the Hourly Firm Energy Amount divided by 60 for each minute in which the Seller is excused under subsection 7.8(a) from the obligation to deliver Energy;
- (b) “Delivered Eligible Energy” means in each hour the amount of Eligible Energy determined pursuant to subsection (a) of the definition of “Eligible Energy” for that hour, but excluding any Energy delivered after the start time and prior to the end time for an Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4;
- (c) LD Factor = the greater of: (i) zero and (ii) $A - [(FEP / (1 - L)) + FEPA]$

Where:

- (i) A = the lesser of:
 - (I) the LD Cap; and
 - (II) the Mid-C Index;
- (ii) $L = \text{_____} \%$;
- (iii) FEP = the Firm Energy Price for the hour in which the delivery shortfall occurred;
- (iv) $FEPA \text{ (Firm Energy Price Adjuster)}_n = \$\text{_____/MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 2006}}$

Where:

n = the year for which the Firm Energy Price Adjuster is being calculated

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately preceding the year for which the Firm Energy Price Adjuster is being calculated;

[Note to Bidders – L will be the greater of (i) zero and (ii) an amount determined from energy loss information used in the CFT evaluation. FEPA will be the sum of the following: -3.00 if the Green Attributes are transferred to BC Hydro; -3.00 to reflect the fact that the Bidder tendered an Hourly Firm Energy Profile; and X if GHG emission offset obligations are transferred to BC Hydro where “X” is the amount determined from the GHG Adjustment Table (CFT Reference Document), based on the Bidder’s tendered Guaranteed GHG Intensity]

- (v) “Mid-C” means the mid-Columbia electricity region;
- (vi) “Mid C Index” means the Dow Jones Mid-C daily firm On-Peak Index, the Dow Jones Mid-C daily firm Off-Peak Index or, on NERC holidays only, the Dow Jones Mid-C 24 hour firm Sunday and NERC Holidays Index as applicable to the hour in which the delivery shortfall occurred. Amounts quoted in U.S. dollars

will be converted to Canadian dollars using the Bank of Canada daily “noon rate” for the day in which the delivery shortfall occurred;

- (vii) “LD Cap” means \$100/MWh adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$LD\ Cap_n = \$100/MWh * CPI_{January\ 1\ n} / CPI_{January\ 1\ 2006}$, as further adjusted to an amount (expressed in \$/MWh) equal to the amount determined in accordance with the foregoing calculation multiplied by the percentage of the Escalated Bid Price adjustment applicable to the month and hour in which the delivery shortfall occurred as set out in the table in section 3.4 of Appendix 3

Where:

n = the year for which the escalated LD Cap is being calculated

$CPI_{January\ 1\ n}$ = the CPI for December in the year immediately preceding the year for which the escalated LD Cap is being calculated.

Any LDs owing by the Seller to the Buyer pursuant to this section 12.2 shall be payable on 15th day of the month following the month in which the delivery shortfall occurred.”

10. Section 12.3 is amended by deleting the word “Monthly” and replacing it with “Hourly”.
11. Subsections 15.4(a) and 15.5(a) are amended by deleting the words “set out in Appendix 2” and by inserting the word “annual” before the words “Monthly Firm Energy Amounts” in both sections.
12. Subsection (e) in the definition of “**Buyer Termination Event**” in Appendix 1 is amended by deleting the word “Monthly” and replacing it with “Hourly”.
13. The definition of “**Eligible Energy**” in Appendix 1 is amended by deleting the word “month” and replacing it with “hour”.
14. The following definition is added to Appendix 1:

“**Hourly Firm Energy Amount**” means for each hour after COD, the amount of Energy the Seller is required to deliver in that hour as set out in Appendix 2.”
15. The definition of “**Monthly Firm Energy Amount**” in Appendix 1 is deleted and replaced with the following:

“**Monthly Firm Energy Amount**” means for each month after COD the sum of the Hourly Firm Energy Amounts for that month calculated based on the number of hours for that month set out in Part 2 of Appendix 2.
16. The definition of “**Monthly Firm Energy Delivery Rate**” is deleted from Appendix 1.
17. The definition of “**Performance Security**” in Appendix 1 is amended by deleting the words “set out in Appendix 2”, and by inserting the word “annual” prior to the words “Monthly Firm Energy Amounts”.

18. The note with respect to leap years at the bottom of Appendix 2 is deleted.
19. The definition of “**Firm Energy**” in section 1.1 of Appendix 3 is deleted and replaced with the following:

“**Firm Energy**” means in each hour of the Term after COD all Eligible Energy in that hour not exceeding the Hourly Firm Energy Amount for that hour, but excluding any Eligible Energy delivered after the start time and prior to the end time for an Authorized Planned Outage as set out in the notice with respect to the Authorized Planned Outage under section 6.4 and all such Eligible Energy will be considered Non-Firm Energy.
20. The definition of “**Non-Firm Energy**” in Appendix 3 is deleted and replaced with the following:

“**Non-Firm Energy**” means in each hour of the Term after COD all Eligible Energy in that hour in excess of the Hourly Firm Energy Amount for that hour and all Eligible Energy deemed to be Non-Firm Energy pursuant to subsection 1.1(f) of this Appendix.
21. The definition of “**Tier 1 Non-Firm Energy**” in Appendix 3 is deleted and replaced with the following:

“**Tier 1 Non-Firm Energy**” means in each hour of the Term after COD all Eligible Energy in that hour in excess of the Hourly Firm Energy Amount not exceeding an amount equal to the Hourly Firm Energy Amount for that hour.
22. The definition of “**Tier 2 Non-Firm Energy**” in Appendix 3 is deleted and replaced with the following:

“**Tier 2 Non-Firm Energy**” means in each hour during the Term after COD all Non-Firm Energy in excess of the Tier 1 Non-Firm Energy for that hour.
23. Section 3.5 of Appendix 3 is deleted.

PART B - PROJECTS THAT RECEIVE GREEN CREDIT

This Part applies to Sellers that tendered the Green Attributes to BC Hydro in the CFT process.

1. **Definitions** - The following definitions are added to Appendix 1:

“**Green Reduction Amount**” or “**GRA**” means \$3.00/ MWh as adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{GRA}_n = \$3.00/\text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 } 2006}$$

Where:

n= the year for which the Green Reduction Amount is being calculated

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately prior to the year for which the Green Reduction Amount is being calculated.

“**EcoLogo^M Certified Energy Amount**” means the amount of Eligible Energy in each year that qualified for the EcoLogo^M designation as evidenced in a certificate delivered by the Seller to the Buyer under section 7A.5.

“**On-Site Emission Reduction Rights**” means any credit, reduction right, offset, 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, avoidance, sequestration or mitigation of emissions at or from the Seller’s Plant.

2. The definition of “**Green Attributes**” in Appendix 1 is amended by deleting subsection (b)(ii) from that definition and by adding the following words at the end of the definition: “but excluding any On-Site Emission Reduction Rights and any of the foregoing that arise in connection with Pre-COD Energy, other than Test Energy paid for by the Buyer under section 2.2 of Appendix 3”.

3. Subsection 6.2(a) is amended by adding the words “and under section 7A.5” after the words “subsection 6.3(f)”.

4. **Replacement of section 7.10** - Section 7.10 is deleted and the following is added as Article 7A:

7A. - GREEN ATTRIBUTES

7A.1 **Transfer of Green Attributes** - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Green Attributes. The Buyer shall not be required to make any payment for the Green Attributes other than payment for Eligible Energy in accordance with Appendix 3. The Seller, upon the reasonable request of the Buyer, shall do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required to give effect to this section.

7A.2 **On-Site Emission Reduction Rights** - The Seller retains all right, title and interest in and to any On-Site Emission Reduction Rights.

7A.3 **Exclusivity** - Except as set out in section 7A.13, the Seller shall not commit, sell, or transfer any Green Attributes to any Person other than the Buyer, or otherwise use or apply any Green Attributes for any purpose whatsoever at any time during the Term. The

Seller shall ensure that all marketing materials produced by or for the Seller, all public or other statements by the Seller and all other communications by the Seller in any form whatsoever, contain no false or misleading statements concerning the ownership of the Energy or Green Attributes or the destination, end user or recipient of the Energy or Green Attributes. The Seller acknowledges that damages are not an adequate remedy to the Buyer for a breach by the Seller of this section and that the Buyer shall be entitled to an injunction to prevent any breach by the Seller of this section and to an order requiring the Seller to take such other actions as may be required to remedy the effects of any breach of this section.

- 7A.4 **Representations and Warranties** - The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA that the Seller is the legal and beneficial owner of the Green Attributes free and clear of all liens, claims, charges and encumbrances of any kind whatsoever and no other Person has any agreement or right of any kind whatsoever to purchase or otherwise to acquire or to claim or otherwise make any use whatsoever of the Green Attributes.
- 7A.5 **EcoLogo^M Certification** - The Seller shall obtain EcoLogo^M Certification by the first anniversary of COD and shall maintain the EcoLogo^M Certification throughout the remainder of the Term. By May 15 in each year after COD, the Seller shall deliver to the Buyer a certificate issued pursuant to Environment Canada's Environmental Choice^M program certifying the amount (MWh) of Eligible Energy delivered by the Seller to the Buyer in the immediately preceding year that qualified for the EcoLogo^M designation. The Seller shall notify the Buyer forthwith if the seller fails to obtain EcoLogo^M Certification by the date specified in this section or if at any time during the Term the Seller does not have EcoLogo Certification.
- 7A.6 **Alternate Certification** - The Seller shall at the Buyer's request and at the Buyer's cost use commercially reasonable efforts to apply for and diligently pursue and maintain any additional or alternate certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Energy has Green Attributes. Any failure by the Seller to use commercially reasonable efforts pursuant to this section is a "material default" for purposes of this EPA, and the Buyer may terminate the EPA under subsection 15.1(d).
- 7A.7 **Fees** - Except as set out in this section, the Buyer shall reimburse the Seller for all certification, audit and licensing fees paid by the Seller to obtain the EcoLogo^M Certification (including the annual certificate described in section 7A.5) or any alternate certification under section 7A.6, but excluding any fees to obtain the letter from TerraChoice Environmental Marketing required pursuant to the CFT. The Buyer shall reimburse the Seller for such fees within 30 days after receipt of an invoice, together with reasonable supporting information, for such fees. The Buyer shall not be required to pay for any audit or other certification process in which the Seller's Plant and all or part of the Energy does not qualify for EcoLogo^M Certification, or for any audit or recertification process following a loss of EcoLogo^M Certification by the Seller's Plant, and the Seller shall pay all costs associated with any such audit and certification process.

7A.8 Energy Price Reduction - If:

- (a) the Seller fails to obtain EcoLogo^M Certification by the date specified in section 7A.5; or
- (b) at any time during the Term the Seller's Plant does not have EcoLogo^M Certification for any reason whatsoever,

then the Escalated Bid Price for Eligible Energy will be reduced by an amount equal to the Green Reduction Amount. In the case of subsection (a) above, such reductions shall take effect from COD and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after COD. In the case of subsection (b) above the reduction will take effect from and after the date on which the EcoLogo^M Certification ceased to be in effect and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after the date on which the EcoLogo^M Certification ceased to be in effect. For greater certainty, notwithstanding any payment reduction pursuant to this section, the Buyer will throughout the remainder of the Term have title to the Green Attributes and the provisions of section 7A.3 will remain in effect.

7A.9 Restoration of Price - If the Escalated Bid Price is reduced under section 7A.8 and thereafter the Seller demonstrates to the Buyer that the Seller's Plant has obtained EcoLogo^M Certification, other than as a result of expenditures by the Buyer under section 7A.10, or if the Seller obtains an alternate certification at the Buyer's request under section 7A.6, then from and after the date on which the Seller provides such evidence to the Buyer or obtains such alternate certification the Escalated Bid Price will no longer be reduced by an amount equal to the Green Reduction Amount.

7A.10 Cure by the Buyer - If the Seller fails to obtain or maintain EcoLogo^M Certification, as required under section 7A.5 or any alternate certification under section 7A.6, then in addition to applying the payment reduction specified in section 7A.8 (applicable only to the EcoLogo^M Certification), the Buyer in its sole and unfettered discretion, may direct the Seller to take all steps required to obtain EcoLogo^M Certification or an alternate certification by implementing measures that are technologically feasible and not inconsistent with Good Utility Practice, Permits or Applicable Laws and the Seller shall comply promptly and diligently with that direction. Except where the failure to obtain or maintain EcoLogo^M Certification or an alternate certification results from a breach of Laws or Permits, the Buyer shall reimburse the Seller for reasonable direct capital and incremental operating costs incurred by the Seller resulting from compliance with the Buyer's direction within 30 days after submission of an invoice and supporting documentation reasonably satisfactory to the Buyer to evidence such costs. The Seller shall maintain accurate and complete records of such costs, and the Buyer or its designated representative may audit such costs and in that event the Seller shall provide all reasonable cooperation to the Buyer or its designated representative including access to all original records related to such costs. For greater certainty, notwithstanding the performance and completion of compliance measures under this section and the grant or reinstatement of EcoLogo^M Certification, the payment reductions under section 7A.8 will

continue in effect for the remainder of the Term and the Buyer will continue to have title to the Green Attributes.

- 7A.11 **Termination** - If the Seller fails to comply promptly and diligently with a direction under section 7A.10 and such failure is not cured within 30 days of notice from the Buyer to the Seller, then the Seller will be in material default of its obligations under this EPA and the Buyer may terminate the EPA under subsection 15.1(d).
- 7A.12 **Exclusive Remedy** - The remedies set out or referenced in sections 7A.6, 7A.8, 7A.10 and 7A.11 are the sole and exclusive remedies available to the Buyer for any failure by the Seller to obtain or maintain EcoLogo^M Certification or any alternate certification.
- 7A.13 **Transfer to Governmental Authority** - If the Seller has been notified that the Seller's Plant or the Energy qualifies for Canada's Renewable Power Production Incentive or Wind Power Production Incentive or any other Governmental Authority incentive associated with the generation of energy with specified environmental attributes and the transfer of the Green Attributes to the applicable Governmental Authority is required for the Seller to obtain the incentive, the Buyer shall transfer the Green Attributes to such Governmental Authority, provided that the Seller has given notice to the Buyer pursuant to this section by not later than COD. If the Buyer is required to transfer the Green Attributes to a Governmental Authority pursuant to this section, then the Parties shall enter into an amendment to this EPA to delete Article 7A from the EPA and to reduce the Escalated Bid Price by an amount equal to the Green Reduction Amount for all Eligible Energy delivered or deemed to be delivered from and after the date of the notice by the Seller to the Buyer under this section and the Seller shall within 15 days after receipt of an invoice, reimburse the Buyer for all costs incurred by the Buyer under section 7A.7 prior to the date of notice from the Seller under this section.
- 7A.14 **Information Requirements** - Without limiting section 6.5, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer: (a) all information the Buyer requires to verify the quantity of Energy generated by the Seller's Plant, qualification of the Seller's Plant and all or part of the Energy for EcoLogo^M Certification or an alternate certification under section 7A.6, the status of the EcoLogo^M Certification or an alternate certification under section 7A.6, and the existence, nature and quantity of Green Attributes; (b) any information required for the purposes of any Green Attribute or energy tracking system as directed by the Buyer; and (c) any other information the Buyer requires to enable the Buyer or its Affiliates to obtain or realize the full benefit of the Green Attributes, including sales of the Green Attributes to third parties, provided that if the Buyer requests any information pursuant to subsection (b) or (c) above that the Seller would not otherwise be required to maintain for purposes of administering this EPA, the Buyer shall reimburse the Seller for all reasonable costs incurred by the Seller in obtaining or maintaining such information.
- 7A.15 **Audit Rights** - The Buyer, any Affiliate of the Buyer and any third Person who has entered into a contract with the Buyer or any Affiliate of the Buyer to purchase Green Attributes may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets to verify compliance with the requirements for EcoLogo^M Certification or an alternate certification under section 7A.6. The Seller shall promptly provide any consents required to enable the Buyer, any Affiliate of the Buyer or any third Person who has entered into a contract with the Buyer to purchase Green Attributes to: (i) make enquiries with

Governmental Authorities concerning the status of compliance by the Seller and the Seller's Plant with applicable Laws and Permits; (ii) make enquiries of TerraChoice Environmental Marketing or any other third Person regarding the status of the EcoLogo^M Certification; and (iii) obtain copies of all audits, reviews or inspections conducted by the Seller, TerraChoice Environmental Marketing or any other third Person in connection with the application by the Seller to obtain and maintain EcoLogo^M Certification, or any alternate certification under section 7A.6.

7A.16 **Confidentiality** - The Seller consents to the disclosure to any Person or any Governmental Authority of any Confidential Information with respect to the Energy and/or the Seller's Plant the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Green Attributes, including sales of Green Attributes to third parties.

7A.17 **Annual Payment Calculation** - By not later than June 15 in each year after COD the Seller shall pay to the Buyer an amount calculated in accordance with the following formula:

Payment Amount = the greater of (a) zero and (b) the amount determined in accordance with the following formula:

$$[(A \times B) - C] \times \text{GRA}$$

Where:

A = the percentage of Energy Source(s), as set out in Appendix 5, that is designated as acceptable to generate energy that qualifies for EcoLogo^M Certification in the letter from TerraChocie Environmental filed with the Seller's Tender.

B = the total amount of Eligible Energy (as determined under subsection (a) of the definition of Eligible Energy) delivered by the Seller to the Buyer in the immediately preceding year.

C = the EcoLogo^M Certified Energy Amount.

The foregoing amount shall only be payable by the Seller for periods in which subsection 7A.8 does not apply.

5. Subsection 15.3(b)(ii)(A) is amended by adding the following as subsection (V): "Article 7A with respect only to Green Attributes associated with Eligible Energy delivered prior to termination of the EPA; and".

PART C - PROJECTS THAT TRANSFER GHG EMISSION OFFSET LIABILITY TO BUYER

This Part applies to Sellers that elected in the CFT process to transfer to BC Hydro responsibility for any regulatory obligation to purchase GHG-related Compliance Units up to the Guaranteed GHG Intensity tendered by the Seller in the CFT process.

1. Definitions - The following definitions are added to Appendix 1:

“**Actual GHG Intensity**” means the actual GHG Intensity of the Seller’s Plant in each year.

“**GHG Intensity**” means:

- (i) the GHG intensity for the Seller’s Plant determined in the manner specified under any Laws or Permits applicable to the Seller’s Plant, provided that notwithstanding any provision to the contrary in any such Laws or Permits, the GHG intensity for the Seller’s Plant will be determined without regard to any other facilities owned or operated by the Seller, any Affiliate of the Seller or any other Person; or
- (ii) if there is no Law or Permit in effect which specifies the method of calculating the GHG intensity for the Seller’s Plant, the GHG intensity determined by dividing the total GHG emissions from the Seller’s Plant in the year for which the calculation is being conducted (expressed as metric tonnes of CO₂ equivalent) by the total amount of Eligible Energy (as determined under subsection 7(a) of the definition of “Eligible Energy”) for that year.

“**Guaranteed GHG Intensity**” means TO#6 metric tonnes CO₂ e/ MWh.

2. Section 6.8 is amended by adding the following words at the beginning of that section:

“Subject to section 6.12:”

3. The following is added as section 6.12:

6.12 GHG Compliance Unit Obligation - In each year after COD, on or before the date required pursuant to applicable Laws and Permits, and provided that the Seller has complied with its obligations under this section, the Buyer shall deliver to the Seller that number of Compliance Units calculated in accordance with the following formula:

$$\text{RCUs} = \text{the greater of: (i) zero and (ii) } ([\text{the lesser of AGHGI and GGHGI}] - \text{PI}) * \text{DE}$$

Where:

RCUs = the number of Compliance Units (in metric tonnes CO₂ e/MWh) the Buyer is required to deliver to the Seller

AGHGI = the Actual GHG Intensity

GGHGI = the Guaranteed GHG Intensity

PI = the GHG Intensity permitted under applicable Laws and Permits for the Seller’s Plant

DE = the amount of Eligible Energy delivered by the Seller to the POI during the immediately preceding calendar year.

The Seller shall: (a) by the date that is 30 days prior to the date on which the Buyer is required to deliver Compliance Units to the Seller under this section, deliver a statement to the Buyer, together with all information required to support the statement, setting out the GHG intensity target for the Seller's Plant under applicable Laws and Permits, the Actual GHG Intensity for the immediately preceding year, and the number of Compliance Units the Buyer and the Seller are required to obtain by the date specified in this section; and (b) if the Actual GHG Intensity exceeds the Guaranteed GHG Intensity, obtain any Compliance Units required under applicable Laws and Permits with respect to such excess intensity and provide evidence to the Buyer that the Seller has obtained such Compliance Units. The Seller is responsible for obtaining any Compliance Units required for the period prior to COD. The parties shall enter into any amendment to this section required to reflect the reporting and compliance dates established under applicable Laws and Permits regulating GHG emissions from the Seller's Plant.

PART D - GHG COMPLIANCE COMMITMENT

This Part applies to Sellers that elect in the CFT process to comply with a contractually binding GHG intensity.

1. The following is added as section 6.12 as applicable:

6.12 GHG Compliance Commitment - The Seller shall ensure that the Seller's Plant has a GHG intensity of not more than TO#7 metric tonnes CO₂e/MWh in each year. The Seller shall in the reports required to be delivered by the Seller pursuant to subsection 6.8(a) detail the status of compliance by the Seller with this section during the immediately preceding calendar quarter. If the Seller is not in compliance with the requirements of this section and the Seller fails to remedy such non-compliance within 30 days after the date of notice from the Buyer to the Seller, the Buyer may, but is not required to, on behalf of the Seller, purchase those Compliance Units that are required to remedy, in whole or in part, the Seller's non-compliance with the requirements of this section and the provisions of section 6.8(a) shall apply to such purchase, *mutatis mutandis*. Any failure by the Seller to comply with this section is a "material default" for the purposes of the definition of "Buyer Termination Event" in Appendix 1. Notwithstanding the foregoing, the Seller remains bound by the provisions of section 6.8 in addition to the foregoing commitment.

2. Subsection 9.5(a) is amended by adding the words "or section 6.12" at the end of that subsection.
3. Subsection 9.5(b) is amended by adding the words "or section 6.12" after the words "section 6.8" wherever those words appear in that subsection.
4. Section 12.5 is amended by adding the words "or 6.12" after the words "6.8" in that section, and by deleting the word "or" before the word "6.8" in that section.
5. Section 13.3 is amended by adding the words "or 6.12" after the word "6.8" in that section, and by deleting the word "or" before the word "6.8" in that section.
6. Subsection 15.3(a) is amended by adding the words "or 6.12" after the word "6.8" in that section, and by deleting the word "or" before the word "6.8" in that section.

PART E - PROJECTS INTERCONNECTED TO THE TRANSMISSION SYSTEM OR DISTRIBUTION SYSTEM THROUGH AN INDUSTRIAL HOST FACILITY

This Part applies to Sellers that tendered a Project that has an Indirect Interconnection (as defined in the CFT Glossary) to the Transmission System/Distribution System through an industrial host facility.

1. The provisions of this Part E are applicable for so long as the Electrical Host purchases electricity from the Buyer. If the Electrical Host ceases to purchase electricity from the Buyer, the provisions of this Part E, other than sections 5 and 6, cease to have effect, the Seller shall be required to deliver all Energy to the POI or to such other point of interconnection with the *[Distribution System/Transmission System]* as the Parties may agree in writing and the Parties shall enter into an amendment to the EPA to reflect the foregoing. *[Note to Bidders: The words in bold will be finalized depending on the POI for the bidder's plant.]*
2. Section 6.4 is amended by adding the words “or on the Electrical Host” after the words “materially adverse effect on the operation of the Seller’s Plant”.
3. Section 7.6 is amended by adding the following at the end of that section:

Deliveries of Eligible Energy to an Electrical Host to service the Electrical Host’s electricity requirements will be deemed to be deliveries of Eligible Energy to the Buyer at the POI for purposes of this EPA to the extent such deliveries displace deliveries of electricity from the Buyer to the Electrical Host.

4. Appendix 1 is amended by:

- (a) adding the following definition:

“**Electrical Host**” means a facility which is not itself an electrical generating facility and which is located between the Seller’s Plant and the POI, where the Seller’s Plant is providing electricity to the facility and the Seller’s Plant does not have an independent connection to the *[Transmission System/Distribution System]*.

[Note to Bidders - Where a Bidder is proposing to Tender a Project that is interconnected to the Distribution System or the Transmission System through an Electrical Host, BC Hydro will review its electricity supply contract(s) relating to that Electrical Host and will advise the Bidder prior to the Tender Closing Time of any amendments required to such electricity supply contract(s) to accommodate the Project. Any Tender for such a Project will be deemed to incorporate those amendments or must be accompanied by an appropriate amending agreement signed by the owner of the Electrical Host.]

- (b) deleting the definition of “**POI**” and replacing it with the following:

“**POI**” or “**Point of Interconnection**” means the point of interconnection which is the point at which the Electrical Host interconnects with the *[Transmission System/Distribution System]* as more particularly described in the interconnection agreement between the Electrical Host and the *Transmission Authority/Distribution Authority.*”

5. Everywhere in this EPA where the words “Energy delivered to the POI” or words of similar meaning appear, the words “or deemed pursuant to section 7.6 to be delivered to the POI” are deemed to follow immediately thereafter.

6. All of the provisions of Part G, Appendix 10 are applicable.
7. The Seller will be responsible for, and shall pay within 30 days after receipt of an invoice from the Buyer, all costs reasonably incurred by the Buyer and/or the Electrical Host as required to implement any amendments required to any Electricity Supply Agreement between the Buyer and the Electrical Host as a result of provisions of section 7.5 of the EPA and the interconnection arrangements for the Seller's Plant.

PART F - PROJECTS INTERCONNECTED TO THE DISTRIBUTION SYSTEM

This Part applies to Sellers that tendered a Project that interconnects with the Distribution System.

1. Subsection 4.2(a) is amended by adding the words “Distribution Authority and the” before the words “Transmission Authority” in that subsection.
2. Section 4.5 is amended by:
 - (a) deleting the words “Transmission System” and replacing them with “Distribution System”; and
 - (b) adding the words “and the Distribution Authority” after the words “Transmission Authority” in that section.
3. Subsection 5.2(d)(i) is amended by deleting the words “Transmission Authority” and replacing them with “Distribution Authority”.
4. Section 5.6 is amended by:
 - (a) adding the words “and Direct Assignment Facilities” after the words “Network Upgrades” wherever the words “Network Upgrades” appear in that section; and
 - (b) adding the words “or the Distribution Authority” after the words “the Buyer” in the first sentence of that section.
5. Section 5.7 is amended by adding the words “Distribution Authority and” before the words “Transmission Authority” wherever those words appear in that section.
6. Wherever the words “Facilities Agreement” appear in the EPA, except in the heading to section 20.9, the heading to subsection 6.6(d) and in the definition of “Facilities Agreement” in Appendix 1, the words “, if any,” are added immediately thereafter.
7. Section 6.3 is amended by deleting the words “Transmission System” and replacing them with “Distribution System”.
8. Section 6.4 is amended by adding the words “and the Distribution Authority’s” after the words “Transmission Authority’s”.
9. Section 6.9 is amended by adding the words “and the Distribution Authority” after the words “the Transmission Authority” in that section.
10. Subsection 7.8(a) is amended by deleting the words “Transmission System” and replacing them with “Distribution System” and deleting the words “Transmission Authority” and replacing them with “Distribution Authority”.
11. Subsections 7.8(b)(ii) and (iii) are deleted and replaced with the following and subsection (iv) is renumbered as subsection (iii):
 - (ii) disconnection of the Seller’s Plant from the Distribution System, and any Outage, suspension, constraint or curtailment in the operation of the Distribution System preventing or limiting physical deliveries of Eligible Energy at the POI, provided that the

disconnection, Outage, suspension, constraint or curtailment: (A) results from any Outage, suspension, constraint, curtailment or other event of any kind on the Distribution System; or (B) is implemented pursuant to the Interconnection Agreement, Facilities Agreement, if any, or any other legally enforceable right;

12. Subsection 7.9(a) is deleted and replaced with the following:

“(a) any disconnection of the Seller’s Plant from the Distribution System or any Outage or Outages on the Distribution System or any suspension, constraint or curtailment in the operation of the Distribution System preventing or limiting physical deliveries of Eligible Energy at the POI where such Outages, suspensions, constraints or curtailments exceed, in the aggregate 24 hours, whether or not continuous, in that month, other than a disconnection, Outage, suspension, constraint or curtailment attributable to the Seller or the Seller’s Plant; or”
13. Section 8.1 is amended by adding the words “and Distribution Authority” after the words “Transmission Authority”.
14. Subsection 11.2(f) is amended by deleting the words “Transmission System” and replacing them with “Distribution System”.
15. Section 20.9 is deleted and replaced with the following:

“20.9 Interconnection Agreement and Facilities Agreement - Nothing in the Interconnection Agreement or the Facilities Agreement, if any, 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 or the Facilities Agreement, if any, shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA, and this EPA shall be interpreted and applied as though the Distribution Authority were a third party, including for purposes of determining whether or not a Force Majeure has occurred.”
16. The definition of “**Buyer Termination Event**” in Appendix 1 is amended by deleting subsection (c) from that definition and replacing it with the following:

“(c) the Seller has not by the date that is the earlier of: (i) 60 days after the date of award of this EPA pursuant to the CFT; and (ii) 240 days after the date of issuance by the Distribution Authority to the Seller of the F2006 CFT Preliminary Interconnection Study Report, executed and delivered to the Distribution Authority an application for an impact/design study where the interconnection of the Seller’s Plant will have no impact on the Transmission System, or, where the interconnection of the Seller’s Plant will have an impact on the Transmission System, an interconnection impact study and any related studies, together with the applicable study fee in the form and amount prescribed by the Distribution Authority;”
17. The definition of “**Combined Study Agreement**” in Appendix 1 is deleted.

18. The definition of **“Facilities Agreement”** in Appendix 1 is amended by deleting the words “Transmission Authority” and replacing them with “Distribution Authority”.
19. The definition of **“Force Majeure”** in Appendix 1 is amended by adding the words “or the Distribution Authority” after the words “Transmission Authority” in that section.
20. The words “Transmission System” in the definition of **“Interconnection”** in Appendix 1 are deleted and replaced with the words “Distribution System”.
21. The words “Transmission Authority” in the definition of **“Interconnection Agreement”** in Appendix 1 are deleted and replaced with “Distribution Authority”.
22. The definition of **“Outage”** in Appendix 1 is amended by adding the words “Distribution System and” before the words “Transmission System” in that definition.
23. The definition of **“POI”** in Appendix 1 is amended by deleting the words “Transmission System” and replacing them with “Distribution System”.
24. The definition of **“Seller’s Plant”** in Appendix 1 is amended by deleting the words “Transmission System” and replacing them with “Distribution System”.
25. If Part G of Appendix 10 is applicable, then:
 - (a) paragraph 11 of this Part is amended by deleting the words “and subsection (iv) is renumbered as subsection (iii)” and replacing them with the words “and subsections (iv) and (v) are renumbered as subsections (iii) and (iv);
 - (b) subsection 7.8(b)(iv), as added by Part G of Appendix 10 and renumbered by section 11 of this Part F, is amended by deleting the words “Transmission System” and replacing them with “Distribution System”;
 - (c) subsection 7.9(a) is deleted and replaced with the following:

“any disconnection of the Seller’s Plant or the Private Line from the Distribution System or any Outage or Outages on the Distribution System or any suspension, constraint or curtailment in the operation of the Distribution System, exceeding in the aggregate 24 hours, whether or not continuous, in that month, other than a disconnection, Outage, suspension, constraint or curtailment attributable to the Seller or the Seller’s Plant or to the Private Line Owner or any of the Private Line Owner’s facilities; or”;
 - (d) subsection 11.2(i), as added by Part G of Appendix 10, is amended by deleting the words “Transmission System” and replacing them with “Distribution System”;
 - (e) subsection (c) of the definition of **“Buyer Termination Event”** as amended by paragraph 16 of this Part F is amended by adding the words “or the Private Line Owner” after the word “Seller” wherever that word appears in that subsection;
 - (f) the Note to Bidders under the definition of **“POI”** as added by Part G of Appendix 10 is amended by deleting the word “Transmission” and replacing it with “Distribution”; and

- (g) the definition of “**Private Line**” and the related Note to Bidders as added by Part G of Appendix 10, is amended by deleting the word “Transmission” and replacing it with “Distribution”.
26. If Part I of Appendix 10 (Split Bid Projects) applies, then section 4.6 of the EPA (added by Part I of Appendix 10) is amended by adding the words “or the Distribution Authority” after the words “Transmission Authority” in that section.

PART G - PROJECTS INTERCONNECTED TO THE TRANSMISSION SYSTEM OR DISTRIBUTION SYSTEM THROUGH A PRIVATELY-OWNED TRANSMISSION OR DISTRIBUTION LINE

This part applies to Sellers who submit an F2006 CFT Preliminary Interconnection Study Report with their Tenders which indicates that the Seller's Plant will be interconnected to the Transmission System or Distribution System through a privately-owned transmission or distribution line, including a Project that has an Indirect Connection through an industrial host facility.

1. Section 4.2 is amended by:
 - (a) adding the following as subsection (e) and renumbering existing subsections (e) and (f) as (f) and (g):

“(e) the Seller has entered into an agreement with the Private Line Owner amending the Private Line Agreement as required to accommodate the increase or decrease in the Plant Capacity and has provided a copy of the amending agreement to the Buyer (with any confidential information redacted) or has provided evidence satisfactory to the Buyer, acting reasonably, that no such amendments are required”;
 - (b) deleting the words “subsections (a) and (c)” in the sentence immediately following subsection (g) (as renumbered in accordance with the foregoing) and replacing them with “subsections (a), (c) and (e)”.
2. Section 4.5 is amended by:
 - (a) deleting the first sentence and replacing it with the following:

“If the Private Line Owner makes any change to the point of interconnection between the Private Line and the Transmission System (including any change to the point of interconnection specified in the F2006 CFT Preliminary Interconnection Study Report), the Seller shall notify the Buyer forthwith upon the Seller becoming aware of such change or proposed change and the Seller shall enter into an amendment to this EPA as required to put the Buyer in the position it would have been in under this EPA had the point of interconnection between the Private Line and the Transmission System not been changed, including with respect to the amount of Eligible Energy.”; and
 - (b) adding the words “or the Private Line Owner” after the word “Seller” at the beginning of the second sentence.
3. Subsection 5.2(c) is amended by adding the words “or under the Private Line Agreement” at the end of that subsection.
4. Subsection 5.2(d)(i) is amended by adding the words “or the Private Line Owner” after the words “to the Seller”.

5. Section 5.2 is amended by:
 - (a) adding the following as subsection 5.2(e) and changing the comma at the end of subsection 5.2(d) to a semicolon, adding the word “and” after the semicolon and deleting the word “and” at the end of subsection 5.2(c):

“(e) the Private Line Owner is not in default under the Interconnection Agreement or the Facilities Agreement.”; and
 - (b) deleting the words “subparagraphs (a) to (d)” in the last sentence of that Section and replacing them with “subparagraphs (a) to (e)”.
6. Subsection 6.3(g) is amending by adding the words and the Private Line Agreement” at the end of that subsection.
7. Subsection 6.6(d) is amended by adding the words “or the Private Line Agreement” after the words “Interconnection Agreement” and by adding the words “or the Private Line Owner” after the word “Seller” at the end of the subsection.
8. Section 6.9 is amended by adding the following at the end of that section:

“The Seller shall promptly on request by the Buyer provide to the Buyer a consent in similar form signed by the Private Line Owner for delivery to the Transmission Authority provided that in such consent all references to the “Seller” in subsections (a) and (d) will be replaced by the “Private Line Owner”.
9. Section 6.10 is amended by:
 - (a) adding the following after the first sentence in that section:

“The Seller shall use commercially reasonable efforts to obtain any information or cooperation that may be required from the Private Line Owner to complete those studies and cost estimates.”; and
 - (b) adding the words “(including reasonable amounts paid to the Private Line Owner to reimburse the Private Line Owner for costs incurred in providing information or cooperation as requested by the Buyer)” after the words “all reasonable costs incurred by the Seller”.
10. Section 7.2 is amended by adding the following as subsection (e) and changing the period at the end of subsection (d) to a semicolon and inserting the word “and” and deleting the word “and” at the end of subsection 7.2(c):

“(e) the Seller has entered into an agreement with the Private Line Owner amending the Private Line Agreement as required to accommodate the increase or decrease in the Monthly Firm Energy Amounts and has provided a copy of the amending agreement to the Buyer (with any confidential information redacted) or has provided evidence satisfactory to the Buyer, acting reasonably, that no such amendments are required.”

11. Subsection 7.8(a) is amended by:
 - (a) adding the words “or the Private Line Owner or any of the Private Line Owner’s facilities” at the end of subsections 7.8(a)(ii) and (iii); and
 - (b) adding the following as subsection (vi) and by changing the period at the end of subsection (v) to a semicolon and adding the word “and” after the semicolon and deleting the word “and” at the end of subsection (iv):

“(vi) disconnection of the Private Line from the Transmission System by the Transmission Authority for reasons that are not attributable to the Seller or the Seller’s Plant or the Private Line Owner or any of the Private Line Owner’s facilities.”.
12. Subsection 7.8(b) is amended by adding the following as subsection (v) and by changing the period at the end of subsection (iv) to a semicolon and adding the word “and” after the semicolon and deleting the word “and” at the end of subsection (iii):

“(v) disconnection of the Private Line from the Transmission System for reasons not attributable to the Buyer.”.
13. Subsection 7.9(a) is amended by:
 - (a) adding the words “or the Private Line” after the words “Seller’s Plant” in the first line;
 - (b) adding the words “or the Private Line” after the words “Seller’s Plant” in subsection 7.9(a)(i); and
 - (c) adding the words “or to the Private Line Owner or any of the Private Line Owner’s facilities” at the end of the subsection.
14. Subsection 8.1(c) is amended by adding the following at the end of that subsection:

“and after adjusting for any incremental losses associated with the transmission of energy from any other generating facility connected to the Private Line where: (i) the output from that other generating facility is sold to the Buyer; (ii) the incremental losses have not been accounted for in the calibration of the meter for the other generating facility; and (iii) “incremental losses” refers to those losses that would not have occurred but for the transmission of Energy from the Seller’s Plant to the POI through the Private Line”.
15. Subsection 11.2(e) is amended by adding the words “including any act or omission of the Private Line Owner” after the words “of a Party”.
16. Section 11.2 is amended by adding the following as subsection (h) and by deleting the period at the end of subsection (g) and replacing it with a semicolon and by adding the word “or” after the semicolon and deleting the word “or” at the end of subsection (f):

“(h) for any disconnection of the Private Line from the Transmission System or any Outage, constraint or curtailment in the operation of the Private Line, except to the extent such disconnection, Outage, constraint or curtailment in operation would be excused by reason of Force Majeure as defined in this EPA.”.

17. Subsection 18.1(c) is amended by adding the words “or the Private Line” after the words “Seller’s Plant”.

18. Appendix 1 is amended by:

(a) adding the following definitions:

“**Private Line**” means the line owned by _____ as at the Effective Date extending from _____ to the Transmission System as indicated on Schedule 1 to Appendix 5. *[Note to Bidders: The blanks in this section will be completed based on the information contained in the Bidder’s Tender as supplemented, as required, by information provided by the Transmission Authority.]*

“**Private Line Agreement**” means the agreement between the Seller and the Private Line Owner pursuant to which the Seller is authorized to transmit Energy from the Seller’s Plant along the Private Line to the POI.

“**Private Line Owner**” means the owner of the Private Line from time to time.

(b) amending subsection (c) of the definition of “**Buyer Termination Event**” by adding the words “or the Private Line Owner” after the word “Seller” wherever that word appears in that subsection;

(c) amending the definition of “**Combined Study Agreement**” by adding the words “or the Private Line Owner” after the word “Seller”;

(d) amending the definition of “**Facilities Agreement**” by adding the words “or the Private Line Owner” after the word “Seller”;

(e) amending subsection (f) in the definition of “**Force Majeure**” by deleting everything from the words “and such delay” to the end of the subsection and replacing them with the following:

“and such delay is not attributable to the Seller or the Seller’s Plant or to the Private Line Owner or any of the Private Line Owner’s facilities, including any change to the point of interconnection with the Transmission System or other Project change made by the Seller or the Private Line Owner as described in section 4.5”;

(f) amending the definition of “**Interconnection**” by adding the words “along the Private Line” after the words “Seller’s Plant”;

(g) amending the definition of “**Interconnection Agreement**” by adding the words “or the Private Line Owner” after the word “Seller”;

(h) deleting the definition of “**POI**” and replacing it with the following:

“**POI**” or “**Point of Interconnection**” means _____. *[Note to Bidders – This will be the point of interconnection between the Private Line and the Transmission System. This blank will be completed based on the information in the Bidder’s Tender as supplemented, as required, by information provided by the Transmission Authority.]*

- (i) amending the definition of “**Project Assets**” by adding the words “and all agreements with the Private Line Owner” at the end of the definition; and
 - (j) amending the definition of “**Seller’s Plant**” by adding the words “but excluding the Private Line” at the end of the definition.
19. Section 3 of Appendix 4 is amended by:
- (a) adding the words “or the Private Line Agreement” at the end of the second sentence of that section; and
 - (b) adding the following sentence at the end of section 3:

“The Private Line Owner is not in material default under the Interconnection Agreement or the Facilities Agreement”;
20. If Part A of Appendix 10 is applicable, Section 7.2 as amended by Part A is amended by adding the following as subsection (d) and by changing the period at the end of subsection (c) to a semicolon and adding the word “and” at the end of subsection (c):
- “(d) the Seller has entered into an agreement with the Private Line Owner amending the Private Line Agreement as required to accommodate the increase or decrease in the Hourly Firm Energy Amount and has provided a copy of the amending agreement to the Buyer (with any confidential information redacted) or has provided evidence satisfactory to the Buyer, acting reasonably, that no such amendments are required.”
21. If Part E of Appendix 10 is applicable, the definition of “POI” in Part E of Appendix 10 will be applicable instead of the definition of “POI” set out in this Part G of Appendix 10.

PART H – INTENTIONALLY DELETED

PART I - SPLIT BIDS

This Part applies to Bidders that tender only a portion of the output from the Seller's Plant to BC Hydro.

A. MONTHLY FIRM PROJECTS

1. Section 3.3 is amended by deleting the words "Plant Capacity" and replacing them with "highest Split Bid Threshold Level set out in Appendix 2."
2. The text of section 4.2 is deleted and replaced with the words "Intentionally Deleted" and all references to section 4.2 in any other section of the EPA are deleted.
3. Section 4.5 is amended by adding the words "(including any increase in the Project size)" after the words "Transmission Authority" in the second sentence of that section.
4. The following section is added as section 4.6:

"4.6 Network Upgrade Cost Allocation - Regardless of how the Transmission Authority allocates Network Upgrade Costs as between the Buyer and the Seller, the Seller and the Buyer agree that the Buyer shall be responsible for that amount of the Network Upgrade Costs that is determined by multiplying the Network Upgrade Costs by an amount equal to the average of the Split Bid Threshold Levels divided by the Plant Capacity. The Seller shall be responsible for, and shall promptly reimburse the Buyer for, any Network Upgrade Costs in excess of the Network Upgrade Costs for which the Buyer is responsible pursuant to this section."

5. Subsection 5.2(b) is amended by deleting the words "Plant Capacity multiplied by 1 hour" and replacing them with "highest Split Bid Threshold Level set out in Appendix 2 multiplied by 1 hour".
6. Section 6.4 is amended by adding the following at the end of that section: "Notwithstanding anything in this section, the Buyer will not be required to reimburse or otherwise compensate the Seller for any impact on sales of Energy to third parties resulting from a requirement to reschedule a Planned Outage in accordance with this section."
7. Section 7.2 is amended by:
 - (a) deleting the words "Plant Capacity multiplied by the number of hours in the applicable month" in subsection 7.2(b) and replacing them with "Split Bid Threshold Level for the applicable month" and
 - (b) adding the following sentence at the end of that section:

"If the Seller delivers a notice to increase or decrease the Monthly Firm Energy Amount pursuant to this section, the Seller may at the same time elect to increase or decrease the corresponding Split Bid Threshold Level by a percentage corresponding to the percentage increase or decrease in the Monthly Firm Energy Amount and in that event the amendment to Appendix 2 referred to above will include an amendment to the Split Bid Threshold Level set out in that Appendix."

8. Section 7.5 is deleted and replaced with the following:

“7.5 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy to any Person, other than the Buyer under this EPA, except for:

- (a) Pre-COD Energy sold to third parties in accordance with section 7.1;
- (b) during any period in which the Buyer is in breach of its obligations under section 7.4;
- (c) during any period in which the Buyer is not accepting deliveries of Energy from the Seller due to Force Majeure invoked by the Buyer; and
- (d) Energy, if any, in excess of the Split Bid Threshold Level.

From and after COD, the Seller shall not commit, sell or deliver any Energy to any Person at any time, unless the Metered Energy at that time exceeds the Split Bid Threshold Level and in that case, the Seller may only sell to third Persons that portion of Metered Energy that exceeds the Split Bid Threshold Level. All sales to third Persons authorized under this section shall be contracted in a manner that is consistent with the Seller’s obligations and the Buyer’s rights under this EPA. Any such sales will be subordinated in priority of delivery and in all other respects to the Buyer’s rights to receive Energy from the Seller’s Plant.”

9. Section 7.9 is amended by deleting the words “Plant Capacity” in that section and replacing them with “Split Bid Threshold Level”.
10. Section 12.5 is amended by adding the words “4.6” after “4.5” in that section, and by deleting the words “4.2,”.
11. Section 13.3 is amended by adding the words “4.6” after “4.5” in that section, and by deleting the words “4.2,”.
12. Section 15.3(a) is amended by adding “4.6,” after “4.5,” in that section, and by deleting the words “4.2,”.
13. Section 15.4(a) is amended by deleting the words “Plant Capacity” and replacing them with “highest Split Bid Threshold Level set out in Appendix 2”.
14. Subsection 15.5(d)(i) is deleted and replaced with the following:
- “**(i)** 115% of the amount determined by multiplying the Development Costs by an amount equal to the average of the Split Bid Threshold Levels divided by the Plant Capacity; and”.
15. The definition “**Eligible Energy**” in Appendix 1 is deleted and replaced with the following:

“**Eligible Energy**” means in each month after COD:

- (a) the amount of Metered Energy delivered by the Seller at the POI in that month; and
- (b) Energy that is deemed to be “Eligible Energy” in that month pursuant to section 7.9, but excluding all Metered Energy that exceeds the Split Bid Threshold Level.

16. The definition of “**Major Damage**” in Appendix 1 is deleted and replaced with the following:
- “**Major Damage**” means damage where the cost to repair or rebuild the Seller’s Plant with a Plant Capacity equivalent to the highest Split Bid Threshold Level exceeds the present value (using the Present Value Rate) of (a) the projected Energy deliveries from the Seller’s Plant for the remainder of the Term (not exceeding the Split Bid Threshold Levels), multiplied by (b) the projected payments under this EPA for that Energy, (calculated on the basis that the Tier 2 Non-Firm Energy Price will be equal to the Tier 1 Non-Firm Energy Price), less a \$/MWh amount determined by multiplying the estimated operating and maintenance costs for the Seller’s Plant (including costs of the Energy Source) by an amount equal to the average of the Split Bid Threshold Levels divided by the Plant Capacity.
17. The definition of “**Plant Capacity**” in Appendix 1 is amended by deleting the words “as amended in accordance with section 4.2”.
18. The definition of “**Performance Security**” in Appendix 1 is amended by deleting the words “Plant Capacity” and replacing them with “highest Split Bid Threshold Level set out in Appendix 2”.
19. The definition of “**Pre-COD Energy**” in Appendix 1 is deleted and replaced with the following:
- “**Pre-COD Energy**” means that amount of Metered Energy delivered by the Seller at the POI prior to COD including Test Energy, but excluding any portion of the Metered Energy that exceeds the Split Bid Threshold Level.”
20. Appendix 1 is amended by adding the following definition:
- “**Split Bid Threshold Level**” means the level of Energy output as set out in Appendix 2 that the Seller is required to deliver to the Buyer after COD before the Seller can sell any Energy to third parties.
21. The definition of “**Test Energy**” in Appendix 1 is deleted and replaced with the following:
- “**Test Energy**” means Metered Energy delivered to the POI during any successful test pursuant to subsection 5.2(b), but excluding any portion of the Metered Energy that exceeds the Split Bid Threshold Level.
22. Section 4 in Appendix 3 is amended by:
- (a) deleting the first formula in that section and replacing it with the following:
- $$“X_n * [(TRI_n * AVI_n) + (TRi_n * AVi_n)] > X_{COD} * [(TRI_{COD} * AVI_{COD}) + (TRi_{COD} * AVi_{COD})]”,$$
- (b) deleting the second formula and replacing it with the following:
- “Payment Amount = X_n multiplied by (the greater of (i) 0 and (ii) the amount determined in accordance with the following formula: $\{[(TRI_n - TRI_{COD}) * AVI_n] + [(TRi_n - TRI_{COD}) * AVi_n]\} * 0.5$ ”); and

- (c) inserting the following under the term “Where”:

“ X_n = the average of the Split Bid Threshold Levels divided by the Plant Capacity in year n ”.

23. If Part B of Appendix 10 is applicable, the definition of “Green Attributes” is amended by deleting the word “Energy” in subsections (a) and (b) and replacing it with “Energy but not exceeding the Split Bid Threshold Level”.

B. HOURLY FIRM PROJECTS

The following changes apply to Projects that tender an hourly firm split bid project in addition to the changes in Part A of Appendix 10, Part I.

24. Section 4.6, as added by Part A of this Appendix, is amended by adding the word “weighted” before the word “average”, and by inserting the words “(using the Table in Part 2 of Appendix 2)” after the word “average”.
25. Section 7.2 is amended by:
- (a) deleting the words “Plant Capacity multiplied by the number of hours in the applicable month” in subsection (b) and replacing them with “Split Bid Threshold Level for the applicable hour”; and
 - (b) deleting the last sentence of that section (as amended by Part A of Appendix 10, Part I) and replacing it with the following:

“If the Seller delivers a notice to increase or decrease any Hourly Firm Energy Amount pursuant to this section, the Seller may at the same time elect to increase or decrease the corresponding Split Bid Threshold Level by a percentage corresponding to the percentage increase or decrease in the Hourly Firm Energy Amount and in that event the amendment to Appendix 2 referred to above will include an amendment to the Split Bid Threshold Level set out in that Appendix.”
26. Subsection 15.5(d)(i), as amended by Part A of this Appendix, is amended by inserting the word “weighted” before the word “average”, and by inserting the words “(using the Table in Part 2 of Appendix 2)” after the word “average”.
27. Section 4 of Appendix 3, as amended by Part A of this Appendix, is amended in the definition of “ X_n ” by inserting the word “weighted” before the word “average”, and by inserting the words “(using the Table in Part 2 of Appendix 2)” after the word “average”.

PART J - SELLER IS A JOINT VENTURE OR GENERAL PARTNERSHIP

This Part applies if the Seller is a joint venture or general partnership.

1. Section 1.12 is added as follows:

1.12 Joint and Several Liability - Each of [Partner1] and [Partner2] are jointly and severally, and not severally only, liable to the Buyer for and in respect of all liabilities and obligations of the Seller under or in relation to this EPA. All references to the “Seller” herein mean both [Partner1] and [Partner2], unless the contrary is expressly indicated. Acts or omissions of either [Partner1] or [Partner2] in relation to this EPA are deemed to be acts or omissions of the Seller.

2. Section 6.7 is deleted and replaced with the following:

Neither the Seller nor [Partner1] or [Partner2] shall take any action that would cause the Seller, [Partner1] or [Partner2] to cease to be exempt, or omit to take any action necessary for the Seller, [Partner 1] and [Partner 2] to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

3. Section 16.1 is deleted and replaced with the following:

A Party, which in the case of the Seller, includes any or all of the Seller, [Partner1] and [Partner2], may not 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 except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned; or
- (b) to an Affiliate, on notice to, but without the consent of, the other Party, provided that the assignor will remain liable for the obligations of the assignee under this EPA, unless otherwise agreed in writing by the other Party.

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignor to the other Party not less than 30 days before the date of assignment, and, except in the case of assignment to a Facility Lender, must be accompanied by a proposed form of assignment and assumption agreement, and, in the case of an assignment pursuant to subsection 16.1(a), other than to a Facility Lender, evidence of the capability of the assignee as required by subsection 16.2(b). Consent to an assignment to a Facility Lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by section 16.3. Any sale or other disposition of all or a substantial part of the Seller’s, [Partner1]’s or [Partner2]’s ownership interest, in the Seller’s Plant, or of all or any interest of the Seller, [Partner1] or [Partner2] in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s, [Partner1]’s or [Partner2]’s ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller, [Partner1] or [Partner2] is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 16, including section 16.2, provided that where Control is transferred to an Affiliate or where the Seller or [Partner1] or [Partner2] merges or amalgamates with an Affiliate or enters into a reorganization with an Affiliate, subsection 16.1(b) shall apply.

4. Subsection 16.2(b) is deleted and replaced with the following:
 - (b) except for an assignment under subsection 16.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial, technical and otherwise) to fulfil the obligations of the assignor under this EPA or, in the case of a change of Control, merger, amalgamation or reorganization of the Seller, [Partner1] or [Partner2], the parties to that transaction demonstrating to the reasonable satisfaction of the Buyer, the continued ability of the Seller to perform its obligations under this EPA and, in the case only of an assignment of 100% of the assignor's interest in the Project Assets, the Seller's Plant, or this EPA or revenue derived from this EPA, upon such demonstration and concurrently with the agreement providing for the assumption of liabilities and obligations and the provision of Performance Security required under subsection 16.2(a), the assignor shall be released from all future obligations and liabilities under the EPA and the Performance Security provided by it will be returned or released.

5. Section 16.6 is deleted and replaced with the following:

Notwithstanding subsection 16.1(a), the Seller, [Partner1] or [Partner2] shall not assign (including any event or action that is deemed under section 16.1 to be an assignment) or otherwise dispose of any interest in this EPA prior to COD, except: (i) to an Affiliate as permitted under subsection 16.1(b); (ii) to a Facility Lender as permitted under subsection 16.1(a) and section 16.3; or (iii) with the prior consent of the Buyer, which consent may be given, withheld or conditioned in the unfettered discretion of the Buyer.

6. Section 18.1 is deleted and replaced with the following: The Seller and each of [Partner1] and [Partner2] as to itself only, represent and warrant to the Buyer, and acknowledge that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:
 - (a) Corporate Status - Each of [Partner1] and [Partner2] are 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 its business as now conducted and to enter into and to perform its obligations under this EPA;
 - (b) Bankruptcy - No actions have been taken or authorized by either [Partner1] or [Partner2] or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or either [Partner1] or [Partner2] or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller or either [Partner1] or [Partner2];
 - (c) Assets - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
 - (d) No Conflict - Neither the signing of this EPA nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of either [Partner1] or [Partner2], any permit, franchise, lease, license, approval or agreement to which [Partner1] or [Partner2] is a party, or any other covenant or obligation binding on the Seller or either [Partner1] or [Partner2] or affecting any of their 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 Seller, [Partner1] and [Partner2] enforceable against Seller, [Partner1] and [Partner2] in accordance with its terms;
 - (f) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by [Partner1] and [Partner2];
 - (g) Bid Documents - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
 - (h) Exemption from Regulation - The Seller, [Partner 1] and [Partner 2] are exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.
7. Section 19.1 is amended by:
- (a) adding the words "and [Partner 1] and [Partner 2]" after the word "Seller" in the first line in that section; and
 - (b) adding the words "or [Partner 1] or [Partner 2]" after the word "Seller" in all other places where the word "Seller" appears in that section.
8. Section 19.2 is amended by replacing the words "the Seller" with the words "the Seller [Partner 1] and [Partner 2]" in the first line thereof.
9. The definition of "**Affiliate**" in Appendix 1 is deleted and replaced with the following:
- "**Affiliate**" means, with respect to the Seller, [Partner1] or [Partner2] any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, [Partner1] or [Partner2] 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.
10. The definition of "**Bankrupt or Insolvent**" in Appendix 1 is amended by adding the following after the word "Person" in the first line of that definition: "(which in the case of the Seller includes any or all of the Seller, [Partner1] or [Partner2])".
11. Subsection (a) of the definition of "Buyer Termination Event" in Appendix 1 is deleted and replaced with the following:
- "(a) any one of the Seller, [Partner1] or [Partner2] is Bankrupt or Insolvent";

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12. The words “the Seller is in material default” in subsection (e) of the definition of “Buyer Termination Event” in Appendix 1 are deleted and replaced with the following:

“any one of the Seller, [Partner 1] or [Partner 2] is in material default”
13. The definition of “**COD Certificate**” in Appendix 1 is amended by adding the following after the words “officer of”:

“each of [Partner1] and [Partner2] and”.
14. Note to Bidders: The description of the Parties on page 1 of the EPA and the signature block will be amended as necessary to reflect the general partnership or joint venture structure.

PART K - SELLER IS A LIMITED PARTNERSHIP

This Part applies if the Seller is a limited partnership.

1. Section 1.12 is added as follows:

1.12 **General Partner** - All references to the “Seller” herein include [General Partner(s)], unless the contrary is expressly indicated. Acts or omissions of [General Partner(s)] in relation to this EPA are deemed to be acts or omissions of the Seller.

[Note to Bidders: Where there is more than one General Partner the following will be added at the end of section 1.12:

Each of [General Partner 1] and [General Partner 2] are jointly and severally, and not severally only, liable to the Buyer for and in respect of all liabilities and obligations of the Seller under or in relation to this EPA.]

2. Section 6.7 is deleted and replaced with the following:

Neither the Seller nor [General Partner(s)] shall take any action that would cause the Seller or [General Partner(s)] to cease to be exempt, or omit to take any action necessary for the Seller and the [General Partner(s)] to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

3. Section 16.1 is deleted and replaced with the following:

A Party, which in the case of the Seller includes any or all of the Seller and General Partner(s), may not 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 except:

- (a) with the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditional; or
- (b) to an Affiliate, on notice to, but without the consent of, the other Party, provided that the assignor will remain liable for the obligations of the assignee under this EPA, unless otherwise agreed in writing by the other Party.

Notice of intent to assign, and where applicable a request for consent to assign, must be given by the assignor to the other Party not less than 30 days before the date of assignment, and, except in the case of assignment to a Facility Lender, must be accompanied by a proposed form of assignment and assumption agreement, and, in the case of an assignment pursuant to subsection 16.1(a), other than to a Facility Lender, evidence of the capability of the assignee as required by subsection 16.2(b). Consent to an assignment to a Facility Lender will not be given or be deemed to be given until full execution and delivery of the agreement contemplated by section 16.3. Any sale or other disposition of all or a substantial part of the Seller’s or [General Partner(s)]’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller or [General Partner(s)] in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s or [General Partner(s)]’s ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller or [General Partner(s)] is deemed to be an assignment of this EPA by

the Seller for the purpose of this Article 16, including section 16.2, provided that where Control is transferred to an Affiliate or where the Seller or [General Partner(s)] merges or amalgamates with an Affiliate or enters into a reorganization with an Affiliate, subsection 16.1(b) shall apply.

4. Subsection 16.2(b) is deleted and replaced with the following:

(b) except for an assignment under subsection 16.1(b), the assignee demonstrating to the reasonable satisfaction of the other Party its capability (financial, technical and otherwise) to fulfil the obligations of the assignor under this EPA or, in the case of a change of Control, merger, amalgamation or reorganization of the Seller or [General Partner(s)], the parties to that transaction demonstrating to the reasonable satisfaction of the Buyer, the continued ability of the Seller to perform its obligations under this EPA and, in the case only of an assignment of 100% of the assignor's interest in the Project Assets, the Seller's Plant, or this EPA or revenue derived from this EPA, upon such demonstration and concurrently with the agreement providing for the assumption of liabilities and obligations and the provision of Performance Security required under subsection 16.2(a), the assignor shall be released from all future obligations and liabilities under the EPA and the Performance Security provided by it will be returned or released.

5. Section 16.6 is deleted and replaced with the following:

Notwithstanding subsection 16.1(a), the Seller or [General Partner(s)] shall not assign (including any event or action that is deemed under section 16.1 to be an assignment) or otherwise dispose of any interest in this EPA prior to COD, except: (i) to an Affiliate as permitted under subsection 16.1(b); (ii) to a Facility Lender as permitted under subsection 16.1(a) and section 16.3; or (iii) with the prior consent of the Buyer, which consent may be given, withheld or conditioned in the unfettered discretion of the Buyer.

6. Section 18. 1 is deleted and replaced with the following:

The Seller and each [General Partner(s)] as to itself only represent and warrant to the Buyer, and acknowledge that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) Corporate Status - As to the [General Partner(s)], it 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 its business as now conducted and to enter into and to perform its obligations under this EPA. As to the Seller, it is duly created and organized, validly existing and in good standing under the laws of the jurisdiction of its creation, 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 perform its obligations under this EPA;
- (b) Bankruptcy - No actions have been taken or authorized by the Seller or [General Partner(s)] or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or [General Partner(s)] or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller or [General Partner(s)];

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- (c) Assets - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
 - (d) No Conflict - Neither the signing of this EPA nor the carrying out of the Seller's obligations 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 [General Partner(s)], any permit, franchise, lease, license, approval or agreement to which the Seller or [General Partner(s)] is a party, or any other covenant or obligation binding on the Seller or [General Partner(s)] or affecting any of their 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 [General Partner(s)] enforceable against the Seller and [General Partner(s)] in accordance with its terms;
 - (f) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by the [General Partner(s)] on behalf of the Seller;
 - (g) Bid Documents - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
 - (h) Exemption From Regulation - The Seller and [General Partner(s)] are exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.
7. Section 19.1 is amended by:
- (a) adding the words "and [General Partner(s)]" after the word "Seller" in the first line in that section; and
 - (b) adding the words "or [General Partner(s)]" after the word "Seller" in all other places where the word "Seller" appears in that section.
8. Section 19.2 is amended by replacing the words "the Seller" with the words "the Seller and the [General Partner(s)]" in the first line thereof.
9. The definition of "**Affiliate**" in Appendix 1 is deleted and replaced with the following:
- "**Affiliate**" means, with respect to the Seller or [General Partner(s)] any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or [General Partner(s)] 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.

10. The definition of “**Bankrupt or Insolvent**” in Appendix 1 is amended by adding the following after the word “Person” in the first line of that definition: “(which in the case of the Seller includes any or all of the Seller or [General Partner(s)])”
11. Subsection (a) of the definition of “Buyer Termination Event” in Appendix 1 is deleted and replaced with the following:

“(a) any one of the Seller or [General Partner(s)] is Bankrupt or Insolvent”;
12. The words “the Seller is in material default” in subsection (e) of the definition of “Buyer Termination Event” in Appendix 1 are deleted and replaced with the following:

“any one or all of the Seller, or [General Partner(s)] is in material default”
13. The definition of “**COD Certificate**” in Appendix 1 is amended by adding the following after the words “officer of”:

“each [General Partner(s)] and”.
14. Note to Bidders: The description of the Parties on page 1 of the EPA and the signature block will be amended as necessary to reflect the limited partnership structure.

PART L – INTENTIONALLY DELETED

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT**SMALL PROJECTS****F2006 OPEN CALL FOR POWER***Notes to Bidders:*

1. *The **base form** of EPA applies to Projects with a Plant Capacity of .05 MW and larger, but less than 10 MW with the following characteristics:*
 - *Seller retains Green Attributes*
 - *Seller retains all GHG obligations*
 - *Project is a BC Clean Electricity Project*
 - *Project has a direct interconnection to the Distribution System*
 - *Seller is a corporation rather than a joint venture or limited partnership.*
2. *The terms and conditions applicable to other types of generating facilities or ownership structures are set out in the Appendices to this EPA (including those terms and conditions applicable to Projects connected to the Transmission System). The applicable provisions of Appendix 9, other than Part D, will be incorporated into the relevant sections of the Awarded EPA based on the information in the Seller's Tender. Part D will remain in Appendix 9.*
3. *All blanks in this Standard Form EPA will be completed based on information contained in the Seller's Tender.*
4. *The Awarded EPA will include the Project name on the title page and at the bottom of each page.*

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BC HYDRO

STANDARD FORM ELECTRICITY PURCHASE AGREEMENT

SMALL PROJECTS

THIS ELECTRICITY PURCHASE AGREEMENT (“EPA”) is made as of •, 2006 (the “Effective Date”)

BETWEEN:

_____ a corporation incorporated under the laws of _____ with its head office at _____

(“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”).

WHEREAS:

- A. The Buyer issued a Call for Tenders on 8 December 2005 for the sale of electrical energy to the Buyer from independent power producers’ generation plants in British Columbia with a capacity of greater than .05 MW.
- B. A Tender in respect of the Project was submitted in response to the CFT not later than _____, 2006.
- C. The Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, Energy from the Seller’s Plant on the terms, conditions and exceptions set forth in this EPA.

1. INTERPRETATION

1.1 Definitions - Appendix 1 sets out or references the definitions applicable to certain words and expressions used in this EPA.

1.2 Appendices - Attached to and forming part of this EPA are the following Appendices:

- | | | |
|------------|---|----------------------------|
| Appendix 1 | - | Definitions |
| Appendix 2 | - | Energy Price |
| Appendix 3 | - | COD Certificate |
| Appendix 4 | - | Seller’s Plant Description |

Appendix 5	-	Sample Form Standby Letter of Credit
Appendix 6	-	Sample Form Lender Consent Agreement
Appendix 7	-	Sample Form Development Progress Report
Appendix 8	-	Addresses for Delivery of Notices
Appendix 9	-	Special Terms and Conditions

1.3 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.

1.4 Plurality and Gender - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.

1.5 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 19.7, 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.

1.6 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.

1.7 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.

1.8 Currency - References to dollars or \$ means Canadian dollars, unless otherwise stated.

1.9 Reference Indices - If any 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 shall 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 19.7.

1.10 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.

1.11 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) unless otherwise expressly stated in this EPA, 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, unless otherwise expressly stated;
- (f) unless otherwise expressly stated in this EPA, 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;
- (g) the provisions of Appendix 9, if any, govern over the other provisions of this EPA, and all provisions of this EPA are mutually explanatory of one another; and
- (h) 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, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

2. TERM

2.1 Term - The term (“**Term**”) of this EPA commences on the Effective Date and continues until the TO#2 anniversary of COD, subject to extension for the period specified pursuant to section 10.2, unless it is terminated earlier as authorized under this EPA.

3. REGULATORY REVIEW

3.1 Regulatory Review Termination - Either Party may terminate this EPA if, within 120 days after the Effective Date, the BCUC has not accepted the EPA for filing as an energy supply contract under section 71 of the UCA on terms and conditions that do not materially alter the price or any other material term or condition of the EPA (“**BCUC Acceptance**”).

3.2 Regulatory Filing - The Buyer, on behalf of itself and the Seller, shall file the EPA with the BCUC within a reasonable time after the Effective Date.

3.3 EPA Support - The Buyer shall take all steps reasonably required to secure the BCUC Acceptance and the Seller shall provide any assistance reasonably requested by the Buyer to secure the BCUC Acceptance. The Parties will not take, and will cause their Affiliates not to take, any action inconsistent with the performance by the Parties of their obligations under this section 3.3. If a Party fails to comply with this section (the “**Breaching Party**”) and, as a result, the EPA is terminated under section 3.1, the Breaching Party shall pay the non-Breaching Party, by not later than 5 Business Days after the date of termination, an amount equal to \$30,000/MW multiplied by the Plant Capacity. The Breaching Party’s liability for a breach of this section 3.3 is limited to the amount set out in this section.

3.4 Termination - A Party entitled to terminate under section 3.1 must do so by giving notice to terminate to the other Party at any time after the right to terminate arises pursuant to section 3.1 and prior to the earlier of:

- (a) the date of issuance of the BCUC Acceptance; and
- (b) the date that is 150 days after the Effective Date.

3.5 Effect of Termination - If this EPA is terminated by either Party in accordance with sections 3.1 and 3.4, the following provisions shall apply:

- (a) on or before the 30th day following the date of termination, or if that day is not a Business Day, then or before on the next succeeding Business Day, the Buyer shall return the Performance Security to the Seller after deducting any amount to which the Buyer is entitled but which has not been paid pursuant to section 3.3 of this EPA; and
- (b) except as set out in section 14.3, the Parties shall have no further liabilities or obligations under, or in relation to, this EPA.

4. DEVELOPMENT

4.1 Development and Construction of the Seller's Plant - The Seller shall, at its expense, perform, or cause to be performed, all Project activities necessary to construct and commission the Seller's Plant and achieve COD in accordance with the terms and conditions of this EPA.

4.2 Modification to Plant Capacity - The Seller shall construct the Seller's Plant with a capacity that does not exceed the Plant Capacity. Except as set out in this section and notwithstanding section 6.2, the Seller shall not increase or decrease the Plant Capacity without the Buyer's prior consent. The Seller may at any time prior to the Target COD give notice to the Buyer that the Seller intends to increase or decrease the Plant Capacity by an amount not exceeding 10% of the Plant Capacity specified in Appendix 4, provided that:

- (a) the Seller has completed all studies required by the Distribution Authority and the Transmission Authority in connection with the proposed increase or decrease in Plant Capacity, such studies include an estimate of any increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity, and the Seller provides copies of such studies to the Buyer together with the notice to the Buyer;
- (b) the Seller shall be responsible for, and shall pay, all costs associated with the increase or decrease in the Plant Capacity, including all additional Direct Assignment Costs and Network Upgrade Costs in accordance with section 4.5;
- (c) prior to the earlier of:
 - (i) 30 days after the date of delivery of a notice to the Buyer under this section; and
 - (ii) the date on which any additional Network Upgrade Costs associated with the increase or decrease in Plant Capacity are incurred,

the Seller shall deliver to the Buyer replacement Performance Security calculated in the manner set out in Appendix 1 to reflect any proposed increase or decrease in the Plant

Capacity and an amount equal to the total estimated increase in Network Upgrade Costs resulting from the proposed increase or decrease in the Plant Capacity. Upon receipt of the replacement Performance Security in the required form, the Buyer shall release the existing Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder;

- (d) the Seller shall complete all construction and commissioning associated with the increase or decrease in the Plant Capacity prior to COD;
- (e) Target COD will not be extended by any increase or decrease in the Plant Capacity; and
- (f) the Seller may give only one notice under this section.

Upon delivery by the Seller of a notice under this section and compliance by the Seller with subsections (a) and (c) above, the Buyer and the Seller shall execute an amendment to this EPA to amend Appendix 4 to reflect the proposed increase or decrease in the Plant Capacity as set out in the Seller's notice. The Buyer is not required to accept or pay for any Energy associated with an increase in the Plant Capacity that does not comply with this section and section 7.4 applies to such Energy.

4.3 Permits - The Seller shall promptly obtain, comply with and maintain in full force and effect all Permits. The Seller shall on request promptly provide to the Buyer copies of all Material Permits.

4.4 Development Reports - On each January 1, April 1, July 1 and October 1 after the Effective Date, (or, where such day is not a Business Day, on the first Business Day thereafter) and continuing until COD, the Seller shall deliver to the Buyer a report in the form specified in Appendix 7, describing the progress of the Project.

4.5 Project Changes - The Seller shall not make any change to the point of interconnection with the Distribution System (including any change to the point of interconnection specified in the F2006 CFT Preliminary Interconnection Study Report) without the prior consent of the Buyer, such consent not to be unreasonably withheld, provided that the Seller acknowledges that the Buyer is entitled to require as a condition of the Buyer's consent that the Seller enter into an amendment to this EPA as required to put the Buyer in the position it would have been in under this EPA had the Seller not made a change to the point of interconnection, including with respect to the amount of Eligible Energy. If the Seller makes any change to the point of interconnection between the Seller's Plant and the Distribution System as set out in the F2006 CFT Preliminary Interconnection Study Report or any other change to the information relied on by the Distribution Authority and/or the Transmission Authority in completing the F2006 CFT Preliminary Interconnection Study Report and developing the Network Upgrade Cost estimate for purposes of the CFT, the Seller shall be liable for all costs related directly or indirectly to such change and for all other losses, costs and damages suffered or incurred by the Buyer, whether as a transmission customer or otherwise, as a result of such change and the Seller shall pay any such amount within 30 days after receiving an invoice from the Buyer for such amount.

5. COMMERCIAL OPERATION DATE

5.1 Target COD - The Seller shall use commercially reasonable efforts to ensure that the Seller's Plant achieves COD by the Target COD.

5.2 Requirements for COD - Subject to sections 5.4 and 5.5, the Seller's Plant will have achieved COD at the commencement of the hour immediately following the hour in which all of the following conditions have been satisfied:

- (a) the Seller has obtained all Material Permits and all such Material Permits are in full force and effect;
- (b) the Seller's Plant has generated Energy over any continuous 72 hour period, in compliance with all Material Permits, and delivered such Energy to the POI in an amount not less than 20% of the Plant Capacity multiplied by 1 hour multiplied by 72;
- (c) the Seller is not: (i) Bankrupt or Insolvent; (ii) in material default of any of its covenants, representations, warranties or obligations under this EPA; or (iii) in material default under any Material Permit, any tenure agreement for the site on which the Seller's Plant is located, the Interconnection Agreement or the Facilities Agreement, if any;
- (d) the Seller has delivered to the Buyer:
 - (i) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, issued by the Distribution Authority to the Seller under the Interconnection Agreement;
 - (ii) data from the Metering Equipment sufficient to demonstrate compliance by the Seller with subsection 5.2(b);
 - (iii) payment of any amounts owing by the Seller to the Buyer under any of sections 4.2, 4.5, or 5.6; and
 - (iv) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant,

provided that, except as hereinafter provided, the Seller delivers a COD Certificate to the Buyer within 30 days after the last of the requirements set out above is satisfied. If a COD Certificate is not delivered by that date, COD will occur at 12:00 PPT on the date of delivery to the Buyer of the COD Certificate. For greater certainty, the Parties acknowledge that, notwithstanding satisfaction of all the conditions set out in subparagraphs (a) to (d) above, the Seller may defer delivery of the COD Certificate until, and the COD will not occur earlier than, the date determined under section 5.4.

5.3 COD Disputes - The Buyer may, by notice to the Seller within 10 Business Days after the date of delivery to the Buyer of a COD Certificate, contest the COD Certificate on the grounds that the Seller has not satisfied the requirements for COD in section 5.2. If the Buyer does not deliver a notice to the Seller contesting the COD Certificate within the time specified in this section, COD will be deemed to have occurred as provided in section 5.2.

5.4 Early COD - Except with the Buyer's prior consent, COD may not occur earlier than the later of: (a) 365 days prior to the Target COD; and (b) 1 October 2007. The Buyer shall not be required to incur any incremental expense (other than payment for Eligible Energy) to enable COD to occur prior to the Target COD.

5.5 Deemed COD - If on or after the Target COD, the Seller's Plant has satisfied all requirements for COD, other than those requirements that depend on completion of Direct Assignment Facilities or Network Upgrades, and if the Seller cannot achieve COD solely as a result of a delay in completion of any Direct Assignment Facilities or Network Upgrades and such delay is solely caused by the Buyer or the Distribution Authority, then COD will be deemed to have occurred on or after the Target COD at the commencement of the hour following the hour in which all other conditions for COD were satisfied. The

Buyer shall thereafter be liable to pay the Seller for the Energy not exceeding the Plant Capacity that could have been generated and delivered at the POI but for the delay in completion of the Direct Assignment Facilities or Network Upgrades described above, and all such Energy will be considered Eligible Energy for purposes of this EPA. The Energy that could have been generated and delivered at the POI will be determined based on the information described in section 7.8. Except for the payments for deemed Eligible Energy provided for pursuant to this section, the Seller shall have no other rights or remedies against the Buyer, and the Buyer shall have no other liability, with respect to any delay in completion of the Direct Assignment Facilities and Network Upgrades. If the Seller's Plant fails to satisfy the requirements specified in section 5.2 within a reasonable period, but not later than 60 days after completion of the Direct Assignment Facilities and Network Upgrades, the Seller will be deemed not to have achieved COD and the Seller shall within 10 days after receipt of an invoice from the Buyer, refund to the Buyer all payments made by the Buyer to the Seller prior to that date. This section 5.5 will not apply if a delay in completion of any Direct Assignment Facilities or Network Upgrades is due, in whole or in part, to any increase or decrease in Plant Capacity from the Plant Capacity specified in Appendix 4 or to any change described in section 4.5.

5.6 Early Network Upgrades - If the Seller requires Network Upgrades to be completed prior to 90 days prior to the Target COD to enable early COD or to enable sales of Pre-COD Energy to third parties, the Seller shall give notice of such requirement to the Buyer and following delivery of such notice, the Seller and the Buyer shall discuss such requirement with the Distribution Authority and, if required, the Transmission Authority, to determine the incremental costs, if any, required to complete the Network Upgrades prior to 90 days prior to the Target COD. The Seller shall be responsible for, and shall indemnify the Buyer from and against, all such incremental costs and expenses and, prior to commencement by the Distribution Authority or the Transmission Authority of any work required to advance the completion date for the Network Upgrades, shall provide to the Buyer replacement Performance Security which includes an amount equal to the total estimated increase in Network Upgrade Costs resulting from any request by the Seller to complete the Network Upgrades prior to 90 days prior to the Target COD.

6. OPERATION OF SELLER'S PLANT

6.1 Owner and Operator - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated using qualified and experienced individuals.

6.2 Modifications to Seller's Plant/Additional Generators

- (a) **Modifications to Seller's Plant** - The Seller shall not make, without the Buyer's prior consent, any modification or addition, or series of modifications or additions, to the Seller's Plant, except for those modifications or additions which: (i) are not likely to have an adverse effect on the Seller's ability to observe and perform its obligations under this EPA, including the Seller's obligations under subsection 6.3(f); or (ii) are required to comply with a change in Law or a change in Permit conditions (where such change in Permit conditions is initiated by a Governmental Authority) after the Effective Date. The Seller shall provide prior notice to the Buyer of any proposed modifications or additions, or series of modifications or additions, to the Seller's Plant, together with an explanation of the reason for such modifications or additions.
- (b) **Additional Generators** - The Seller shall not add any additional generators on the site of the Seller's Plant or that otherwise inject output at the same POI as the Seller's Plant, unless the Seller has first entered into an amendment to this EPA with the Buyer as required to address any adverse impacts on the Buyer or on the benefit to the Buyer of this EPA resulting from the construction or operation of such additional generators.

6.3 Standard of Construction and Operation - The Seller shall cause the Seller's Plant to be designed, engineered, constructed, interconnected to the Distribution System, commissioned, operated and maintained in compliance with: (a) all applicable Laws; (b) the terms and conditions of all Permits and land tenure agreements issued in connection with the Seller's Plant; (c) Good Utility Practice; (d) the specifications in Appendix 4, as changed from time to time with the prior consent of the Buyer provided that, subject to section 6.2, the Seller may amend the information in sections 4 and 5 of Appendix 4 at any time without consent on notice to the Buyer not less than 30 days prior to such change and the Buyer and the Seller will enter into an amendment to this EPA to amend Appendix 4 in accordance with such notice; (e) the Code of Conduct Guidelines Applicable to BC Hydro Contracts in effect as of the date specified for submission of Tenders under the CFT; (f) if applicable, the information provided to the British Columbia Minister of Energy, Mines and Petroleum Resources or to TerraChoice Environmental Marketing to obtain confirmation that the output from the Seller's Plant could be considered BC Clean Electricity in the CFT process; and (g) the terms and conditions of this EPA, the Interconnection Agreement and the Facilities Agreement.

6.4 Requirement to Generate - Subject to Force Majeure invoked by the Seller in accordance with Article 11, Outages of the Seller's Plant where there is no breach by the Seller of this EPA, Permit restrictions, availability of the Energy Source (provided that cost will not be a factor in determining the availability of the Energy Source), and the right of the Seller to suspend its performance under the EPA in accordance with Article 13, the Seller shall maximize generation at the Seller's Plant at all times during the Term. When the Seller's Plant is generating, the Seller shall 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 within each hour. The Seller shall, except with the Buyer's consent, such consent not to be unreasonably withheld, use best efforts to promptly resume generating following any Forced Outage.

6.5 Planned Outages - The Seller shall provide the Buyer not less than 90 days' prior notice of any Planned Outage and such notice shall state the start date and hour and the end date and hour for the Planned Outage. The Seller shall make commercially reasonable efforts to: (a) coordinate all Planned Outages with the Buyer's requirements as notified to the Seller and the Distribution Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller; and (b) to limit the duration of any Planned Outage. Within 14 days after receipt of any notice of a Planned Outage, the Buyer may request the Seller to reschedule the Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, of the costs the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section. For payment and all other purposes of this EPA, all Planned Outages will be deemed to start at the beginning of an hour and to end at the end of an hour.

6.6 Records - During the Term the Seller shall prepare and maintain all records required to properly administer this EPA, including Energy generation records and operating logs, a log book of all Outages and other reductions in Energy output (specifying the date, time, duration and reasons for each Outage and each reduction in Energy output), meter readings, maintenance reports, invoice support records, documents concerning compliance with Permits and applicable Laws, and all other records and logs consistent with Good Utility Practice. The Seller shall maintain such 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 to by the Buyer, acting reasonably, for a period of not less than 7 years from the date on which each such record is created.

6.7 Reports to the Buyer - The Seller shall deliver the following documents, reports, plans and notices to the Buyer:

- (a) **Notice of Outages** - Where the cumulative duration of all Outages in a month exceeds 24 hours, the Seller shall deliver to the Buyer, concurrently with delivery of the statement described in subsection 9.1(a), a report of all Outages during the month for which the statement described in subsection 9.1(a) is issued, including a statement of the cause of each Outage;
- (b) **Notice of Buyer Termination Event** - The Seller shall notify the Buyer promptly of any Buyer Termination Event or any material risk that a Buyer Termination Event will occur or any default by the Seller under any agreement with a Facility Lender; and
- (c) **Energy Schedules** - After COD the Seller shall either (as elected by the Seller in a notice to the Buyer prior to COD):
 - (i) on the 20th day of each month, or the first Business Day thereafter, deliver to the Buyer a schedule of the expected deliveries of Eligible Energy to the POI during the next succeeding calendar month on a daily basis, or
 - (ii) on each Thursday by 12:00 PPT, deliver to the Buyer a schedule of the expected deliveries of Eligible Energy in each day during the next succeeding week commencing at 00:00 PPT on Monday,

provided that such schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer forthwith upon becoming aware of any expected material change in a filed Energy schedule. The Seller may change its election with respect to the delivery of Energy schedules in accordance with subsection (i) or (ii) above at any time on 60 days' prior notice to the Buyer.

6.8 Exemption from Utility Regulation - The Seller shall 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, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a "public utility" could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

6.9 Compliance with Emissions Requirements

- (a) **GHG Requirements** - Without limiting section 4.3 or section 6.3, the Seller shall comply with all applicable Laws and all Permits regulating GHG emissions from the Seller's Plant. The Seller shall by each January 31 after COD (or, if alternate reporting dates are established under any Laws or Permits regulating GHG emissions from the Seller's Plant, then by such alternate reporting dates) deliver to the Buyer a report signed by a senior officer of the Seller, in a form satisfactory to the Buyer acting reasonably, detailing the status of compliance by the Seller with this section during the immediately

preceding year (or, if an alternate compliance period is established under any Laws or Permits regulating GHG emissions from the Seller's Plant, then the report shall address such alternate compliance.) If the Seller is not in compliance with any Law or Permit regulating GHG emissions from the Seller's Plant and the Seller fails to remedy such non-compliance within 30 days after the date of notice from the Buyer to the Seller, the Buyer may, but is not required to, on behalf of the Seller, purchase any Compliance Units required to remedy, in whole or in part, the Seller's non-compliance with the applicable Law or Permit. The Seller shall cooperate with the Buyer as necessary to enable the Buyer to purchase such Compliance Units. The Seller shall reimburse the Buyer for all costs (including all commissions, charges, brokerage, consulting and legal fees, taxes, duties, transfer and registration fees and all other transaction costs and expenses) incurred by the Buyer in purchasing such Compliance Units, together with an administration fee equal to 15% of such costs within 30 days after receipt of an invoice from the Buyer for such amount.

- (b) **Other Emissions** - Without limiting subsection (a), the Seller is solely responsible at the Seller's cost for compliance with all applicable Laws and Permits regulating all emissions from the Seller's Plant, including GHG emissions. The Buyer has no responsibility or liability of any kind whatsoever with respect to any such emissions.

6.10 Islanding - Subject to the provisions of this section, at any time after the Effective Date and prior to completion by the Seller of the final engineering design for the Seller's Plant, the Seller shall, at the request of the Buyer, provide all information and cooperation required to enable the Buyer to undertake, at the Buyer's cost, any studies the Buyer considers necessary to determine the ability of the Seller's Plant to provide Planned Islanding Capability and the estimated cost of providing, operating and maintaining such Planned Islanding Capability. The Seller shall provide the Buyer with not less than 120 days prior notice of the anticipated date of completion of the final engineering design for the Seller's Plant and the Buyer shall advise the Seller within 60 days after receipt of such notice if the Buyer intends to undertake any studies pursuant to this section. The Buyer shall, within 30 days after receipt of an invoice together with reasonable supporting information, reimburse the Seller for all reasonable costs incurred by the Seller, that the Seller would not otherwise have incurred, to provide the Buyer with information required for any studies pursuant to this section. The Buyer may on notice to the Seller within 30 days after receipt of all studies commissioned by the Buyer under this section advise the Seller that the Buyer wishes to enter into negotiations with the Seller with respect to the Seller's Plant providing Planned Islanding Capability, including any amendments required to this EPA as a result thereof. Upon receipt of such notice the Parties shall negotiate in good faith to determine the terms and conditions on which the Seller will provide such Planned Islanding Capability.

6.11 BC Clean Electricity - If in the CFT process the output from the Seller's Plant was treated as BC Clean Electricity based on a letter from TerraChoice Environmental Marketing confirming eligibility of the Seller's Plant for EcoLogo^M Certification, and if the Seller does not obtain EcoLogo^M Certification by the date that is one year after COD, the Seller shall within 60 days after the first anniversary of COD, provide a letter to the Buyer from the British Columbia Minister of Energy, Mines and Petroleum Resources confirming that the output from the Seller's Plant is BC Clean Electricity together with a copy of all information provided to the Minister to obtain such confirmation. Without limiting section 6.6, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer all information the Buyer requires to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Buyer may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets, its employees and relevant documentation to verify qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller shall promptly provide to the Buyer any consents required to enable the Buyer to

make enquiries with any Governmental Authority concerning the qualification of the output from the Seller's Plant as BC Clean Electricity. The Seller consents to the disclosure by the Buyer to any Person or any Governmental Authorities of any Confidential Information with respect to the Seller's Plant, that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as BC Clean Electricity or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as BC Clean Electricity.

7. PURCHASE AND SALE OBLIGATIONS

7.1 Pre-COD Energy - The Buyer shall make commercially reasonable efforts to accept delivery at the POI of all Pre-COD Energy, provided that the Buyer shall not be required to take any steps or to incur any incremental expense to enable the delivery of Pre-COD Energy to the POI prior to 90 days before the Target COD. Prior to the earlier of COD and the Target COD the Seller may, on prior notice to the Buyer, sell any Energy to any Person other than the Buyer, and in that case such Energy shall not be delivered, or be deemed to be delivered, to the Buyer.

7.2 Post-COD Sale of Energy - From and after COD for the remainder of the Term, the Seller shall sell and deliver to the Buyer at the POI all Energy.

7.3 Post-COD Purchase of Energy - Subject to section 7.7, from and after COD for the remainder of the Term, the Buyer shall purchase, and accept delivery from the Seller at the POI of, all Eligible Energy.

7.4 Exclusivity - The Seller shall not at any time during the Term commit, sell or deliver any Energy to any Person, other than the Buyer under this EPA, except for:

- (a) Pre-COD Energy sold to third parties in accordance with section 7.1;
- (b) during any period in which the Buyer is in breach of its obligations under section 7.3; and
- (c) during any period in which the Buyer is not accepting deliveries of Energy from the Seller due to Force Majeure invoked by the Buyer.

7.5 Custody, Control and Risk of Energy - Custody, control, risk of, and title to all Pre-COD Energy delivered to the Buyer and all Eligible Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA is free and clear of all liens, claims, charges and encumbrances. The Seller shall be responsible for all transmission losses and costs, if any, relating to the transmission of Energy from the Seller's Plant to the POI.

7.6 Price and Payment Obligation - The Buyer shall pay for all Test Energy in respect of which the Seller has not given a notice under section 7.1 and all Eligible Energy in accordance with Appendix 2.

7.7 Limitations on Acceptance Obligations - The obligations of the Buyer under sections 7.1 and 7.3 are subject to:

- (a) Force Majeure invoked by the Buyer in accordance with Article 11;
- (b) disconnection of the Seller's Plant from the Distribution System and any Outage, suspension, constraint or curtailment in the operation of the Distribution System preventing or limiting physical deliveries of Eligible Energy at the POI, provided that the disconnection, Outage, suspension, constraint or curtailment:

- (i) results from any Outage, suspension, constraint, curtailment or other event of any kind on the Transmission System, or
- (ii) is implemented pursuant to the Interconnection Agreement, Facilities Agreement or any other legally enforceable right; and
- (c) the right of the Buyer to suspend the Seller's performance under the EPA in accordance with Article 13.

7.8 Deemed Deliveries - If in any month after COD the Seller is unable to deliver Energy at the POI at any time during that month solely as a result of:

- (a) any disconnection of the Seller's Plant from the Distribution System or any Outage, suspension, constraint or curtailment in the operation of the Distribution System preventing or limiting physical deliveries of Energy at the POI where such disconnections, Outages, suspensions, constraints or curtailments exceed in the aggregate 24 hours, whether or not continuous, in that month, but excluding any disconnection, Outage, suspension, constraint or curtailment attributable to the Seller or the Seller's Plant; or
- (b) a breach by the Buyer of its obligations under section 7.3;

then, notwithstanding that the Buyer is excused under subsection 7.7(b) from its obligations under section 7.3, the amount of Energy, not exceeding the Plant Capacity multiplied by one hour, that could have been generated and delivered at the POI in each hour (in the case of subsection (a), after the 24 hours has elapsed) but for the occurrence of the event described in subsection 7.8(a) or (b) will be deemed to be Eligible Energy. The amount of Energy that could have been generated and delivered at the POI during an event described in subsection 7.8(a) or (b) will be determined based on the Seller's Energy schedule for the applicable period, meter readings with respect to the Energy Source, if applicable, readings of the Metering Equipment before and after the occurrence of the event described in subsection 7.8(a) or (b) and other available information. There will be no deemed Eligible Energy during any period specified as a Planned Outage in a notice delivered by the Seller under section 6.5. For greater certainty, the provisions of this section 7.8 will not apply during any period when either Party is excused, in accordance with Article 11, from its obligation to deliver, or to accept delivery of, Energy as a result of a Force Majeure.

7.9 Green Attributes - The Buyer acknowledges that the Seller retains title and all right, benefit and interest in, to and arising from the Green Attributes.

8. METERING

8.1 Installation of Metering Equipment - The Seller shall, at its cost, ensure that revenue metering equipment (the "**Metering Equipment**") is installed, operated and maintained in accordance with the requirements of the Distribution Authority and the requirements of this section. For projects rated 1.00 MVA and higher, the Seller shall ensure that the Seller's Plant is equipped with electronic meters and SCADA capability. The Metering Equipment shall be installed at a location approved by the Buyer, acting reasonably, which location shall be such that the Metering Equipment can measure the Energy generated by the Seller's Plant independent of all other generation equipment or facilities. The Seller shall ensure that the Metering Equipment is: (a) capable of being remotely interrogated; (b) sufficient to accurately meter the quantity of Energy to be purchased and sold hereunder; (c) calibrated to measure the quantity of Energy delivered to the POI, after adjusting for any line losses from the Seller's Plant to the

POI; and (d) in compliance with all requirements set out in the *Electricity and Gas Inspection Act* (Canada) and associated regulations.

8.2 Operation of Metering Equipment - The Metering Equipment shall be used for purposes of calculating the amount of Eligible Energy. In the event of any failure of the Metering Equipment, the Parties shall, until such time as the Metering Equipment has been repaired or replaced, rely upon information provided by any back-up meter installed pursuant to section 8.3, or, in the absence of such back-up meter, the Seller's metering equipment, if any, for purposes of calculating payments due under this EPA. If there is any dispute regarding the accuracy of the Metering Equipment, either Party may give notice to the other Party of the dispute, in which case the Buyer and the Seller will proceed to rectify the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Seller shall allow the Buyer to access the Seller's Plant at any time during normal business hours on reasonable advance notice for purposes of inspecting the Metering Equipment. The Seller shall, on the Buyer's request, cause the Metering Equipment to be inspected, tested and adjusted, provided that, except as set out below, the Buyer shall not make such a request more than once in each year during the Term. The Seller shall give the Buyer reasonable prior notice of all inspections, tests and calibrations of the Metering Equipment and shall permit a representative of the Buyer to witness and verify such inspections, tests and calibration. If either Party has reason to believe that the Metering Equipment is inaccurate, the Seller shall cause the Metering Equipment to be tested forthwith upon becoming aware of the potential inaccuracy. The Seller shall provide the Buyer with copies of all meter calibration test results and all other results of any test of the Metering Equipment. If any test of the Metering Equipment discloses an inaccuracy outside the inaccuracies permitted under the *Electricity and Gas Inspection Act* (Canada), any payments or adjustments made or calculated under this EPA that would have been affected by the inaccuracy shall be recalculated to correct for the inaccuracy. For purposes of such correction, if the inaccuracy is traceable to a specific event or occurrence at a reasonably ascertainable time, then the adjustment shall extend back to that time; otherwise, it shall be assumed that the error has existed for a period equal to one half of the time elapsed since COD or one half of the time since the last meter test, whichever is more recent, but in any event shall not extend back more than 36 months. Any amounts which are determined to be payable or subject to refund as a result of such re-computations shall be paid to the Party entitled to such amounts within 20 days after the paying Party is notified of the re-computation.

8.3 Duplicate Metering Equipment - The Buyer may at any time during the Term, at the Buyer's sole cost, on not less than 30 days' prior notice to the Seller install a duplicate revenue meter at the Seller's Plant at a location to be agreed upon by the Buyer and the Seller, acting reasonably, and the Seller shall allow the Buyer to access the Seller's Plant for such purpose and for the purpose of inspecting and maintaining such equipment. The Seller shall make transformers, transformer connections and telephone access available to the Buyer, as required, if the Buyer elects to install a duplicate revenue meter. Any duplicate revenue meter and metering equipment installed by the Buyer will remain the property of the Buyer, and the Seller shall not tamper with, remove or move such meter or equipment.

8.4 Energy Source Meters - The Seller shall, at its cost, ensure that meters are installed at the Seller's Plant capable of measuring the Energy Source available to the Seller's Plant.

9. STATEMENTS AND PAYMENT

9.1 Statements

- (a) In each month after the month in which Pre-COD Energy is first delivered to the Buyer, the Seller shall, by the 15th day of the month or the first Business Day thereafter, deliver to the Buyer a statement prepared by the Seller for the preceding month. The statement must comply with any billing guideline issued by the Buyer pursuant to section 9.4 and must indicate, among other things, the amount of Eligible Energy, the price payable for

the Eligible Energy and any Final Amounts owing by either Party to the other Party and set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed. To the extent not previously delivered pursuant to the requirements of this EPA, the statement must 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 wilful misstatement 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.

9.2 Payment

- (a) Within 30 days after receipt of a statement delivered pursuant to subsection 9.1(a) and subject to section 9.5, the Buyer shall 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 in compliance with subsection 9.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) 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 3%, 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.

9.3 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 the Eligible Energy, including GST and PST, which, if applicable, will be borne by the Buyer and added to each statement.

9.4 Billing Guideline - The Seller shall comply with any reasonable written billing guideline (including any requirements with respect to the form of statements pursuant to section 9.1) issued by the Buyer during the Term, provided that any such billing guideline shall not vary the express terms of this EPA. If there is any conflict between a billing guideline and this EPA, this EPA will govern.

9.5 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 shall 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 shall pay to the other Party the difference between the amounts owed provided that:

- (a) this section 9.5 applies only to any purchase price for Eligible Energy owing by the Buyer to the Seller, any Termination Payment or Final Amount owing by either Party to the other Party, and any amount owing by the Seller to the Buyer under section 6.9; and
- (b) no Termination Payment, Final Amount, or amount owing by the Seller to the Buyer under section 6.9 shall be added to or deducted from the price owing by the Buyer to the Seller for Eligible Energy unless the Termination Payment, Final Amount or amount owing under section 6.9 remains unpaid 30 days after the Party owed the Termination

Payment, Final Amount or amount owing under section 6.9 gives notice to the other Party.

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.

10. INSURANCE/DAMAGE AND DESTRUCTION

10.1 Insurance - The Seller shall, by the date that is the earlier of:

- (a) the date of commencement of the Project activities necessary to construct the Seller's Plant; and
 - (b) 150 days after the Effective Date,
- obtain, maintain and pay for:
- (c) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$2,000,000 applicable to the Project separate from all other projects and operations of the Seller; and
 - (d) property insurance and Construction 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 requires.

All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. 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 shall 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 immediately upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section.

10.2 Damage or Destruction of the Seller's Plant

- (a) **Major Damage** - If the Seller's Plant suffers Major Damage caused by a Force Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, then the Seller may at its option exercisable by notice to the Buyer within 120 days after the occurrence thereof, either: (i) proceed to diligently and expeditiously and at its own cost repair the Major Damage and restore the Seller's Plant to at least the condition in which it was in immediately prior to the Major Damage and resume deliveries of Energy hereunder; or (ii) terminate this EPA, and in that event, the provisions of section 14.3 and subsection 14.5(c) apply. If the Seller fails to give notice exercising its option within such 120 day period, it will be deemed to have exercised the option described in (i) above. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA.
- (b) **Non-Major Damage** - If the Seller's Plant is damaged or destroyed, in whole or in part, by any cause or peril, then, except in the case of Major Damage caused by a Force

Majeure event in respect of which the Seller has invoked Force Majeure in accordance with Article 11, the Seller shall within 30 days after the date of the damage or destruction, provide notice to the Buyer setting out the date by which the Seller, acting reasonably can resume delivering Energy to the Buyer which date shall be not more than 365 days after the date of occurrence of the damage or destruction. The Seller shall diligently and expeditiously and at its own cost, repair the Seller's Plant and restore the same to at least the condition in which it was in immediately prior to the damage or destruction and shall complete such work not later than the date specified in the notice delivered by the Seller to the Buyer under this section. Nothing in this section limits the rights of either Party to terminate this EPA under any other section of this EPA, except that provided the Seller continues diligent efforts to repair the damage and resume delivering Energy hereunder, the Buyer may not exercise its right to terminate this EPA under subsection 14.1(c), unless the Seller fails to resume delivering Energy to the Buyer by the date specified in the notice delivered by the Seller to the Buyer pursuant to this section 10.2.

- (c) **Extension of Term** - Provided the Seller complies with its obligations under this section 10.2, the Term shall be extended by the number of days from the date of the event of damage or destruction to the date on which the Seller resumes delivering Energy to the Buyer.

11. FORCE MAJEURE

11.1 Invoking Force Majeure and Notice

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given as required in this section 11.1 and, 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.
- (b) If there is a Force Majeure preventing a Party from performing an obligation under this EPA, that Party shall promptly notify the other Party of the Force Majeure. The notice must identify the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. The affected Party shall provide reports to the other Party with respect to the Force Majeure at such intervals as the other Party may reasonably request while the Force Majeure continues. A Party will be deemed to have invoked Force Majeure from the date when that Party gives notice of the Force Majeure in accordance with this subsection 11.1(b), provided that if such notice is given within 24 hours after the later of: (i) the occurrence of the Force Majeure; and (ii) the time 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. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure. The Party invoking Force Majeure shall give prompt notice of the end of the Force Majeure.

11.2 Exclusions - A Party may not invoke Force Majeure:

- (a) for any economic hardship, or for lack of money, credit or markets; or

- (b) if the Force Majeure is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws; or
- (c) for a mechanical breakdown, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the mechanical breakdown was caused by a latent defect in the design or manufacture of the equipment which could not reasonably have been identified by normal inspection or testing of the equipment; or
- (d) if the Force Majeure was 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; or
- (e) for any disconnection of the Seller's Plant from the Distribution System, or any Outage, suspension, constraint or curtailment in the operation of the Distribution System; or
- (f) for any acts or omissions of third parties, including any Affiliate of the Seller, or any vendor, supplier, contractor or customer of a Party, but excluding Governmental Authorities, unless such acts or omissions are themselves excused by reason of Force Majeure as defined in this EPA.

12. PERFORMANCE SECURITY

12.1 Delivery - The Parties acknowledge that the Seller has delivered the Performance Security in the form required pursuant to section 12.4, to the Buyer concurrently with execution and delivery of this EPA. The Seller shall maintain the Performance Security until the time provided in section 12.2. The Performance Security secures the obligations of the Seller under this EPA to be performed on or before the first anniversary of COD, but is not a limitation of the Seller's liability in respect of any breach of, or default under, this EPA.

12.2 Return - The Buyer shall return or release the Performance Security to the Seller, without deduction, other than prior deductions, if any, properly made hereunder on the earlier of:

- (a) 10 Business Days after the first anniversary of COD;
- (b) upon termination of this EPA under section 3.1, by the date specified in subsection 3.5(a); or
- (c) 10 Business Days after termination of this EPA under subsection 10.2(a), section 14.1 or section 14.2 and discharge of all obligations and liabilities of the Seller to the Buyer under this EPA.

12.3 Enforcement - If:

- (a) the Seller fails to pay amounts owing by the Seller to the Buyer pursuant to any of sections 4.2, 4.5, 5.6 or 6.9; or
- (b) the Seller fails to pay any Final Amount owing by the Seller to the Buyer; or
- (c) the Seller fails to pay any Termination Payment owing by the Seller to the Buyer,

and, in each case, the Seller fails to cure such failure to pay within 15 days after notice from the Buyer to the Seller, then the Buyer may enforce the Performance Security and apply the proceeds thereof on account of amounts owing to the Buyer in respect of any or all of the foregoing.

12.4 Form - The Seller shall maintain the Performance Security in the form of a letter of credit that is:

- (a) issued or advised by a branch in Vancouver, Canada of a bank or financial institution where the issuing bank or financial institution has a credit rating not less than Standard & Poor's A-, Moody's A3 or Dominion Bond Rating Service A (low) and if such credit rating agencies publish differing credit ratings for the same bank or financial institution, the lowest credit rating of any of the credit rating agencies shall apply for purposes of this section;
- (b) in the form set out in Appendix 5, or in such other form as agreed to by the Buyer; and
- (c) for a term of not less than one year and must provide that it is renewed automatically, unless the issuing or confirming bank advises otherwise by the date specified in Appendix 5.

12.5 Replenishment - If the Buyer draws on the Performance Security, as permitted hereunder, then the Seller shall within 3 Business Days after such draw provide additional security in the form specified in section 12.4 sufficient to replenish or maintain the aggregate amount of the Performance Security at the amount required hereunder.

12.6 Letter of Credit Failure - The Buyer shall be entitled to enforce the Performance Security in the event of a Letter of Credit Failure and the Buyer shall be entitled to hold the proceeds of such enforcement until such time as the Seller delivers replacement Performance Security in the amount and in the form required under this EPA. Upon receipt of such replacement security, the Buyer shall return the proceeds of enforcement of the original Performance Security to the Seller without interest after deducting any amounts the Buyer is entitled to deduct under this EPA. The Seller shall notify the Buyer promptly of any Letter of Credit Failure.

13. SUSPENSION

13.1 Buyer Suspension - If a Buyer Termination Event has occurred and is continuing, the Buyer may, upon notice to the Seller, suspend performance under this EPA provided that in no event shall any such suspension continue for longer than 90 days and further provided that such right shall not affect the Buyer's obligation to make any payment owing to the Seller in respect of performance by the Seller of its obligations under this EPA prior to the date of suspension by the Buyer.

13.2 Seller Suspension - If a Seller Termination Event has occurred and is continuing, the Seller may, upon notice to the Buyer, suspend performance under this EPA, provided that such right shall not affect the Seller's obligation to pay any amount owing by the Seller to the Buyer in respect of performance of, or failure to perform, the Seller's obligations under this EPA prior to the date of suspension by the Seller.

13.3 Resuming Deliveries - The non-defaulting Party's right to suspend performance pursuant to this Article 13 shall cease when the defaulting Party has demonstrated to the satisfaction of the non-defaulting Party, acting reasonably, that the defaulting Party has cured the cause for the suspension.

14. TERMINATION

14.1 Termination by the Buyer - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Buyer may terminate this EPA by notice to the Seller if:

- (a) COD does not occur by the earlier of:
 - (i) Target COD plus all Force Majeure Days (not exceeding 365 Force Majeure Days) plus 365 days; and
 - (ii) 1 November 2010 plus all Force Majeure Days (not exceeding 185 Force Majeure Days) plus 180 days,

provided that the Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to COD; or

- (b) at any time after COD, the Buyer has received a notice from the Seller invoking Force Majeure and:
 - (i) the Force Majeure has not been removed by the date that is 365 days after the date of the notice invoking Force Majeure; or
 - (ii) if the Force Majeure cannot be removed within that 365 day period by the date that is 730 days after the date of the notice invoking Force Majeure, provided that the Seller is working diligently and expeditiously to remove the Force Majeure.

The Buyer shall only be entitled to terminate the EPA under this provision if the Buyer delivers a termination notice prior to the end of the Force Majeure; or

- (c) at any time after COD, the Seller fails to deliver any Energy to the Buyer for a period of 180 continuous days for reasons other than Force Majeure; or
- (d) a Buyer Termination Event occurs.

Any termination pursuant to this section 14.1 shall be effective immediately upon delivery of the notice of termination to the Seller.

14.2 Termination by the Seller - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA, the Seller may terminate this EPA by notice to the Buyer:

- (a) at any time prior to the earlier of: (i) COD; and (ii) the first anniversary of the Effective Date; or
- (b) if the Seller has received a notice from the Buyer invoking Force Majeure and the Force Majeure has not been removed by the date that is 365 days after the date of the notice invoking Force Majeure, provided that the Seller shall only be entitled to terminate the EPA under this provision if the Seller delivers a termination notice prior to the end of the Force Majeure; or
- (c) if a Seller Termination Event occurs.

Any termination pursuant to this section 14.2 shall be effective immediately upon delivery of the notice of termination to the Buyer.

14.3 Effect of Termination - Upon expiry of the Term or if this EPA is terminated pursuant to section 3.1, subsection 10.2(a) or this Article 14:

- (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 the 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 (including any claims by the Buyer for amounts that would have been payable by the Seller under any of sections 4.2, 4.5, 5.6 or 6.9 but for the expiry or termination of the EPA), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and
- (b)
 - (i) with respect to a termination under section 3.1 only, both Parties will remain bound by (A) Article 18 and sections 19.7 and 19.8, and (B) sections 3.3, 3.5, 12.2 and 12.3, in respect of the satisfaction of residual obligations specified to arise on termination only;
 - (ii) upon expiry of the Term or upon any termination other than a termination under section 3.1:
 - (A) both Parties will remain bound by: (I) section 7.9; (II) Article 9, in respect of any final billing and resolution of disputed amounts only; (III) Article 12, and Article 14, in respect of the satisfaction of residual obligations specified to arise on termination only; and (IV) Article 18 and sections 19.7 and 19.8; and
 - (B) the Seller will remain bound by: (I) section 6.6; and (II) for a period of 36 months following expiry of the Term or termination of this EPA, Article 16, with respect to records only,

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

14.4 Payment on Termination by the Buyer

- (a) If the Buyer terminates this EPA under section 14.1 except for a termination pursuant to subsection 14.1(b), the Seller shall pay to the Buyer an amount equal to \$30,000/MW multiplied by the Plant Capacity.
- (b) If the Buyer terminates this EPA under subsection 14.1(b), no Termination Payment is payable by the Seller to the Buyer, except as set out in subsection 14.4(c).
- (c) If the Buyer terminates this EPA under subsection 14.1(b) prior to the first anniversary of COD, the Seller shall reimburse the Buyer, within 30 days after the date of delivery by the Buyer to the Seller of an invoice therefor (which invoice shall be delivered not later than 60 days after the date of termination of the EPA), for an amount, not exceeding the amount of the Performance Security required hereunder, equal to the Network Upgrade Costs.

14.5 Payment on Termination by the Seller

- (a) If the Seller terminates this EPA under subsection 14.2(a), the Seller shall pay to the Buyer an amount equal to \$10,000/MW multiplied by the Plant Capacity.

- (b) If the Seller terminates this EPA under subsection 14.2(b), no Termination Payment is payable by the Buyer to the Seller.
- (c) If the Seller terminates this EPA under subsection 10.2(a), no Termination Payment is payable by the Seller to the Buyer except that if the Seller terminates the EPA under subsection 10.2(a) prior to the first anniversary of COD, subsection 14.4(c) applies.
- (d) If the Seller terminates this EPA under subsection 14.2(c) prior to COD, the Buyer shall pay to the Seller an amount equal to the lesser of:
 - (i) 115% of the Development Costs; and
 - (ii) the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (e) If the Seller terminates this EPA under subsection 14.2(c) after COD, the Buyer shall pay to the Seller an amount equal to the positive amount, if any, by which the Seller's Losses and Costs exceed its aggregate Gains.
- (f) The Buyer may audit the Seller's Development Costs and in that event, the Seller shall provide all reasonable cooperation to the Buyer or its designated representative, including access to all original records related to Development Costs.
- (g) The Seller's Gains, Losses and Costs shall be determined by comparing the value of the remaining Term, contract quantities and price payable under this EPA had it not been terminated to the relevant market prices for equivalent quantities for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and the product specified under this EPA including with respect to quantity, place of delivery and length of term.
- (h) The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer pursuant to subsection 14.5(d) or (e).
- (i) The Seller shall determine the amount of any Termination Payment owed by the Buyer pursuant to subsection 14.5(d) or (e) as applicable and shall notify the Buyer of such amount and provide reasonable particulars with respect to its determination within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any Termination Payment under this section.
- (j) If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the Termination Payment shall be zero.
- (k) The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate applicable at the effective date of termination of the EPA, where the "Present Value Rate" means the annual yield on a

Government of Canada Bond having a maturity date that most closely matches the date on which the Term would have expired but for the termination of the EPA, plus 3%.

14.6 Termination Payment Date - A Party required to make a Termination Payment to the other Party shall, except in the case of a Termination Payment payable pursuant to subsection 14.5(d) or (e), pay the Termination Payment within 5 Business Days after the effective date of termination of this EPA. The Buyer shall pay any Termination Payment owing by the Buyer pursuant to subsection 14.5(d) or (e) within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer pursuant to subsection 14.5(d) or (e) as applicable. At the time for payment of the Termination Payment, each Party shall pay to the other Party all additional amounts payable by it pursuant to this EPA, but all such amounts will be netted and aggregated with any Termination Payment.

14.7 Exclusive Remedies - Subject to section 14.3, the payments and actions contemplated by section 3.5 shall be the exclusive remedy to which the Parties are entitled for termination of this EPA pursuant to section 3.1. Except in the case of Deliberate Breach or as otherwise expressly set out in this EPA, and subject to section 14.3: (a) payment by the Seller of the Termination Payment is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsections 14.1(a), (c) or (d) or 14.2(a); and (b) payment by the Seller of any amount payable pursuant to subsection 14.4(c) is the exclusive remedy to which the Buyer is entitled for termination of this EPA pursuant to subsection 14.1(b). Payment by the Buyer of the Termination Payment is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 14.2(c). Termination of this EPA is the exclusive remedy to which the Seller is entitled for termination of this EPA pursuant to subsection 14.2(b). The Seller's exclusive remedy for the Buyer's failure to take or pay for Eligible Energy is a claim for the price payable by the Buyer for Eligible Energy pursuant to Appendix 2 and any interest on any such amount owing by the Buyer to the Seller, provided that the foregoing does not limit or otherwise affect any right to terminate the EPA, or any rights under section 9.5, or any right to receive a Termination Payment expressly set out in this EPA.

14.8 Limits of Liability - Except in the case of Deliberate Breach, in each year during the Term, the Seller's liability for damages for all breaches of or defaults under this EPA in that year is limited to an amount equal to \$30,000/MW multiplied by the Plant Capacity, provided that the foregoing does not apply to: (i) any liability under any of sections 4.2, 4.5, 5.6, or 6.9; (ii) any liability under section 18.1; (iii) interest on any amount owing under this EPA; (iv) any right to receive a Termination Payment expressly set out in this EPA; or (v) any other provision in this EPA that is expressly excluded from the limits of liability in this section.

14.9 Consequential Damages - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages arising out of a Party's performance or non-performance under this EPA, whether based on or claimed under contract, tort, strict liability or any other theory at law or in equity.

15. ASSIGNMENT

15.1 Assignment - The Seller may not 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, except with the prior consent of the Buyer, such consent not to be unreasonably withheld, conditioned or delayed. Any request by the Seller for the Buyer's consent to an assignment must be delivered to the Buyer not less than 30 days before the date of assignment. Any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's ownership

interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 15.

15.2 Assignment to Lender - If the Seller seeks consent to assign this EPA to a lender or lenders, the Seller acknowledges that the Buyer is entitled to require, as a condition of the Buyer's consent to such assignment, that the Seller and the lender enter into an agreement with the Buyer substantially in the form attached as Appendix 6.

15.3 Costs - The Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with an assignment.

16. INSPECTION

For the sole purpose of verifying compliance with this EPA, of verifying the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA and of verifying the Seller's right to rely on any relief claimed by the Seller under this EPA, on reasonable prior written notice to the Seller, the Seller shall provide the Buyer and the Buyer's representatives and advisors with prompt access during normal business hours to the Seller's Plant and to the records relating to the Seller's Plant including all records required to be maintained by the Seller under section 6.6 and the Seller shall promptly provide copies of any such records to the Buyer on request by the Buyer at any time. The Buyer and the Buyer's representatives and advisors may take copies of all such records. All such records that contain confidential technical or proprietary information are Confidential Information under section 19.8. The Buyer shall exercise any access under this Article 16 at the Buyer's cost and in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by the Buyer of the Seller's Plant, its design, construction, operation, maintenance, repair, records or other activities of the Seller may not be relied upon by the Seller, or others, as confirming or approving those matters.

17. REPRESENTATIONS AND WARRANTIES

17.1 By Seller - The Seller 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 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 its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Seller or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller;
- (c) **Assets** - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA, nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of the Seller, any permit, franchise, lease, license, approval or agreement to which the Seller is a party, or any other covenant or obligation binding on the Seller or affecting any of its 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 enforceable against the Seller in accordance with its terms;
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Seller;
- (g) **Bid Documents** - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
- (h) **Exemption From Regulation** - The Seller is exempt from regulation as a "public utility", as defined in the UCA, with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.

17.2 By Buyer - 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 in 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 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;
- (b) **Bankruptcy** - No actions have been taken or authorized by the Buyer or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Buyer or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Buyer;
- (c) **Assets** - There is no appropriation, expropriation or seizure of any of the material assets of the Buyer pending or threatened;
- (d) **No Conflict** - Neither the signing of this EPA nor the carrying out of the Buyer's obligations under this EPA will constitute or cause a breach of, default under, or violation of, the *Hydro and Power Authority Act* (British Columbia), any permit, franchise, lease, license, approval or agreement to which the Buyer is a party, or any other covenant or obligation binding on the Buyer or affecting any of its properties;
- (e) **Binding Obligation** - This EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
- (f) **Authorization, Execution and Delivery** - This EPA has been duly authorized, executed and delivered by the Buyer.

18. INDEMNITIES

18.1 Seller Indemnity - The Seller shall indemnify, defend and hold harmless the Buyer and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (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, any contractor or subcontractor or supplier to the Seller or any director, officer, employee or agent of the Seller or any other Person for whom the Seller 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.

18.2 Buyer Indemnity - The Buyer shall indemnify, defend and hold harmless the Seller and its shareholder(s) and Affiliates, and their respective directors, officers, employees, agents, representatives, successors and permitted assigns (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.

18.3 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 party 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 written consent of the Indemnitor.

19. GENERAL PROVISIONS

19.1 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, and not under this EPA.

19.2 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.

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

19.4 Notices - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill (a “notice”) 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 stated in subsection 19.4(c) or (d) and:

- (a) may be delivered by hand or by a courier service during normal business hours on a Business Day, in which case the notice will be deemed to have been delivered on that Business Day; or
- (b) notices, other than notices under section 3.4 or 4.2 or any of Articles 11, 12, 13, 14 or 15, may be sent by email during normal business hours on a Business Day, in which case provided that the Party delivering the notice obtains a confirmation of delivery, the notice will be deemed to have been delivered on that Business Day;
- (c) subject to subsection 19.4(e), the address of the Buyer for notices is as set out in Appendix 8;
- (d) subject to subsection 19.4(e), the address of the Seller for notices is as set out in Appendix 8, and the Buyer may, but is not required to (except as otherwise provided in a Lender Consent Agreement, if any) provide a copy of any such notice to the Facility Lender; and
- (e) either Party may change its address or fax number for notices under this EPA by notice to the other Party.

19.5 Entire Agreement and Amendment - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the Call for Tenders issued by the Buyer on 8 December 2005 and all Addenda, questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto. 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. This EPA may not be amended, except by an agreement in writing signed by both Parties.

19.6 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.

19.7 Dispute Resolution - If any dispute arises under or in relation to this EPA, that dispute will be referred to and finally resolved by arbitration by a single arbitrator. The arbitration will be administered by the British Columbia International Commercial Arbitration Centre (“**BCICAC**”) pursuant to its rules. The place of arbitration will be Vancouver, British Columbia. If at the time a dispute arises the BCICAC does not exist, the dispute will be finally settled by arbitration by a single arbitrator who, failing agreement of the parties, shall be appointed under the *Commercial Arbitration Act* (British Columbia) or under the *International Commercial Arbitration Act* (British Columbia), as applicable, and the arbitrator shall conduct the arbitration in accordance with such rules as the Parties may agree in writing, or failing agreement, such rules as may be determined or adopted by the arbitrator. The decision of the arbitrator will be final and binding on the Parties. All performance required under this EPA by the Parties and payments required under this EPA will continue during the dispute resolution proceedings contemplated

by this section 19.7, provided that this section may not be interpreted or applied to delay or restrict the exercise of any right to suspend performance under or terminate this EPA pursuant to the express terms hereof. Any payments or reimbursements required by an arbitration award will be due as of the date determined in accordance with section 9.2 or, where section 9.2 is not applicable, as of the date determined in the award, and, without duplication with subsection 9.2(b), will bear interest at an annual rate equal to the Prime Rate plus 3% compounded monthly, from the date such payment was due until the amount is paid. To the fullest extent permitted by law, the Parties shall 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 arbitrators' award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors, shareholders and employees, its professional advisors and other representatives, and may make such disclosures in the course of any Proceedings required to pursue any legal right arising out of or in connection with the arbitration and may make such disclosures as are required by law or for regulatory purposes.

19.8 Confidentiality

- (a) Without limiting any other confidentiality agreement between the Parties, during the Term and for 5 years thereafter, the Buyer shall treat as confidential and will not cause or permit the publication, release or disclosure of any Confidential Information received by the Buyer from the Seller, except to the extent that publication, release or disclosure: (i) is expressly authorized under any section of this EPA; (ii) is necessary to enable the Buyer to fulfil its obligations under this EPA, including under section 3.3, (iii) is required by law or for regulatory purposes, (iv) is made with the prior consent of the Seller, or if (v) such information has entered the public domain other than through the actions of the Buyer. The Buyer may also disclose Confidential Information: (vi) to consultants and advisors to the Buyer and representatives of the Government of British Columbia who have a need to know the Confidential Information and who have been informed by the Buyer of the need to maintain the confidentiality of the Confidential Information disclosed to them; (vii) as may be necessary for the Buyer to adequately pursue or defend any legal or regulatory proceeding relating to the CFT or this EPA or any EPA awarded under the CFT process; and (viii) as otherwise set out in this EPA.
- (b) 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.
- (c) The Parties confirm that 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 all Confidential Information disclosed by the Seller to the Buyer shall 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.

19.9 Interconnection Agreement and Facilities Agreement - Nothing in the Interconnection Agreement or the Facilities Agreement, if any, 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 or the Facilities Agreement, if any, shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA, and this EPA shall be

interpreted and applied as though the Distribution Authority were a third party, including for purposes of determining whether or not a Force Majeure has occurred.

19.10 Commodity Contract/Forward Contract - The Parties agree and intend that this EPA constitutes a commodity contract for the purposes of subsection (h) of the definition of “eligible financial contract” in section 65.1(8) of the *Bankruptcy and Insolvency Act* (Canada) and in Section 11.1(1) of the *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.

19.11 Further Assurances - Each Party shall, 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.

19.12 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.

19.13 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 as of the date set out on page 1 of this EPA.

For ●

Authorized Representative

Print Name and Office

Date

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

Authorized Representative

Print Name and Office

Date

APPENDIX 1

DEFINITIONS

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

1. **“Affiliate”** means, with respect to the Seller, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.
2. **“Bankrupt or Insolvent”** means, with respect to a Person:
 - (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 has issued an order declaring the Person bankrupt or insolvent.
3. **“BCUC”** means the British Columbia Utilities Commission or any successor thereto.
4. **“BCUC Acceptance”** has the meaning given in section 3.1.
5. **“BC Clean Electricity”** means electricity that meets the requirements set out in the “BC Clean Electricity Guidelines” issued by the British Columbia Ministry of Energy, Mines and Petroleum Resources” dated 15 September, 2005, as amended at any time prior to the first anniversary of COD.
6. **“Bid Documents”** means the Tender described in Recital B and all documents and information provided by the Seller to the Buyer in connection with such Tender, whether concurrently with or after the date of submission of the Tender to the Buyer.
7. **“Business Day”** means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
8. **“Buyer”** means British Columbia Hydro and Power Authority and its successors and permitted assigns.
9. **“Buyer Termination Event”** means any one of the following:
 - (a) the Seller is Bankrupt or Insolvent;

- (b) a Letter of Credit Failure has occurred and the Seller has failed to deliver a replacement Performance Security within 5 Business Days after the Letter of Credit Failure occurred;
 - (c) the Seller has not by the date that is the earlier of: (i) 60 days after the date of award of this EPA under the CFT; and (ii) 240 days after the date of issuance by the Distribution Authority to the Seller of the F2006 CFT Preliminary Interconnection Study Report, executed and delivered to, or caused to be executed and delivered to, the Distribution Authority an application for an impact/design study where the interconnection of the Seller's Plant will have no impact on the Transmission System, or, where the interconnection of the Seller's Plant will have an impact on the Transmission System, an interconnection impact study and any related studies, together with the applicable study fee in the form and amount prescribed by the Distribution Authority;
 - (d) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
 - (e) the Seller 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 failure by the Seller to comply with subsection 6.3(f) or any of sections 6.9, 6.11 or 7.4, any Deliberate Breach by the Seller of its obligations under section 6.4, and any purported assignment of this EPA without the consent of the Buyer where such consent is required under Article 15.
10. **"CFT"** means the "F2006 Open Call for Power - Call for Tenders" issued by the Buyer on 8 December 2005, together with all Addenda thereto, and all other documents and forms referenced therein as forming part of the CFT.
 11. **"COD"** or **"Commercial Operation Date"** means the time when the Seller's Plant achieves COD pursuant to section 5.2.
 12. **"COD Certificate"** means a certificate in the form set out in Appendix 3 signed by a senior officer of the Seller.
 13. **"Compliance Units"** means any credit, offset, unit, allowance or other instrument that may be used to achieve compliance with emission limitation or intensity obligations as prescribed under Laws and Permits regulating GHG emissions from the Seller's Plant.
 14. **"Confidential Information"** means: (i) information that is described as confidential information in any section of this EPA; and (ii) information disclosed by the Seller to the Buyer in the CFT process and that is described in the CFT as confidential.
 15. **"Construction Insurance"** means all insurance generally accepted in the insurance industry as being required to construct a facility similar to the Seller's Plant including course of construction insurance.

16. **“Control”** of any Person means: (i) 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; (ii) ownership of 50% or more of the equity or beneficial interest in that Person; or (iii) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
17. **“Costs”** means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller’s rights under this EPA.
18. **“Deliberate Breach”** means:
 - (a) any failure by the Seller to achieve COD by the earlier of: (i) the Target COD plus all Force Majeure Days (not exceeding 365 Force Majeure Days) plus 365 days; and (ii) 1 November 2010 plus all Force Majeure Days (not exceeding 185 Force Majeure Days) plus 180 days, resulting from any wilful or grossly negligent act or omission of the Seller;
 - (b) any breach of or default under any provision of this EPA by the Seller resulting from any wilful or grossly negligent act or omission by the Seller;
 - (c) a Buyer Termination Event constituting a repudiation of the EPA by the Seller; or
 - (d) any sale or transfer by the Seller of Energy to any Person, other than the Buyer, except where such sale or transfer is expressly permitted under this EPA.
19. **“Development Costs”** means all costs reasonably incurred or committed by the Seller, after the date of issuance of the CFT, for the Project and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the Project and to otherwise cease development of the Project, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.
20. **“Direct Assignment Costs”** means all costs of design, engineering, procurement, construction, installation and commissioning of Direct Assignment Facilities incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System).
21. **“Direct Assignment Facilities”** means modifications or additions to transmission, or distribution, related facilities that are integrated with the Transmission System or the Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller’s Plant and are for the sole benefit of the Seller’s Plant, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).
22. **“Distribution Authority”** means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.

23. **“Distribution System”** means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kV or less, and includes all additions and modifications thereto and repairs or replacements thereof.
24. **“EcoLogo^M Certification”** means certification pursuant to Environment Canada’s Environmental Choice^M program confirming that the Seller’s Plant and all or part of the Energy complies with the “Guideline on Renewable Low-Impact Electricity” as amended from time to time and is therefore entitled to the EcoLogo^M designation.
25. **“Effective Date”** means the date set out on page one hereof.
26. **“Eligible Energy”** means in each month after COD:
 - (a) the amount of Metered Energy delivered by the Seller at the POI in that month, but excluding any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) Energy that is deemed to be “Eligible Energy” in that month pursuant to section 7.8.
27. **“Energy”** means all electric energy expressed in MWh generated by the Seller’s Plant excluding Station Service.
28. **“Energy Source”** means the source of energy used to generate Energy at the Seller’s Plant as specified in Appendix 4.
29. **“Escalated Bid Price”** has the meaning given in Appendix 2.
30. **“F2006 CFT Preliminary Interconnection Study Report”** means the report referenced in section 7 of Appendix 4.
31. **“Facilities Agreement”** means the agreement, if any, between the Seller and the Distribution Authority setting out the commercial terms and conditions applicable to the construction of the Direct Assignment Facilities and Network Upgrades, as amended or replaced from time to time.
32. **“Facility Lender”** means any lender(s) providing any debt financing for the Project and any successors or assigns thereto.
33. **“Final Amount”** means an amount owing by either Party to the other Party pursuant to 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 pursuant to section 19.7 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
34. **“Force Majeure”** means, subject to the exclusions in section 11.2, any event or circumstance not within the control of the Party claiming Force Majeure and, to the extent not within that Party’s control, includes:
 - (a) acts of God, including wind, ice and other storms, lightning, floods, earthquakes, volcanic eruptions and landslides;

- (b) strikes, lockouts and other industrial disturbances, provided that settlement of strikes, lockouts and other labour disturbances will be wholly within the discretion of the Party involved;
- (c) epidemics, war (whether or not declared), blockades, acts of public enemies, acts of sabotage, civil insurrection, riots and civil disobedience;
- (d) acts or omissions of Governmental Authorities, including delays in regulatory process and orders of a regulatory authority or court of competent jurisdiction;
- (e) explosions and fires; and
- (f) notwithstanding subsection 11.2(f), an inability of the Seller to achieve COD solely as a result of a delay by the Distribution Authority in completion of Direct Assignment Facilities or Network Upgrades and such delay is not attributable to the Seller or the Seller's Plant, including any change to the point of interconnection with the Distribution System or other Project change made by the Seller under section 4.5,

but does not include:

- (g) any refusal, failure or delay of any Governmental Authority in granting any Permit to the Seller, whether or not on terms and conditions that permit the Seller to perform its obligations under this EPA, except where such failure or delay is a result of an event described in paragraph (a), (b), (c) or (e) above.
35. **"Force Majeure Days"** means the number of days the Seller is delayed in achieving COD as a result of Force Majeure invoked by the Seller in accordance with Article 11.
 36. **"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.
 37. **"Gains"** means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
 38. **"GHG"** or **"Greenhouse Gas(es)"** means: (i) one or more of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride; and (ii) any other gas that is identified as having significant global warming potential and is added, at any time before the expiry of the Term, to Schedule 1 to the *Canadian Environmental Protection Act, 1999* or to any other regulation(s) governing the emissions of the gases noted in (i) from the Seller's Plant.
 39. **"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 WECC region.

40. **“Governmental Authorities”** means any federal, provincial, local or foreign governments 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.
41. **“Green Attributes”** means:
- (a) all attributes associated with, or that may be derived from, the Energy and/or the Seller’s Plant having decreased environmental impacts, 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, resulting from the Energy during the Term;
 - (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: (i) 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 Energy; or (ii) the reduction, removal, avoidance, sequestration or mitigation of emissions at or from the Seller’s Plant; and
 - (c) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing.
42. **“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.
43. **“Interconnection”** means the facilities and procedures that permit the flow of electric power from the Seller’s Plant to the Distribution System and vice versa.
44. **“Interconnection Agreement”** means the agreement between the Seller and the Distribution Authority which provides for the implementation and operation of the Interconnection, as amended or replaced from time to time.
45. **“kV”** means kilovolts.
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.
47. **“Lender Consent Agreement”** means an agreement referred to in section 15.2.
48. **“Letter of Credit Failure”** means:
- (a) a failure to renew or substitute the Performance Security by no later than 60 days prior to the expiry thereof;
 - (b) the issuer of the Performance Security fails to maintain a credit rating of at least the minimum rating specified in section 12.4;
 - (c) the issuer of the Performance Security fails to comply with or perform its obligations under the Performance Security;

- (d) the issuer of the Performance Security disaffirms, disclaims, repudiates, terminates, rejects, in whole or in part, or challenges the validity of, the Performance Security; or
 - (e) the Performance Security fails or ceases to be in full force and effect for purposes of this EPA (whether or not in accordance with its terms) prior to the date specified in Article 12 for return of the Performance Security to the Seller.
49. **“Losses”** means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner.
50. **“Major Damage”** means damage where the cost to repair the damage exceeds the present value (using the Present Value Rate) of (a) the Escalated Bid Price less a \$/MWh amount representing the estimated operating and maintenance costs for the Seller’s Plant (including costs of the Energy Source) multiplied by (b) the projected Energy deliveries from the Seller’s Plant for the remainder of the Term.
51. **“Material Permits”** means all of the following if and as required for the Seller’s Plant:
- (a) environmental assessment certificate;
 - (b) air emissions permit;
 - (c) any permits, licenses or approvals required with respect to the discharge of any type of waste liquids from the Seller’s Plant;
 - (d) water licence;
 - (e) zoning appropriate for the Seller’s Plant;
 - (f) any subdivision approvals required to create the site on which the Seller’s Plant is or will be located as a separate legal parcel;
 - (g) any permits or approvals required with respect to the storage of the Energy Source at the Seller’s Plant; and
 - (h) any lease, license or occupation or similar agreement required with respect to the Seller’s Plant including all access roads to the Seller’s Plant;
- on terms and conditions that permit the Seller to comply with its obligations under this EPA.
52. **“Metered Energy”** means Energy recorded by the Metering Equipment.
53. **“Metering Equipment”** means the metering equipment described in section 8.1.
54. **“MW”** means megawatt.
55. **“MWh”** means megawatt-hour.
56. **“Network Upgrades”** means modifications or additions to transmission or distribution related facilities that are integrated with and support the overall Transmission System or Distribution System, as the case may be, that are required to accommodate the interconnection of the Seller’s

Plant to the system and to transmit the electricity from the Seller's Plant through the system to the Buyer's network loads, but which benefit all users of the system, as determined by the Transmission Authority (as to the Transmission System) or the Distribution Authority (as to the Distribution System).

57. **“Network Upgrade Costs”** means all costs incurred by the Transmission Authority (in respect of the Transmission System) and/or the Distribution Authority (in respect of the Distribution System) for the design, engineering, procurement, construction, installation and commissioning of Network Upgrades.
58. **“Outage”** means:
 - (a) in the case of the Seller's Plant, a partial or total interruption in the delivery of, or ability to deliver, Energy; and
 - (b) in the case of the Distribution System and the Transmission System, a partial or total interruption in the transmission of, or ability to transmit, Energy from the Seller's Plant.
59. **“Party”** means: (i) the Buyer and its successors and permitted assigns; or (ii) the Seller and its successors and permitted assigns, and **“Parties”** means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority shall be deemed not to be a **“Party”**, whether or not owned or operated by British Columbia Hydro and Power Authority.
60. **“Performance Security”** means a letter of credit in the form specified in section 12.4 in an amount equal to \$30,000/MW multiplied by the Plant Capacity.
61. **“Permits”** means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation and maintenance of the Seller's Plant and the delivery of Eligible Energy at the POI, including all Material Permits.
62. **“Person”** means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
63. **“Planned Islanding Capability”** means the ability of a generator to electrically energize, in a safe, controlled and reliable manner, a portion of the Transmission System or Distribution System, including loads, that is separated from the rest of the Transmission System or Distribution System.
64. **“Planned Outage”** means an Outage, which is scheduled in accordance with section 6.5 and Good Utility Practice for purposes of inspection and/or general overhaul of equipment in the Seller's Plant.
65. **“Plant Capacity”** means the electrical capacity of the Seller's Plant expressed in MW, determined as the nameplate capacity if expressed in MW, or as the nameplate capacity if expressed in MVA multiplied by a power factor of 0.95, as set out in Appendix 4, as amended in accordance with section 4.2.
66. **“POI”** or **“Point of Interconnection”** means the point at which the Seller's Plant interconnects with the Distribution System as more particularly defined in the Interconnection Agreement.

67. **“PPT”** means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
68. **“Pre-COD Energy”** means that amount of Metered Energy delivered by the Seller at the POI prior to COD including Test Energy, but excluding:
- (a) any portion of the Metered Energy that at any time exceeds 120% of the Plant Capacity; and
 - (b) that portion of the Metered Energy that is sold to third parties in accordance with section 7.1.
69. **“Present Value Rate”** has the meaning given in subsection 14.5(k).
70. **“Prime Rate”** means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, 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.
71. **“Proceeding”** has the meaning given in section 1.5.
72. **“Project”** means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller’s Plant.
73. **“Project Assets”** means the Seller’s Plant and all rights, property, assets, equipment, materials and contracts required to design, engineer, procure, construct, commission, operate and maintain the Seller’s Plant, whether real or personal and whether tangible or intangible, including equipment and other warranties, Permits, supply and other contracts, the goodwill in and right to use the name by which the Seller’s Plant is commonly known, the books, records and accounts with respect to the Seller’s Plant, and all land tenure and land tenure agreements with respect to the Seller’s Plant.
74. **“PST”** means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
75. **“Seller”** means the Party so identified on page one of this EPA, and its successors and permitted assigns.
76. **“Seller Termination Event”** means:
- (a) the Buyer is Bankrupt or Insolvent;
 - (b) except where an amount has been disputed in the manner specified in subsection 9.1(b), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
 - (c) 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.

77. **“Seller’s Plant”** means the Seller’s plant described in Appendix 4 and all facilities and equipment required to construct, operate and maintain the plant described in Appendix 4 and to interconnect that plant to the Distribution System.
78. **“Station Service”** means electricity required to service the Seller’s Plant, including electricity required for fuel processing.
79. **“Target COD”** means TO#1.
80. **“Tender ”** means the Tender submitted by the Seller pursuant to the CFT.
81. **“Term”** has the meaning given in section 2.1.
82. **“Termination Payment”** means the amount payable by the Seller to the Buyer or the amount payable by the Buyer to the Seller pursuant to section 14.4 or section 14.5, as the case may be.
83. **“Test Energy”** means Metered Energy delivered at the POI during any successful test pursuant to subsection 5.2(b) but excluding all Metered Energy that at any time exceeds 120% of the Plant Capacity.
84. **“Transmission Authority”** means the British Columbia Transmission Corporation or any successor thereto.
85. **“Transmission System”** means the transmission, substation, protection, control and communication facilities: (i) owned by the Buyer or by the Transmission Authority; and (ii) operated by the Transmission Authority in British Columbia, and includes all additions and modifications thereto and repairs or replacements thereof.
86. **“UCA”** means the *Utilities Commission Act* (British Columbia).
87. **“WECC”** means the Western Electricity Coordinating Council or any successor organization of which the Buyer is a member.

APPENDIX 2

ENERGY PRICE

1. Definitions and Interpretation

1.1 **Definitions** - In this Appendix 2 or elsewhere in the EPA, the following words and expressions have the following meanings:

- (a) **“BPP” or “Bid Price Percentage”** means BP#5 %, which is the percentage of the Initial Period Bid Price and Remainder Period Bid Price that is subject to escalation pursuant to section 3.2 of this Appendix.
- (b) **“CPI”** means the Consumer Price Index for Canada, All Items (Not Seasonally Adjusted) as published by Statistics Canada, adjusted or replaced in accordance with subsection 1.2(d) of this Appendix.
- (c) **“EPA Price”** means the Escalated Bid Price as adjusted pursuant to section 3.3 of this Appendix.
- (d) **“Escalated Bid Price”** means:
 - (i) for the period from COD to the hour ending at 24:00 PPT on the day immediately prior to the first day of the month following the BP#2 anniversary of COD, the Initial Period Bid Price as adjusted pursuant to section 3.2 of this Appendix; and
 - (ii) for the period from the hour commencing at 00:00 PPT on the first day of the month following the BP#2 anniversary of COD for the remainder of the Term, the Remainder Period Bid Price, as adjusted pursuant to section 3.2 of this Appendix.

[Note to Bidders: If there is only one Bid Price for the Term, the above section will be revised to read ““Escalated Bid Price” means the Bid Price as adjusted pursuant to section 3.3 of this Appendix.”]

- (e) **“HLH” or “Heavy Load Hours”** means the hours commencing at 06:00 PPT and ending at 22:00 PPT Monday through Saturday inclusive but excluding British Columbia statutory holidays.
- (f) **“Initial Period Bid Price”** means \$ BP#3 /MWh.

[Note to Bidders: If there is only one Bid Price for the Term, the above definition will be revised to read ““Bid Price” means \$ BP#4 /MWh.”]

- (g) **“LLH” or “Light Load Hours”** means all hours other than Heavy Load Hours.
- (h) **“Remainder Period Bid Price”** means \$ BP#3 /MWh.

[Note to Bidders: If there is only one Bid Price for the Term the above definition will be deleted.]

1.2 Interpretation - All payments 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;
- (c) any escalators or percentages will be expressed as a percentage and will be rounded to four decimal places (i.e. 0.0000%); and
- (d) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
 - (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 Canadian Government);
 - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 1.9 of this EPA 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 shall 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 shall recalculate the invoice amounts in the next succeeding invoice and shall 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 shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

2. Pre-COD Energy

2.1 No price is payable by the Buyer for Energy, if any, delivered to the Buyer before COD, except as set out in section 2.2 of this Appendix.

2.2 The price payable by the Buyer for Test Energy in respect of which the Seller has not given a notice under section 7.1 is \$25.00/MWh. If the Seller's Plant does not satisfy the requirements of section 5.2, no price is payable by the Buyer for any Energy generated during the period specified in subsection 5.2(b).

3. Post-COD Energy

3.1 **Price** - The price payable by the Buyer for each MWh of Eligible Energy after COD is the EPA Price.

3.2 **CPI Adjustment** - The Initial Period Bid Price ("IPBP") and the Remainder Period Bid Price ("RPBP") will be adjusted effective as of January 1 in each year after the Effective Date in accordance with the following applicable formula:

$$IPBP_n = IPBP_{\text{January 1 2006}} * [(BPP * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}) + (1 - BPP)]$$

$$RPBP_n = RPBP_{\text{January 1 2006}} * [BPP * CPI_{\text{January 1 } n} / CPI_{\text{January 1 2006}}) + (1 - BPP)]$$

Where:

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

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

3.3 Delivery Time Adjustment - For each hour during the Term, the Escalated Bid Price applicable to Eligible Energy delivered to the POI during that hour, or deemed pursuant to section 7.8 to be delivered to the POI during that hour, will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of the Escalated Bid Price expressed in the following table:

	HLH	LLH
January	113%	97%
February	109%	102%
March	105%	100%
April	103%	88%
May	104%	73%
June	104%	71%
July	104%	77%
August	104%	97%
September	105%	98%
October	103%	89%
November	106%	104%
December	117%	101%

3.4 Third Person Sales - Where the Seller has sold Energy to a third Person in accordance with section 7.4, there shall be deducted from the amount otherwise payable by the Buyer to the Seller in respect of the Energy that is deemed to be Eligible Energy pursuant to Section 7.8 an amount equal to any revenue received by the Seller from the third Person for that Energy.

4. Property Tax Flow Through

In each year during the Term after COD, provided that the taxes payable in respect of the Seller's Plant in that year exceed the taxes payable in respect of the Seller's Plant during the year in which COD occurred determined in accordance with the following formula (where the definitions applicable to such formula have the meaning given below):

$$[(TRI_n * AVI_n) + (TRi_n * AVi_n)] > [(TRI_{\text{COD}} * AVI_{\text{COD}}) + (TRi_{\text{COD}} * AVi_{\text{COD}})],$$

then, the Buyer shall pay the Seller an amount determined in accordance with the following formula:

Payment Amount =

the greater of (i) zero and (ii) the amount determined in accordance with the following formula):

$$\{[(TRI_n - TRI_{COD}) * AVI_n] + [(TRI_n - TRI_{COD}) * AVI_n]\} * 0.5$$

Where:

TRI = Tax rates for the land on which the Seller's Plant is located

TRi = Tax rates for the improvements

AVI = Assessed value of the land on which the Seller's Plant is located

AVi = Assessed value of the improvements

n = the year in which the tax invoice is received by the Seller

"tax" means any ad valorem tax imposed by any Governmental Authority with respect to the Seller's Plant, including the associated land, as shown on the annual property tax notice for the Seller's Plant.

"improvements" means those improvements forming part of the Seller's Plant at COD.

Notwithstanding the foregoing, the Buyer will only be required to pay a portion of the amount determined in accordance with the foregoing formula based on the portion of the year following COD or the portion of the year prior to termination, as applicable. In addition, the amount payable by the Buyer will be reduced on a proportionate basis for each day in which the Seller does not deliver Eligible Energy to the Buyer except where the Seller is excused under section 6.4 from the requirement to generate.

The Seller shall have the burden of proving which improvements formed part of the Seller's Plant at COD. In each year during the Term after COD, within 60 days after receipt of the tax statement for the Seller's Plant, the Seller shall provide an invoice to the Buyer for any amount owing by the Buyer to the Seller pursuant to this section, together with all information and documents reasonably required to support the invoice. The Buyer shall pay any amount owing by the Buyer to the Seller under this section within 60 days after receipt from the Seller of an invoice in accordance with this section.

5. No Further Payment

5.1 The amounts payable by the Buyer as specified in this Appendix 2 are the full and complete payment and consideration payable by the Buyer for all Eligible Energy under this EPA.

APPENDIX 3

COD CERTIFICATE

_____ **PROJECT**

TO: British Columbia Hydro and Power Authority (the “**Buyer**”)

RE: Electricity Purchase Agreement (“**EPA**”) made as of ●, 2006 between the Buyer and ●
(the “**Seller**”) for _____ Project

I, [name of senior officer], in my capacity as [title of senior officer] of the Seller, and not in my personal capacity, certify on behalf of the Seller that:

1. **Defined Terms** - Words and phrases having initial capitalized letters in this Certificate have the meanings given in the EPA.
2. **COD Requirements** - The Seller has satisfied the requirements for COD as set out in section 5.2 of the EPA. Attached to this Certificate is all evidence required to demonstrate that the Seller has satisfied all such requirements.
3. **No Material Default** - No event which constitutes a Buyer Termination Event under subsection (a) or (e) of the definition of “Buyer Termination Event” in Appendix 1 to the EPA has occurred. The Seller has obtained all Material Permits and is not in material default under any Material Permit (and all Material Permits are in full force and effect), any tenure agreement for the site on which the Seller’s Plant is located, the Interconnection Agreement or the Facilities Agreement.

Dated this _____ day of _____, 200____.

[name of senior officer]
[title of senior officer]

[Attach to the Certificate in tabbed format all documents and evidence required under section 5.2 of the EPA. Where documents have previously been provided to the Buyer, so indicate and attach a copy of the letter transmitting such documents to the Buyer.]

APPENDIX 4

SELLER'S PLANT DESCRIPTION

[Note to Bidders: To be inserted from the Seller's Tender - See CFT Form #2]

APPENDIX 5

SAMPLE FORM STANDBY LETTER OF CREDIT

[Issuing Bank Name & Address]

Date of Issue: [Date]

Irrevocable Standby Letter of Credit

[Number]

Applicant:**Beneficiary:**

[Seller Name and Address]

British Columbia Hydro and Power Authority

At the request and for the account of the Applicant, we hereby establish in favour of the Beneficiary our irrevocable standby Letter of Credit No. ([Number]) (hereinafter called the “Letter of Credit”) for an amount not exceeding [Currency and Amount both in letters and numbers].

We, [Bank Name and Address] hereby unconditionally and irrevocably undertake and bind ourselves, and our successors and assigns, to pay you immediately, the sum, which you claim upon receipt of the following documents:

- (1) your signed written demand specifying the amount claimed (not exceeding [Dollar Amount]), and certifying that such amount is due to you by the Applicant under the terms of an Electricity Purchase Agreement between you and the Applicant made as of [Date]; and
- (2) this original Letter of Credit must be presented with your demand for payment for endorsement purposes.

Partial drawings are allowed. The amount of this Letter of Credit shall be automatically reduced by the amount of any drawing paid hereunder.

This Letter of Credit takes effect from the date of issue set forth above, and shall remain valid until []. However, it is a condition of this Letter of Credit that it will be automatically extended without notice for a further one year period from the present or any future expiry date unless at least ninety (90) days prior to such expiry date we notify you in writing by courier or registered mail at your address above that we elect not to consider this Letter of Credit to be extended for any additional period.

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This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce, (Publication No. 500). This Letter of Credit is governed by the laws applicable in the Province of British Columbia. The parties hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of British Columbia. The number of this Letter of Credit must be quoted on all documents required hereby. Notwithstanding Article 17 of said publication, if this Letter of Credit expires during an interruption of business as described in Article 17, we agree to effect payment if this Letter of Credit is drawn within 15 days after resumption of normal business.

Authorized Signing Officer
[Bank Name]

Authorized Signing Officer
[Bank Name]

APPENDIX 6

SAMPLE FORM LENDER CONSENT AGREEMENT

(See section 15.2)

THIS AGREEMENT is made as of _____, 200_,

AMONG:

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

(the “**Buyer**”)

AND:

[**COMPANY**], a company under the laws of _____ having an address at _____,

(the “**Company**”)

AND:

[**LENDER**], a _____ under the laws of _____ having an address at _____,

(the “**Lender**”).

WHEREAS:

- A. The Buyer and the Company entered into an Electricity Purchase Agreement made as of _____ (as amended from time to time, the “EPA”);
- B. The Company has obtained certain credit facilities (the “Credit”) from the Lender for the purposes of financing the design, construction, operation and maintenance of the Seller’s Plant (as defined in the EPA);
- C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations of the Company under the Credit, the Company has granted certain security to and in favour of the Lender, including an assignment of the right, title and interest of the Company under the EPA and security on the Seller’s Plant (collectively, the “Lender Security”); and
- D. The Lender has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Company and the Lender to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:

- (a) “**Assumption Notice**” means a notice given by the Lender to the Buyer pursuant to subsection 6.1(a) of this Agreement;
- (b) “**Default or Termination Notice**” means a notice given to the Company by the Buyer under the EPA that, with or without the lapse of time, entitles, or will entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Company to cure the default or other circumstance in respect of which the notice is given;
- (c) “**Receiver**” means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Lender; and
- (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.

2. **EPA Amendments:** The Buyer and the Company acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has been amended only by the documents attached hereto as Schedule A.

3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Lender that:

- (a) the EPA has been duly authorized, executed and delivered by the Buyer;
- (b) the Buyer has not received any notice of assignment by the Company of all or any part of their right, title and interest in and to the EPA, except to the Lender;
- (c) the Buyer has not given any Default or Termination Notice;
- (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
- (e) the Buyer shall not enter into any agreement with the Company to materially amend the EPA, or enter into any agreement with the Company to terminate the EPA, without giving the Lender not less than 30 days’ prior written notice.

4. **Assignment of EPA to Lender:**

4.1 *Buyer Acknowledgement:* The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Company to the Lender of all the right, title and interest of the Company in and to the EPA made pursuant to and in accordance with the Lender Security.

4.2 *Lender Acknowledgement:* The Lender acknowledges that:

- (a) it has received a copy of the EPA; and
- (b) the assignment by the Company to the Lender of the EPA pursuant to the Lender Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.3 *Confidentiality:* The Lender covenants and agrees with the Buyer to be bound by the provisions of section 19.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.4 *Company Representation:* The Company represents and warrants to the Buyer that the Lender is the only person, other than the Buyer, to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Lender that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Lender a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Company;
- (b) shall not exercise any right it may have to terminate the EPA or any right pursuant to Article 13 of the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer delivered to the Lender a copy of the Default or Termination Notice entitling the Buyer to terminate or exercise any right pursuant to Article 13 of the EPA; and (ii) the date on which the Buyer is entitled to terminate or exercise any right pursuant to Article 13 of the EPA;
- (c) shall not, provided that there is no other Buyer Termination Event under the EPA, terminate the EPA based on the Bankruptcy or Insolvency of the Seller if the Lender is promptly and diligently prosecuting to completion enforcement proceedings under the Lender Security until 30 days after the expiry of any court ordered period restricting the termination of the EPA; and
- (d) shall not exercise any right it may have under section 9.5 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Lender with a copy of the notice delivered by the Buyer to the Seller under section 9.5 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Lender to cure, or cause the cure of, any default of the Company under the EPA that would be curable by the Company, whether or not an Assumption Notice is given.

6. **Realization by Lender:**

6.1 *Assumption Notice and/or Sale:* If the Company has defaulted under the Credit or the Lender Security and the Lender has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Lender shall either:

- (a) give the Buyer written notice (an "Assumption Notice") stating that the Lender is assuming the EPA, whereupon:
 - (i) the Lender shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Company under the EPA, and the Lender shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Company;
 - (ii) notwithstanding subparagraph (i), the Lender shall not be liable to the Buyer for defaults of the Company occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the

Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or

- (b) give written notice to the Buyer that the Lender wishes to cause the Company to assign all of the Company's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Company and the assignee complying with all provisions of the EPA relative to such assignment.

The Buyer agrees that if the Lender enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Lender Liability and Release:* The Lender assumes no liability to the Buyer under the EPA unless and until the Lender gives an Assumption Notice. Thereafter, if the Lender completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Lender shall be released from all liability and obligations of the Company to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Company not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to subsection 6.1(b) of this Agreement releases the Company from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Lender include a Receiver.

7. **Notices:** Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

- (a) Buyer at:

British Columbia Hydro and Power Authority

Attention: _____

Facsimile No.: _____

- (b) **[Company]** at:

Attention: _____

Facsimile No.: _____

- (c) **[Lender]** at:

Attention: _____

Facsimile No.: _____

Notices given by facsimile shall be deemed to be received on the business day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Lender acknowledges that upon an Assumption Notice being given, the Lender will become party to, and bound by, the agreements to arbitrate contained in section 19.7 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Lender Security. The Lender shall give the Buyer prompt notice of the full and final discharge of all of the Lender Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.

13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.

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

**BRITISH COLUMBIA HYDRO AND
POWER AUTHORITY**

[COMPANY]

By: _____
(Signature)

By: _____
(Signature)

Name: _____

Name: _____

Title: _____

Title: _____

[LENDER]

By: _____
(Signature)

Name: _____

Title: _____

APPENDIX 7

SAMPLE FORM DEVELOPMENT PROGRESS REPORT

BC Hydro Quarterly Development Report

For the quarter ending: _____

Report Number: _____

Project Name: _____

Tasks:	Percentage of Completion					Comments
	5%	25%	50%	75%	100%	
Permitting:						
Water Licence <i>[Note to Bidders: This section will be expanded in the Awarded EPA to contain a list of permits relevant to the Bidder's Project based on the information in the Bidder's Project Submission.]</i>						
Zoning Approval						
Subdivision Approval						
Leave to Construct						
Other Permits						
Financing:						
Construction						
Project Equity						
Long Term Financing						
Project Design:						
Preliminary						
Final						
Interconnection:						
Studies (Please describe the status of each interconnection study)						
Construction						
Major Equipment:						
Ordering						
Delivery						
Installation						
Construction:						
Road						
Powerhouse						
Other						

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Key Project Tasks:	Target	Actual
Permitting Complete		
Financing Complete		
Interconnection/Facilities Agreement Signed		
Major Equipment Ordered		
Commence Construction		
Begin Commissioning		

COD:

Current Estimate: _____

Prepared by: _____

Submitted by: _____

APPENDIX 8

ADDRESSES FOR DELIVERY OF NOTICES

Subject to subsection 19.4(e), the address for the Parties for notices is as follows:

Buyer: BC Hydro	Seller:
All Notices (Except as set out below)	
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10 th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	To: Address: Email:
Development Reports	
To: Manager, Contract Management Address: 333 Dunsmuir Street, 10th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	N/A
Planned Outages, Operating Plans, Notice of Outages, Energy Schedules	
To: Resource Coordinator, Plant Operations Group, Generation Address: 6911 Southpoint Drive, E15 Burnaby , B. C. V3N 4X8 Attention: (name to be inserted in Awarded EPA) Email: (to be inserted in Awarded EPA) Copy to: Contract Management, as per all Notices address	To: Address: Email:
GHG Compliance Reports	
To: Triple Bottom Line Strategy Address: 333 Dunsmuir Street, 9th floor Vancouver, B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: (to be inserted in Awarded EPA) Copy to: Contract Management, as per all Notices address	To: Address: Email:

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Invoices and Statements	
To: IPP Invoicing Address: 333 Dunsmuir Street, 16th floor Vancouver, B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Invoicing@bchydro.com	To: Address: Email:
Performance Security	
To: Distribution Line of Business, Finance Address: 6911 Southpoint Drive, E16 Burnaby, B.C. V3N 4X8 Attention: (name to be inserted in Awarded EPA) Copy to: Contract management	To: Address: Email:
Insurance	
To: Title Manager, Contract Management Address: 333 Dunsmuir Street, 10th floor Vancouver B.C. V6B 5R3 Attention: (name to be inserted in Awarded EPA) Email: IPP.Contract@bchydro.com	To: Address: Email:

If the Seller is a joint venture, general partnership or limited partnership, a notice given in accordance with the foregoing provisions is deemed to have been given to the Seller and to each joint venturer and/or partner as applicable.

APPENDIX 9**SPECIAL TERMS AND CONDITIONS**

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PART A - PROJECTS THAT RECEIVE GREEN CREDIT

[This Part applies to Sellers that tendered the Green Attributes to BC Hydro in the CFT process]

1. **Definitions** - The following definitions are added to Appendix 1:

“**Green Reduction Amount**” or “**GRA**” means \$3.00/MWh as adjusted effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{GRA}_n = \$3.00/\text{MWh} * \text{CPI}_{\text{January 1 } n} / \text{CPI}_{\text{January 1 2006}}$$

Where:

n = the year for which the Green Reduction Amount is being calculated

$\text{CPI}_{\text{January 1 } n}$ = the CPI for December in the year immediately prior to the year for which the Green Reduction Amount is being calculated.

“**On-Site Emission Reduction Rights**” means any credit, reduction right, offset, 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, avoidance, sequestration or mitigation of emissions at or from the Seller’s Plant.

“**EcoLogo^M Certified Energy Amount**” means the amount of Eligible Energy in each year that qualified for the EcoLogo^M designation as evidenced in a certificate delivered by the Seller to the Buyer under section 7A.5.

2. The definition of “**Green Attributes**” in Appendix 1 is amended by deleting subsection (b)(ii) from that definition and by adding the following words at the end of the definition: “but excluding any On-Site Emission Reduction Rights and any of the foregoing that arise in connection with Pre-COD Energy, other than Test Energy paid for by the Buyer under section 2.2 of Appendix 3”.
3. Subsection 6.2(a) is amended by adding the words “and under section 7A.5” after the words “subsection 6.3(f)”.
4. **Replacement of Section 7.9** - Section 7.9 is deleted and the following is added as Article 7A:

7A. - GREEN ATTRIBUTES

- 7A.1 **Transfer of Green Attributes** - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Green Attributes. The Buyer shall not be required to make any payment for the Green Attributes other than payment for Eligible Energy in accordance with Appendix 2. The Seller, upon the reasonable request of the Buyer shall do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required to give effect to this section.
- 7A.2 **On-Site Emission Reduction Rights** - The Seller retains all right, title and interest in and to any On-Site Emission Reduction Rights.
- 7A.3 **Exclusivity** - Except as set out in section 7A.13, the Seller shall not commit, sell, or transfer any Green Attributes to any Person other than the Buyer, or otherwise use or

apply any Green Attributes for any purpose whatsoever at any time during the Term. The Seller shall ensure that all marketing materials produced by or for the Seller, all public or other statements by the Seller and all other communications by the Seller in any form whatsoever, contain no false or misleading statements concerning the ownership of the Energy or Green Attributes or the destination, end user or recipient of the Energy or Green Attributes. The Seller acknowledges that damages are not an adequate remedy to the Buyer for a breach by the Seller of this section and that the Buyer shall be entitled to an injunction to prevent any breach by the Seller of this section and to an order requiring the Seller to take such other actions as may be required to remedy the effects of any breach of this section.

- 7A.4 **Representations and Warranties** - The Seller represents and warrants to the Buyer and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA that the Seller is the legal and beneficial owner of the Green Attributes free and clear of all liens, claims, charges and encumbrances of any kind whatsoever and no other Person has any agreement or right of any kind whatsoever to purchase or otherwise to acquire or to claim or otherwise make any use whatsoever of the Green Attributes.
- 7A.5 **EcoLogo^M Certification** - The Seller shall obtain EcoLogo^M Certification by the first anniversary of COD and shall maintain the EcoLogo^M Certification throughout the remainder of the Term. By May 15 in each year after COD, the Seller shall deliver to the Buyer a certificate issued pursuant to Environment Canada's Environmental Choice^M program certifying the amount (MWh) of Eligible Energy delivered by the Seller to the Buyer in the immediately preceding year that qualified for the EcoLogo^M designation. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo^M Certification by the date specified in this section or if at any time during the Term the Seller's Plant does not have EcoLogo Certification.
- 7A.6 **Alternate Certification** - The Seller shall at the Buyer's request and at the Buyer's cost use commercially reasonable efforts to apply for and diligently pursue and maintain any additional or alternate certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Energy has Green Attributes. Any failure by the Seller to use commercially reasonable efforts pursuant to this section is a "material default" for purposes of this EPA, and the Buyer may terminate the EPA under subsection 14.1(d)
- 7A.7 **Fees** - Except as set out in this section, the Buyer shall reimburse the Seller for all certification, audit and licensing fees paid by the Seller to obtain the EcoLogo^M Certification (including the annual certificate described in section 7A.5) or any alternate certification under section 7A.6, but excluding any fees to obtain the letter from TerraChoice Environmental Marketing required pursuant to the CFT. The Buyer shall reimburse the Seller for such fees within 30 days after receipt of an invoice, together with reasonable supporting information, for such fees. The Buyer shall not be required to pay for any audit or other certification process in which the Seller's Plant and all or part of the Energy does not qualify for EcoLogo^M Certification, or for any audit or recertification process following a loss of EcoLogo^M Certification by the Seller's Plant, and the Seller shall pay all costs associated with any such audit and certification process.

7A.8 Energy Price Reduction - If:

- (a) the Seller fails to obtain EcoLogo^M Certification by the date specified in section 7A.5; or
- (b) at any time during the Term the Seller's Plant does not have EcoLogo^M Certification for any reason whatsoever,

then the Escalated Bid Price for Eligible Energy will be reduced by an amount equal to the Green Reduction Amount. In the case of subsection (a) above, such reductions shall take effect from COD and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after COD. In the case of subsection (b) above the reduction will take effect from and after the date on which the EcoLogo^M Certification ceased to be in effect and the Seller shall within 30 days after receipt of an invoice from the Buyer, refund to the Buyer an amount equal to the Green Reduction Amount multiplied by the amount of Eligible Energy in respect of which the Seller has received payment from and after the date on which the EcoLogo^M Certification ceased to be in effect. For greater certainty, notwithstanding any payment reduction pursuant to this section, the Buyer will throughout the remainder of the Term have title to the Green Attributes and the provisions of section 7A.3 will remain in effect.

7A.9 Restoration of Price - If the Escalated Bid Price is reduced under section 7A.8 and thereafter the Seller demonstrates to the Buyer that the Seller's Plant has obtained EcoLogo^M Certification, other than as a result of expenditures by the Buyer under section 7A.10 or if the Seller obtains an alternate certification at the Buyer's request under section 7A.6, then from and after the date on which the Seller provides such evidence to the Buyer or obtains such alternate certification the Escalated Bid Price will no longer be reduced by an amount equal to the Green Reduction Amount.

7A.10 Cure by the Buyer - If the Seller fails to obtain or maintain EcoLogo^M Certification as required under section 7A.5 or any alternate certification under section 7A.6 then in addition to applying the payment reduction specified in section 7A.8 (applicable only to the EcoLogo^M Certification), the Buyer in its sole and unfettered discretion, may direct the Seller to take all steps required to obtain EcoLogo^M Certification, or an alternate certification, by implementing measures that are technologically feasible and not inconsistent with Good Utility Practice, Permits or applicable Laws and the Seller shall comply promptly and diligently with that direction. Except where the failure to obtain or maintain EcoLogo^M Certification or an alternate certification results from a breach of Laws or Permits, the Buyer shall reimburse the Seller for reasonable direct capital and incremental operating costs incurred by the Seller resulting from compliance with the Buyer's direction within 30 days after submission of an invoice and supporting documentation reasonably satisfactory to the Buyer to evidence such costs. The Seller shall maintain accurate and complete records of such costs, and the Buyer or its designated representative may audit such costs and in that event the Seller shall provide all reasonable cooperation to the Buyer or its designated representative including access to all original records related to such costs. For greater certainty, notwithstanding the performance and completion of compliance measures under this section and the grant or reinstatement of EcoLogo^M Certification, the payment reductions under section 7A.8 will

continue in effect for the remainder of the Term and the Buyer will continue to have title to the Green Attributes.

- 7A.11 **Termination** - If the Seller fails to comply promptly and diligently with a direction under section 7A.10 and such failure is not cured within 30 days of notice from the Buyer to the Seller, then the Seller will be in material default of its obligations under this EPA and the Buyer may terminate the EPA under subsection 14.1(d).
- 7A.12 **Exclusive Remedy** - The remedies set out or referenced in sections 7A.6, 7A.8, 7A.10 and 7A.11 are the sole and exclusive remedies available to the Buyer for any failure by the Seller to obtain or maintain EcoLogo^M Certification or any alternate certification.
- 7A.13 **Transfer to Governmental Authority** - If the Seller has been notified that the Seller's Plant or the Energy qualifies for Canada's Renewable Power Production Incentive or Wind Power Production Incentive or any other Governmental Authority incentive associated with the generation of energy with specified environmental attributes and the transfer of the Green Attributes to the applicable Governmental Authority is required for the Seller to obtain the incentive, the Buyer shall transfer the Green Attributes to such Governmental Authority provided that the Seller has given notice to the Buyer pursuant to this section by not later than COD. If the Buyer is required to transfer the Green Attributes to a Governmental Authority pursuant to this section, then the Parties shall enter into an amendment to this EPA to delete Article 7A from the EPA and to reduce the Escalated Bid Price by an amount equal to the Green Reduction Amount for all Eligible Energy delivered or deemed to be delivered from and after the date of the notice by the Seller to the Buyer under this section and the Seller shall within 15 days after receipt of an invoice, reimburse the Buyer for all costs incurred by the Buyer under section 7A.7 prior to the date of notice from the Seller under this section.
- 7A.14 **Information Requirements** - Without limiting section 6.6, the Seller shall maintain, and shall within 10 Business Days after a request from the Buyer, provide to the Buyer: (a) all information the Buyer requires to verify the quantity of Energy generated by the Seller's Plant, qualification of the Seller's Plant and all or part of the Energy for the EcoLogo^M Certification or an alternate certification under section 7A.6, the status of the EcoLogo^M Certification for the Seller's Plant or an alternate certification under section 7A.6, and the existence, nature and quantity of Green Attributes; (b) any information required for the purposes of any Green Attribute or energy tracking system as directed by the Buyer; and (c) any other information the Buyer requires to enable the Buyer or its Affiliates to obtain or realize the full benefit of the Green Attributes, including sales of the Green Attributes to third parties, provided that if the Buyer requests any information pursuant to subsection (b) or (c) above that the Seller would not otherwise be required to maintain for purposes of administering this EPA, the Buyer shall reimburse the Seller for all reasonable costs incurred by the Seller in obtaining or maintaining such information.
- 7A.15 **Audit Rights** - The Buyer, any Affiliate of the Buyer and any third Person who has entered into a contract with the Buyer or any Affiliate of the Buyer to purchase Green Attributes may at any time during the Term conduct or have a third Person with the necessary expertise conduct, at the Buyer's expense, an audit of the Project Assets to verify compliance by the Seller's Plant with the requirements for EcoLogo^M Certification or an alternate certification under section 7A.6. The Seller shall promptly provide any consents required to enable the Buyer, any Affiliate of the Buyer or any third Person who has entered into a contract with the Buyer to purchase Green Attributes to: (i) make

enquiries with Governmental Authorities concerning the status of compliance by the Seller and the Seller's Plant with applicable Laws and Permits; (ii) make enquiries of TerraChoice Environmental Marketing or any other third Person regarding the status of the EcoLogo^M Certification; and (iii) obtain copies of all audits, reviews or inspections conducted by the Seller, TerraChoice Environmental Marketing or any other third Person in connection with the application by the Seller to obtain and maintain EcoLogo^M Certification, or any alternate certification under section 7A.6, for the Seller's Plant.

7A.16 **Confidentiality** - The Seller consents to the disclosure to any Person or any Governmental Authority of any Confidential Information with respect to the Seller's Plant the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Green Attributes, including sales of Green Attributes to third parties.

7A.17 **Annual Payment Calculation** - By not later than June 15 in each year after COD the Seller shall pay to the Buyer an amount calculated in accordance with the following formula:

Payment Amount = the greater of (a) zero and (b) the amount determined in accordance with the following formula:

$$[(A \times B) - C] \times \text{GRA}$$

Where:

A = the percentage of Energy Source(s), as set out in Appendix 4, that is designated as acceptable to generate energy that qualifies for EcoLogo^M Certification in the letter from TerraChoice Environmental filed with the Seller's Tender.

B = the total amount of Eligible Energy (as determined under subsection (a) of the definition of Eligible Energy) delivered by the Seller to the Buyer in the immediately preceding year.

C = the EcoLogo^M Certified Energy Amount.

The foregoing amount shall only be payable by the Seller for periods in which subsection 7A.8 does not apply.

4. Subsection 14.3(b)(ii)(A) is amended by adding the following as subsection (V): "Article 7A with respect only to Green Attributes associated with Eligible Energy delivered prior to termination of the EPA; and".

PART B - PROJECTS THAT TRANSFER GHG EMISSION OFFSET LIABILITY TO BUYER

This Part applies to Sellers that elected in the CFT process to transfer to BC Hydro responsibility for any regulatory obligation to purchase GHG-related Compliance Units up to the Guaranteed GHG Intensity tendered by the Seller in the CFT process.

1. Definitions - The following definitions are added to Appendix 1:

“**Actual GHG Intensity**” means the actual GHG intensity of the Seller’s Plant in each year expressed in metric tonnes CO₂ e/MWh.

“**GHG Intensity**” means:

- (i) the GHG intensity for the Seller’s Plant determined in the manner specified under any Laws or Permits applicable to the Seller’s Plant, provided that notwithstanding any provision to the contrary in any such Laws or Permits, the GHG intensity for the Seller’s Plant will be determined without regard to any other facilities owned or operated by the Seller, any Affiliate of the Seller or any other Person; or
- (ii) if there is no Law or Permit in effect which specifies the method of calculating the GHG intensity for the Seller’s Plant, the GHG intensity determined by dividing the total GHG emissions from the Seller’s Plant in the year for which the calculation is being conducted (expressed as metric tonnes of CO₂ equivalent) by the total amount of Eligible Energy (as determined under subsection (a) of the definition of “Eligible Energy”) for that year.

“**Guaranteed GHG Intensity**” means TO#5 metric tonnes CO₂ e/MWh.

2. Section 6.9 is amended by adding the following words at the beginning of that section:

“Subject to section 6.12:”.

3. The following is added as section 6.12:

6.12 GHG Compliance Unit Obligation - In each year after COD, on or before the date required pursuant to applicable Laws and Permits, and provided that the Seller has complied with its obligations under this section, the Buyer shall deliver to the Seller that number of Compliance Units calculated in accordance with the following formula:

RCUs = the greater of: (i) zero and (ii) ([the lesser of AGHGI and GGHGI] - PI) * DE

Where:

RCUs = the number of Compliance Units (in metric tonnes CO₂ e/MWh) the Buyer is required to deliver to the Seller

AGHGI = the Actual GHG Intensity

GGHGI = the Guaranteed GHG Intensity

PI = the GHG Intensity permitted under applicable Laws and Permits for the Seller’s Plant

DE = the amount of Eligible Energy delivered by the Seller to the POI during the immediately preceding calendar year.

The Seller shall: (a) by the date that is 30 days prior to the date on which the Buyer is required to deliver Compliance Units to the Seller under this section, deliver a statement to the Buyer, together with all information required to support the statement, setting out the GHG intensity target for the Seller's Plant under applicable Laws and Permits, the Actual GHG Intensity for the immediately preceding year and the number of Compliance Units the Buyer and the Seller are required to obtain by the date specified in this section; and (b) if the Actual GHG Intensity exceeds the Guaranteed GHG Intensity, obtain any Compliance Units required under applicable Laws and Permits with respect to such excess intensity and provide evidence to the Buyer that the Seller has obtained such Compliance Units. The Seller is responsible for obtaining any Compliance Units required for the period prior to COD. The parties shall enter into any amendment to this section required to reflect the reporting and compliance dates established under applicable Laws and Permits regulating GHG emissions from the Seller's Plant.

PART C - GHG COMPLIANCE COMMITMENT

This Part applies to Sellers that elect in the CFT process to comply with a contractually binding GHG intensity.

1. The following is added as section 6.12:

6.12 GHG Compliance Commitment - The Seller shall ensure that the Seller's Plant has a GHG intensity of not more than TO#6 metric tonnes CO₂e/MWh in each year. The Seller shall in the reports required to be delivered by the Seller pursuant to subsection 6.9(a) detail the status of compliance by the Seller with this section during the immediately preceding calendar quarter. If the Seller is not in compliance with the requirements of this section and the Seller fails to remedy such non-compliance within 30 days after the date of notice from the Buyer to the Seller, the Buyer may, but is not required to, on behalf of the Seller, purchase those Compliance Units that are required to remedy, in whole or in part, the Seller's non-compliance with the requirements of this section and the provisions of section 6.9(a) shall apply to such purchase, *mutatis mutandis*. Any failure by the Seller to comply with this section is a "material default" for the purposes of the definition of Buyer Termination Event in Appendix 1. Notwithstanding the foregoing, the Seller remains bound by the provisions of section 6.9 in addition to the foregoing commitment.

2. Subsection 9.5(a) is amended by adding the words "or section 6.12" at the end of that subsection.
3. Subsection 9.5(b) is amended by adding the words "or section 6.12" after the words "section 6.9" wherever those words appear in that subsection.
4. Section 12.3 is amended by adding the words "or 6.12" after the words "6.9" in that section and by deleting the word "or" before the word "6.9" in that section.
5. Subsection 14.3(a) is amended by adding the words "or 6.12" after the words "6.9" in that section and by deleting the word "or" before the word "6.9" in that section.
6. Subsection 14.8(i) is amended by adding the words "or 6.12" after the words "6.9" in that section and by deleting the word "or" before the word "6.9" in that section.

PART D - PROJECTS INTERCONNECTED TO THE TRANSMISSION SYSTEM OR DISTRIBUTION SYSTEM THROUGH AN INDUSTRIAL HOST FACILITY

This Part applies to Sellers that tendered a project that has an Indirect Interconnection (as defined in the CFT Glossary) to the Transmission System/Distribution System through an industrial host facility

1. The provisions of this Part D are applicable for so long as the Electrical Host purchases electricity from the Buyer. If the Electrical Host ceases to purchase electricity from the Buyer, the provisions of this Part D, other than sections 5 and 6, cease to have effect, the Seller shall be required to deliver all Energy to the POI or to such other point of interconnection with the *[Distribution System/Transmission System]* as the Parties may agree in writing and the Parties shall enter into an amendment to the EPA to reflect the foregoing. *[Note to Bidders: The words in bold will be finalized depending on the POI for the bidder's plant.]*
2. Section 6.5 is amended by adding the words “or on the Electrical Host” after the words “materially adverse effect on the operation of the Seller’s Plant”.
3. Section 7.5 is amended by adding the following at the end of that section:

Deliveries of Eligible Energy to an Electrical Host to service the Electrical Host’s electricity requirements will be deemed to be deliveries of Eligible Energy to the Buyer at the POI for purposes of this EPA to the extent such deliveries displace deliveries of electricity from the Buyer to the Electrical Host.

4. Appendix 1 is amended by:
 - (a) adding the following definition:

“**Electrical Host**” means a facility which is not itself an electrical generating facility and which is located between the Seller’s Plant and the POI, where the Seller’s Plant is providing electricity to the facility and the Seller’s Plant does not have an independent interconnection to the *[Transmission System / Distribution System]*.

[Note to Bidders - Where a Bidder is proposing to Tender a Project that is interconnected to the Distribution System or the Transmission System through an Electrical Host, BC Hydro will review its electricity supply contract(s) relating to that Electrical Host and will advise the Bidder prior to the Tender Closing Time of any amendments required to such electricity supply contract(s) to accommodate the Project. Any Tender for such a Project will be deemed to incorporate those amendments or must be accompanied by an appropriate amending agreement signed by the owner of the Electrical Host.]

- (b) deleting the definition of “**POI**” and replacing it with the following:

“**POI**” or “**Point of Interconnection**” means the point at which the Electrical Host interconnects with the [*Transmission System / Distribution System*] as more particularly described in the interconnection agreement between the Electrical Host and the [*Transmission Authority / Distribution Authority*].”

5. Everywhere in this EPA where the words “Energy delivered to the POI” or words of similar meaning appear, the words “or deemed pursuant to section 7.5 to be delivered to the POI” are deemed to follow immediately thereafter.
6. All of the provisions of Part F, Appendix 9 are applicable.
7. The Seller will be responsible for, and shall pay within 30 days after receipt of an invoice from the Buyer, all costs reasonably incurred by the Buyer and/or the Electrical Host as required to implement any amendments required to any Electricity Supply Agreement between the Buyer and the Electrical Host as a result of the provisions of section 7.5 of this EPA and the interconnection arrangements for the Seller’s Plant.

PART E - PROJECTS INTERCONNECTED TO THE TRANSMISSION SYSTEM

[This Part applies to Sellers that tendered a project that interconnects with the Transmission System]

1. The words “Distribution System” in section 4.5, 6.3, subsection 11.2(e), the definitions of “**POI**”, “**Interconnection**” and “**Seller’s Plant**” in Appendix 1 are deleted and replaced with “Transmission System”.
2. The words “Distribution Authority” in subsection 5.2(d)(i), section 8.1, the definitions of “**Facilities Agreement**” and “**Interconnection Agreement**” in Appendix 1, are deleted and replaced with “Transmission Authority”.
3. Section 5.5 is amended by:
 - (a) deleting all references to “Direct Assignment Facilities” in that section; and
 - (b) deleting the words “or the Distribution Authority” after the words “the Buyer” in the first sentence of that section.
4. Section 6.5 is amended by deleting the words “Distribution Authority’s” and replacing them with “Transmission Authority’s”.
5. The following section is added as section 6.12, 6.13 or 6.14 as applicable depending on the Tender options selected by the bidder:

6.12/13/14 **Disclosure of Information by Distribution Authority and Transmission Authority** - The Seller consents to the Transmission Authority disclosing to the Buyer on request:

 - (a) all information with respect to Network Upgrades, including any information provided by the Seller to the Transmission Authority that relates to, or affects, Network Upgrades including any preliminary interconnection application, study and report, and any subsequent studies, that contain information relevant to Network Upgrades;
 - (b) all metering data collected by, or provided to, the Transmission Authority with respect to the Seller’s Plant;
 - (c) copies of any notice of a breach of, or default under, the Interconnection Agreement or the Facilities Agreement given or received by the Transmission Authority; and
 - (d) any other information provided by the Seller to the Transmission Authority or provided by the Transmission Authority to the Seller that is relevant to the administration of this EPA.

The Seller shall promptly on request by the Buyer provide to the Buyer written confirmation of the foregoing consents for delivery by the Buyer to the Transmission Authority.

6. The definition of “**Buyer Termination Event**” in Appendix 1 is amended by deleting subsection (c) from that definition and replacing it with the following:
 - (c) the Seller has not, by the date that is the earlier of: (i) 60 days after the date of award of this EPA under the CFT; and (ii) 240 days after the date of issuance by the Transmission Authority to the Seller of the F2006 CFT Preliminary Interconnection Study Report, executed and delivered to, or caused to be executed and delivered to, the Transmission Authority a Combined Study Agreement for the Seller’s Plant together with the applicable fee, in the form and amount prescribed by the Transmission Authority;
7. Subsection 7.7(b) is deleted and replaced with the following:
 - (b) disconnection of the Seller’s Plant from the Transmission System or any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI in either case for reasons not attributable to the Buyer;
8. Subsection 7.8(a) is deleted and replaced with the following:
 - (a) any disconnection of the Seller’s Plant from the Transmission System or any Outage, suspension, constraint or curtailment in the operation of the Transmission System preventing or limiting physical deliveries of Eligible Energy at the POI where:
 - (i) the Transmission Authority is authorized to disconnect the Seller’s Plant or suspend firm transmission service under the Interconnection Agreement, Facilities Agreement, any tariff applicable to firm transmission or interconnection service or any other legally enforceable right; and
 - (ii) such Outages, disconnections, suspensions, constraints or curtailments exceed in the aggregate 24 hours whether or not continuous, in that month,

but excluding any Outage, disconnection, suspension, constraint or curtailment attributable to the Seller or the Seller’s Plant; or
9. Section 19.9 is deleted and replaced with the following:

19.9 **Distribution Authority** - This EPA shall be interpreted and applied as though the Distribution Authority were a third party, including for purposes of determining whether or not a Force Majeure has occurred.
10. The following definition is added in Appendix 1:

“**Combined Study Agreement**” means an agreement, in prescribed form, between the Seller and the Transmission Authority wherein the Seller contracts with the Transmission Authority for an interconnection impact study and interconnection facility study.
11. The definition of “**Force Majeure**” in Appendix 1 is amended by deleting the words “Distribution Authority” and replacing them with “Transmission Authority”.

12. If Part F of Appendix 9 is applicable, then:

- (a) section 6.12/13/14 as added by section 5 of this Part E is amended by adding the following at the end of that section:

“The Seller shall promptly on request by the Buyer provide to the Buyer a consent in similar form signed by the Private Line Owner for delivery to the Transmission Authority provided that in such consent all references to the “Seller” in subsections (a) and (d) will be replaced by the “Private Line Owner”.”;
- (b) subsection 7.7(d), as added by Part F of Appendix 9, is amended by deleting the words “Transmission System” and replacing them with “Distribution System”;
- (c) subsection 7.8(a), as amended by Part E of Appendix 9, is amended by:
 - (i) adding the words “or the Private Line” after the “Seller’s Plant” in the first line;
 - (ii) adding the words “or the Private Line” after the words “Seller’s Plant” in subsection 7.8(a)(i); and
 - (iii) adding the words “or to the Private Line Owner or any of the Private Line Owner’s facilities” at the end of the subsection;
- (d) subsection 11.2(g), as added by Part F of Appendix 9, is amended by deleting the words “Distribution System” and replacing them with “Transmission System”;
- (e) subsection (c) of the definition of “**Buyer Termination Event**”, as amended by section 6 of this Part E, is amended by adding the words “or the Private Line Owner” after the word “Seller” wherever that word appears in that subsection;
- (f) the definition of “**Private Line**” and the related Note to Bidders, as added by Part F of Appendix 9, is amended by deleting the word “Distribution” and replacing it with “Transmission”; and
- (g) the definition of “**Combined Study Agreement**” in Appendix 1, as added by section 10 of this Appendix E, is amended by adding the words “or the Private Line Owner” after the word “Seller”.

PART F - PROJECTS INTERCONNECTED TO THE TRANSMISSION SYSTEM OR DISTRIBUTION SYSTEM THROUGH A PRIVATELY-OWNED TRANSMISSION OR DISTRIBUTION LINE

This part applies to Sellers who submit an F2006 CFT Preliminary Interconnection Study Report with their Tenders which indicates that the Seller's Plant will be interconnected to the Transmission System or Distribution System through a privately-owned transmission or distribution line, including a Project that has an Indirect Connection through an industrial host facility.

1. Section 4.2 is amended by:
 - (a) adding the following as subsection (e) and renumbering existing subsections (e) and (f) as (f) and (g):

“(e) the Seller has entered into an agreement with the Private Line Owner amending the Private Line Agreement as required to accommodate the increase or decrease in the Plant Capacity and has provided a copy of the amending agreement to the Buyer (with any confidential information redacted) or has provided evidence satisfactory to the Buyer, acting reasonably, that no such amendments are required;”;
 - (b) deleting the words “subsections (a) and (c)” in the sentence immediately following subsection (g) (as renumbered in accordance with the foregoing) and replacing them with “subsections (a), (c) and (e)”.
2. Section 4.5 is amended by:
 - (a) deleting the first sentence and replacing it with the following:

“If the Private Line Owner makes any change to the point of interconnection between the Private Line and the Distribution System (including any change to the point of interconnection specified in the F2006 CFT Preliminary Interconnection Study Report), the Seller shall notify the Buyer forthwith upon the Seller becoming aware of such change or proposed change and the Seller shall enter into an amendment to this EPA as required to put the Buyer in the position it would have been in under this EPA had the point of interconnection between the Private Line and the Distribution System not been changed, including with respect to the amount of Eligible Energy.”; and
 - (b) adding the words “or the Private Line Owner” after the word “Seller” at the beginning of the second sentence.
3. Subsection 5.2(c) is amended by adding the words “or under the Private Line Agreement” at the end of that subsection.
4. Subsection 5.2(d)(i) is amended by adding the words “or the Private Line Owner” after the words “to the Seller”.
5. Section 5.2 is amended by:
 - (a) adding the following as subsection 5.2(e) and changing the comma at the end of subsection 5.2(d) to a semicolon and adding the word “and” after the semicolon:

- “(e) the Private Line Owner is not in default under the Interconnection Agreement or the Facilities Agreement”; and
 - (b) deleting the words “subparagraphs (a) to (d)” in the last sentence of that section and replacing them with “subparagraphs (a) to (e)”.
- 6. Subsection 6.3(g) is amended by adding the words “and the Private Line Agreement” at the end of that subsection.
- 7. Section 6.10 is amended by:
 - (a) adding the following after the first sentence in that section:

“The Seller shall use commercially reasonable efforts to obtain any information or cooperation that may be required from the Private Line Owner to complete those studies and cost estimates.”; and
 - (b) adding the words “(including reasonable amounts paid to the Private Line Owner to reimburse the Private Line Owner for costs incurred in providing information or cooperation as requested by the Buyer)” after the words “all reasonable costs incurred by the Seller”.
- 8. Subsection 7.7 is amended by adding the following as subsection (d) and by changing the period at the end of subsection (c) to a semicolon and adding the word “and” after the semicolon and deleting the word “and” after subsection (b)(ii):

“(d) disconnection of the Private Line from the Transmission System for reasons not attributable to the Buyer.”.
- 9. Subsection 7.8(a) is amended by:
 - (a) adding the words “or the Private Line” after the words “Seller’s Plant” in the first line; and
 - (b) adding the words “or to the Private Line Owner or any of the Private Line Owner’s facilities” at the end of the subsection.
- 10. Subsection 8.1(c) is amended by adding the following at the end of that subsection:

“and after adjusting for any incremental losses associated with the transmission of energy from any other generating facility connected to the Private Line where: (i) the output from that other generating facility is sold to the Buyer; (ii) the incremental losses have not been accounted for in the calibration of the meter for the other generating facility; and (iii) “incremental losses” refers to those losses that would not have occurred but for the transmission of Energy from the Seller’s Plant to the POI through the Private Line”.
- 11. Subsection 11.2(f) is amended by adding the words “including any act or omission of the Private Line Owner” after the words “of a Party”.

12. Section 11.2 is amended by adding the following as subsection (g) and by deleting the period at the end of subsection (f) and replacing it with a semicolon and by adding the word “or” after the semicolon and deleting the word “or” after subsection (e):
- “(g) for any disconnection of the Private Line from the Distribution System or any Outage, constraint or curtailment in the operation of the Private Line, except to the extent such disconnection, Outage, constraint or curtailment in operation would be excused by reason of Force Majeure as defined in this EPA.”.
13. Appendix 1 is amended by:
- (a) adding the following definitions:
- “**Private Line**” means the line owned by _____ as at the Effective Date extending from _____ to the Distribution System as indicated on Schedule 1 to Appendix 5. *[Note to Bidders: The blanks in this section will be completed based on the information contained in the Bidder’s Tender as supplemented, as required, by information provided by the Transmission Authority.]*
- “**Private Line Agreement**” means the agreement between the Seller and the Private Line Owner pursuant to which the Seller is authorized to transmit Energy from the Seller’s Plant along the Private Line to the POI.
- “**Private Line Owner**” means the owner of the Private Line from time to time.
- (b) amending subsection (c) of the definition of “**Buyer Termination Event**” by adding the words “or the Private Line Owner” after the word “Seller” wherever that word appears in that subsection;
- (c) amending the definition of “**Facilities Agreement**” by adding the words “or the Private Line Owner” after the word “Seller”;
- (d) amending subsection (f) in the definition of “**Force Majeure**” by deleting everything from the words “and such delay” to the end of the subsection and replacing them with the following:
- “and such delay is not attributable to the Seller or the Seller’s Plant or to the Private Line Owner or any of the Private Line Owner’s facilities, including any change to the point of interconnection with the Transmission System or other Project change made by the Seller or the Private Line Owner as described in section 4.5.”;
- (e) amending the definition of “**Interconnection**” by adding the words “along the Private Line” after the words “Seller’s Plant”;
- (f) amending the definition of “**Interconnection Agreement**” by adding the words “or the Private Line Owner” after the word “Seller”;
- (g) deleting the definition of “**POI**” and replacing it with the following:
- “**POI**” or “**Point of Interconnection**” means _____. *[Note to Bidders – This will be the point of interconnection between the Private Line and the Distribution*

System. This blank will be completed based on the information in the Bidder's Tender as supplemented, as required, by information provided by the Distribution Authority.]

- (h) amending the definition of “**Project Assets**” by adding the words “and all agreements with the Private Line Owner” at the end of the definition; and
 - (i) amending the definition of “**Seller's Plant**” by adding the words “but excluding the Private Line” at the end of the definition.
14. Section 3 of Appendix 3 is amended by:
- (a) adding the words “or the Private Line Agreement” at the end of the second sentence of that section; and
 - (b) adding the following sentence at the end of section 3:

“The Private Line Owner is not in material default under the Interconnection Agreement or the Facilities Agreement.”.
15. If Part D of Appendix 9 is applicable, the definition of “POI” in Part D of Appendix 10 will be applicable instead of the definition of “POI” set out in this Part F of Appendix 9.

PART G - INTENTIONALLY DELETED

PART H - SELLER IS A JOINT VENTURE OR GENERAL PARTNERSHIP

[This Part applies if the Seller is a joint venture or general partnership]

1. Section 1.12 is added as follows:

1.12 Joint and Several Liability - Each of [Partner1] and [Partner2] are jointly and severally, and not severally only, liable to the Buyer for and in respect of all liabilities and obligations of the Seller under or in relation to this EPA. All references to the “Seller” herein mean both [Partner1] and [Partner2], unless the contrary is expressly indicated. Acts or omissions of either [Partner1] or [Partner2] in relation to this EPA are deemed to be acts or omissions of the Seller.

2. Section 6.8 is deleted and replaced with the following:

Neither the Seller nor [Partner1] or [Partner2] shall take any action that would cause the Seller, [Partner1] or [Partner2] to cease to be exempt, or omit to take any action necessary for the Seller, [Partner 1] and [Partner 2] to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

3. Section 15.1 is amended by inserting the words “(which includes any or all of the Seller, [Partner1] and [Partner2])” after the words “The Seller” at the beginning of that section and by deleting the third sentence of that section and replacing it with the following:

“Any sale or other disposition of all or a substantial part of the Seller’s, [Partner1]’s or [Partner2]’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller, [Partner1] or [Partner2] in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s, [Partner1]’s or [Partner2]’s ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller, [Partner1] or [Partner2] is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 15.”

4. Section 17.1 is deleted and replaced with the following: The Seller and each of [Partner1] and [Partner2] as to itself only, represent and warrant to the Buyer, and acknowledge that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - Each of [Partner1] and [Partner2] are 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 its business as now conducted and to enter into and to perform its obligations under this EPA;
- (b) **Bankruptcy** - No actions have been taken or authorized by either [Partner1] or [Partner2] or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or either [Partner1] or [Partner2] or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller or either [Partner1] or [Partner2];

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- (c) Assets - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
 - (d) No Conflict - Neither the signing of this EPA nor the carrying out of the Seller's obligations under this EPA will: (i) constitute or cause a breach of, default under, or violation of, the constating documents or bylaws of either [Partner1] or [Partner2], any permit, franchise, lease, license, approval or agreement to which [Partner1] or [Partner2] is a party, or any other covenant or obligation binding on the Seller or either [Partner1] or [Partner2] or affecting any of their 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 Seller, [Partner1] and [Partner2] enforceable against Seller, [Partner1] and [Partner2] in accordance with its terms;
 - (f) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by [Partner1] and [Partner2];
 - (g) Bid Documents - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
 - (h) Exemption from Regulation - The Seller, [Partner 1] and [Partner 2] are exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.
5. Section 18.1 is amended by:
- (a) adding the words "and [Partner 1] and [Partner 2]" after the word "Seller" in the first line in that section; and
 - (b) adding the words "or [Partner 1] or [Partner 2]" after the word "Seller" in all other places where the word "Seller" appears in that section;
6. Section 18.2 is amended by adding the words "and [Partner 1] and [Partner 2]" after the word "Seller" in the first line in that section.
7. The definition of "**Affiliate**" in Appendix 1 is deleted and replaced with the following:
- "**Affiliate**" means, with respect to the Seller, [Partner1] or [Partner2] any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, [Partner1] or [Partner2] 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.

8. The definition of “**Bankrupt or Insolvent**” in Appendix 1 is amended by adding the following after the word “Person” in the first line of that definition: “(which in the case of the Seller includes any or all of the Seller, [Partner1] or [Partner2]).”
9. Subsection (a) of the definition of “Buyer Termination Event” in Appendix 1 is deleted and replaced with the following:
 - (a) any one of the Seller, [Partner1] or [Partner2] is Bankrupt or Insolvent;
10. The words “the Seller is in material default” in subsection (e) of the definition of “Buyer Termination Event” in Appendix 1 are deleted and replaced with the following:

“any one of the Seller, [Partner1] or [Partner2] is in material default”.
11. The definition of “**COD Certificate**” in Appendix 1 is amended by adding the following after the words “officer of”:

“each of [Partner1] and [Partner2] and”.
12. Note to Bidders: The description of the Parties on page 1 of the EPA and the signature blocks will be amended as necessary to reflect the general partnership or joint venture structure.

PART I - SELLER IS A LIMITED PARTNERSHIP

[This Part applies if the Seller is a limited partnership]

1. Section 1.12 is added as follows:

1.12 General Partner - All references to the “Seller” herein include [General Partner(s)], unless the contrary is expressly indicated. Acts or omissions of [General Partner(s)] in relation to this EPA are deemed to be acts or omissions of the Seller.

[Note to Bidders: Where there is more than one General Partner the following will be added at the end of section 1.12:]

Each of [General Partner 1] and [General Partner 2] are jointly and severally, and not severally only, liable to the Buyer for and in respect of all liabilities and obligations of the Seller under or in relation to this EPA.]

2. Section 6.8 is deleted and replaced with the following:

Neither the Seller nor [General Partner(s)] shall take any action that would cause the Seller or [General Partner(s)] to cease to be exempt, or omit to take any action necessary for the Seller and the [General Partner(s)] to continue to be exempt, from regulation as a “public utility”, as defined in the UCA, with respect to the Seller’s Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA where such designation as a “public utility” could reasonably be expected to have an adverse effect on the Buyer or its interests under this EPA.

3. Section 15.1 is amended by inserting the words “(which includes any or all of the Seller and [General Partner(s)])” after the words “The Seller” at the beginning of that section and by deleting the third sentence of that section and replacing it with the following:

“Any sale or other disposition of all or a substantial part of the Seller’s or [General Partner(s)]’s ownership interest in the Seller’s Plant, or of all or any interest of the Seller or [General Partner(s)] in this EPA or revenue derived from this EPA, and any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller’s, or [General Partner(s)]’s ownership interest in the Project Assets and any change of Control, merger, amalgamation or reorganization of the Seller or [General Partner(s)] is deemed to be an assignment of this EPA by the Seller for the purpose of this Article 15.”

4. Section 17.1 is deleted and replaced with the following:

The Seller and each [General Partner(s)] as to itself only represent and warrant to the Buyer, and acknowledge that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:

- (a) **Corporate Status** - As to the [General Partner(s)], it 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 its business as now conducted and to enter into and to perform its obligations under this EPA. As to the Seller, it is duly created and organized, validly existing and in good standing under the laws of the jurisdiction of its creation, 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 perform its obligations under this EPA;

- (b) Bankruptcy - No actions have been taken or authorized by the Seller or [General Partner(s)] or any other Person to initiate proceedings for, or in respect of, the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Seller or [General Partner(s)] or to appoint a receiver, liquidator, trustee or assignee in bankruptcy in respect of the Seller or [General Partner(s)];
 - (c) Assets - No appropriation, expropriation or seizure of all or any portion of the Seller's Plant is pending or threatened;
 - (d) No Conflict - Neither the signing of this EPA nor the carrying out of the Seller's obligations 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 [General Partner(s)], any permit, franchise, lease, license, approval or agreement to which the Seller or [General Partner(s)] is a party, or any other covenant or obligation binding on the Seller or [General Partner(s)] or affecting any of their 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 [General Partner(s)] enforceable against the Seller and [General Partner(s)] in accordance with its terms;
 - (f) Authorization, Execution and Delivery - This EPA has been duly authorized, executed and delivered by the [General Partner(s)] on behalf of the Seller;
 - (g) Bid Documents - All material information in the Bid Documents is true and correct in all material respects and there is no material information omitted from the Bid Documents which makes the information in the Bid Documents misleading or inaccurate in any material respect; and
 - (h) Exemption From Regulation - The Seller and [General Partner(s)] are exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant, the sale of Energy and the performance by the Seller of its obligations under this EPA.
5. Section 18.1 is amended by:
- (a) adding the words "and [General Partner(s)]" after the word "Seller" in the first line in that section; and
 - (b) adding the words "or [General Partner(s)]" after the word "Seller" in all other places where the word "Seller" appears in that section.
6. Section 18.2 is amended by replacing the words "the Seller" with the words "the Seller and the [General Partner(s)]" in the first line thereof.

7. The definition of “**Affiliate**” in Appendix 1 is deleted and replaced with the following:

“**Affiliate**” means, with respect to the Seller or [General Partner(s)] any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller or [General Partner(s)] 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, shall include any Person directly or indirectly Controlling, or under common Control with, the Buyer.
8. The definition of “**Bankrupt or Insolvent**” in Appendix 1 is amended by adding the following after the word “Person” in the first line of that definition: “(which in the case of the Seller includes any or all of the Seller or [General Partner(s)]):”
9. Subsection (a) of the definition of “**Buyer Termination Event**” in Appendix 1 is deleted and replaced with the following:

(a) any one of the Seller or [General Partner(s)] is Bankrupt or Insolvent;
10. The words “the Seller is in material default” in subsection (e) of the definition of “**Buyer Termination Event**” in Appendix 1 are deleted and replaced with the following:

“any one of the Seller or [General Partner(s)] is in material default”
11. The definition of “**COD Certificate**” in Appendix 1 is amended by adding the following after the words “officer of:

“each [General Partner(s)] and”.
12. Note to Bidders: The description of the Parties on page 1 of the EPA and the signature block will be amended as necessary to reflect the limited partnership structure.

CFT REFERENCE DOCUMENT PROJECT SUBMISSION INSTRUCTIONS

Issued 8 December 2005

Revised 17 March 2006

PURPOSE:

These are instructions for the preparation of the Project Submission, which each Bidder must submit as part of its Tender. The Project Submission should contain information concerning the Bidder and the Project, which BC Hydro requires to determine (i) whether the Tender meets the Mandatory Requirements (see section 15.2 of the CFT), and (ii) to conduct a Risk Assessment (see section 15.3 of the CFT). The Project Submission should also include information on the Bidder's GHG mitigation plan, if applicable, including any optional compliance commitments the Bidder is willing to make, which may be considered as a non-price factor in the determination of an optimal portfolio (see section 15.5 of the CFT). Certain supplementary Project information is also required.

RISK ASSESSMENT THRESHOLDS:

These instructions describe thresholds in respect of each category of the Risk Assessment. The thresholds are provided to assist Bidders in determining the nature and extent of the minimum Bidder or Project information it should include in the Project Submission. Meeting thresholds in each category does not guarantee that a Tender will necessarily pass the Risk Assessment, and meeting the threshold is not mandatory. However, it would be difficult for a Tender to pass the overall Risk Assessment if one or more of these thresholds are not satisfied.

GENERAL INSTRUCTIONS:

1. The Project Submission should be prepared and submitted as ONE signed original and FIVE photocopies.
2. Each copy of the Project Submission should be presented in a 3-ring binder (not coil or other binding) on 8½" X 11" paper, double sided text, except for drawings, photographs and the like.
3. The Project Submission should not contain general corporate brochures or other promotional material of a general nature.
4. The Project Submission should be organized to follow the numbering system and the headings set out in these Instructions. If a particular heading is inapplicable, retain the number and heading and insert "Not applicable".
5. If an Instruction calls for the submission of applications, reports, agreements, plans, schedules, resumes, studies or other documents, those documents should be referenced in the text as an Exhibit. Exhibits should be numbered sequentially and tabbed at the end of the Project Submission. Note that pricing and commercially sensitive data may be redacted from copies of any letters of intent, agreements and similar documentation referenced or included in the Project Submission.
6. The Project Submission should include a Table of Contents with page numbering references, following the numbering system and headings in these Instructions, and including a listing of Exhibits.

7. The Project Submission should include, immediately following the Table of Contents, a signed Certificate in the form attached to these Instructions as Appendix 1.

8. A Bidder should be fully responsive to each Instruction, as applicable to the Bidder and its Project. If a Bidder is in any doubt as to the requirements contained in these Instructions, it should seek clarification using the Q&A process.

PROJECT SUBMISSION INSTRUCTIONS:

1. THE BIDDER:

NOTE: If the Bidder is a public company (i.e. its shares or other securities are listed on a recognized stock exchange), the Bidder may choose to include a copy of its latest Annual Report in an Exhibit to the Project Submission. In that case, this section of the Project Submission may be completed by referencing the Annual Report for the required information, and if applicable, including any new or amended information required to update the referenced information contained in the Annual Report.

1.1 Bidder Identity:

- (a) State the full legal name, form of organization (corporation, general partnership, limited partnership, joint venture, etc.), jurisdiction in which the Bidder is incorporated or formed, the date on which it was incorporated or formed and any incorporation or similar identifying number, the date and number of registration in British Columbia, if applicable, the street and mailing address(es) of the Bidder's principal place of business, its general telephone and fax number and its website address, if any.
- (b) Except in the case of a limited partnership, if the Bidder is a general partnership, joint venture or otherwise consists of two or more legal entities, provide the information described in (a) for each such entity.
- (c) If the Bidder is a limited partnership, provide the information described in (a) for the partnership and the general partner only.

1.2 Ownership:

- (a) If the common shares or similar ownership interests of the Bidder are listed on a stock exchange, state the name of the exchange and applicable trading symbol.
- (b) If the common shares or similar ownership interests of the Bidder are not listed on a stock exchange, state the full name and principal business or resident address of each public company or other person who holds, directly or indirectly, an equity ownership interest in the Bidder equal to or greater than 10%. Include an ownership chart where such a chart can best describe the Bidder's ownership structure.

1.3 Directors and Senior Management:

- (a) State the names and resident addresses of each person who is a director of the Bidder, or in the case of a Bidder which is not a corporation, each person who performs functions substantially similar to those of a director of a corporation, such as serving as a member of the board of directors of a general partner of a limited partnership, or on a joint venture committee.

- (b) State the name and office held of each person who is a senior officer (e.g. Chief Executive Officer, President, Vice-President) of the Bidder, or who performs functions substantially similar to those normally performed by a senior officer of a corporation.

1.4 Bankers, Auditors and Advisors:

- (a) State the name and address of the Bidder's principal bank(s) or financial institution(s).
- (b) State the name of the Bidder's auditors, or if financial statements are not subject to audit, state the name of the Bidder's principal external accountant, if any.
- (c) State the name and address of the Bidder's principal legal advisor.

2. MANDATORY REQUIREMENTS:

2.1 Project Location:

- (a) State the location of the Project within British Columbia.

2.2 Project Size:

- (a) State the Plant Capacity, expressed in MW. See the CFT Glossary for the definition of "Plant Capacity".

2.3 Generation Technology:

- (a) Give a brief description of the Project's generation technology. Confirm that this technology is readily available in commercial markets and is in commercial use (not demonstration use only). Identify the principal manufacturers or suppliers of this technology.
- (b) Describe at least 3 other existing generation plants (which need not be owned or operated by the Bidder) generating electrical energy for a period of at least 3 years, to a standard of reliability generally required by Good Utility Practice (as defined in the CFT Glossary) and the terms of the EPA. Include, at a minimum, the name and location of the plant, the name of the plant owner, and the plant capacity. If the Bidder is satisfied that its chosen generation technology is widely recognized as proven, this item may be omitted. However, BC Hydro reserves the right to require this information to be submitted at its request during Tender evaluation.

2.4 Project Type

- (a) State whether the Project is (i) new generation, (ii) refurbished or existing generation, or (iii) incremental generation.
- (b) If 2.4(a) (iii) applies: (i) state whether the incremental generation is (A) from an existing, interconnected and synchronized generator; or (B) from additional generator units to be installed at an existing and interconnected facility. If (B) applies, confirm that the incremental generation will be separately metered at the generation unit and describe the metering configuration.

- (c) Confirm that the Project has **not** received, and is **not** entitled to receive, funding through a load displacement or demand side management contract with BC Hydro.
- (d) If 2.4(a)(ii) applies in respect of existing load displacement generation, confirm that the Project ceased to be synchronized with the Integrated System before 1 January 2004.

2.5 **Interconnection:**

- (a) State whether the Project is located within the Integrated System Area, and identify the nearest substation.
- (b) Confirm that the Project will be separately metered and the expected meter location.
- (c) State whether the Project will be interconnected with the Transmission System or with the Distribution System.
- (d) For Projects within the Integrated System Area, state whether the Project will have (i) a direct interconnection to the system, or (ii) an Indirect Interconnection. If (ii) applies, provide details of the proposed interconnection, including the identity, ownership and location of the host facility or private transmission or distribution line and confirmation that the interconnection configuration will permit electrical energy generated by the Project to be injected to the Integrated System when a host facility, if any, is not operating. Include plans or other drawings where necessary to describe any proposed Indirect Interconnection.
- (e) For Projects not within the Integrated System Area, specify the interconnection point on the Integrated System at which delivery will be made under the EPA.

2.6 **Interconnection Study Application and Agreement:**

- (a) Confirm that the Bidder submitted a F2006 CFT Preliminary Interconnection Study Application, and in the case of a Project to be interconnected to the Distribution System paid the deposit, as required by section 12 of the CFT. Include as an Exhibit to the Project Submission a copy of the F2006 CFT Preliminary Interconnection Study Application.
- (b) For Projects interconnected to the Transmission System, confirm that the Bidder signed and delivered a F2006 CFT Study Agreement and paid the deposit, as required by section 12 of the CFT. Provide a copy of the F2006 CFT Study Agreement as an Exhibit to the Project Submission.
- (c) Confirm that the Bidder has received a F2006 CFT Preliminary Interconnection Study Report for the Project. Include as an Exhibit to the Project Submission a copy of a completed F2006 CFT Preliminary Interconnection Study Report.
- (d) For Projects that have or will have an Indirect Interconnection, attach:
 - (i) all of the information listed in subsections 2.6(a) to (c) as submitted by, or received by, the Bidder and/or the owner of the transmission line through which the Bidder will transmit energy from the Project to the point of interconnection with the Transmission System or the Distribution System, as the case may be;

- (ii) a copy of the agreement between the Bidder and the owner of the transmission line under which agreement the Bidder has the right to transmit energy from the Project through the owner's transmission line to the point of interconnection with the Transmission System or the Distribution System as the case may be; and
- (iii) a consent in the form attached to these Instructions as Appendix 2 signed by the owner of the transmission line through which the Bidder will transmit energy from the Project to the point of interconnection with the Transmission System or the Distribution System, as the case may be.

2.7 No Current Contracts:

- (a) Confirm that the representation and warranty given in section 3(j) of the Large Project Tender Form or the Small Project Tender Form, as applicable, is true and correct.
- (b) For Projects with existing electricity purchase contracts with BC Hydro, the Bidder must exercise the right to terminate the existing contract or recall capacity and/or energy thereunder, as applicable, in accordance with the provisions in that contract by notice to BC Hydro by not later than 4:00 p.m. PPT on 20 December 2005. Include as an Exhibit to the Project Submission a copy of the notice given.
- (c) For Projects with existing electricity purchase contracts with a third party, the Bidder must exercise the right to terminate the existing contract, or recall capacity and/or energy thereunder, in accordance with the termination or recall provisions in that contract by notice given on or before the Tender Closing Date subject only to the condition that the Bidder is awarded an EPA in the F2006 CFT process. Include as an Exhibit to the Project Submission a copy of the contract with the third party and a copy of the termination or recall notice together with evidence of delivery of that notice to the third party.

3. RISK ASSESSMENT:

3.1 Development and Operating Organization and Experience:

***Threshold:** This section of the Project Submission should establish that the Bidder has, or has a viable plan that will secure access to, a Project development and operations team with sufficient qualification and experience to successfully undertake the development and operation of the Project. The Project team may be direct hire and/or contracted, and may consist of individuals and/or firms. Where the Project team includes a firm, the experience of individuals assigned to the Project, and not just the firm's experience, will be important to the assessment. Project team experience in the development of one or more prior projects similar to the Project in terms of technology and size, will be considered favourably in the assessment.*

3.1.1 Contracting Method:

- (a) Describe the contracting method which the Bidder intends to utilize for the development of the Project (e.g. turnkey contract, retaining consultants and a general contractor, construction management, etc.).

3.1.2 Existing Project Team:

- (a) Provide a list of all members of Bidder's existing Project development team (individuals currently employed or contracted by the Bidder; contracted consultants and advisors) together with a description of the experience of each development team member (including with respect to a project comparable to the tendered Project). Provide resumes for key team members as an Exhibit to the Project Submission.

3.1.3 Further Required Project Team Members:

- (a) Describe the Bidder's plan and schedule for selection of any further engineering and technical consultants, equipment suppliers and contractors required for the design, procurement and construction of the Project.

3.1.4 Securing Performance:

- (a) Describe the Bidder's plan for securing performance by its consultants, suppliers and contractors, whether involving performance and payment bonds, letters of credit, corporate guarantees or other security measures.

3.1.5 Project Organization Chart:

- (a) Provide a chart showing the currently planned Project development organization, including Project team members, principal functions and reporting relationships.

3.1.6 Operating Plan:

- (a) Describe the Bidder's plan to provide a qualified and experienced Project operations and maintenance team, whether by contracting for operating and/or maintenance services, direct hire or otherwise, including the schedule and method for assembling the team.
- (b) If and to the extent that the Bidder has commitments in place for all or part of its operating and maintenance team, describe the experience of committed team members in the operation and maintenance of other projects similar to the Project. Provide resumes of any committed team members.
- (c) Describe the experience of the Bidder, or any or all of its owners described in Instruction 1.2(b) above in the operation and maintenance of other projects similar to the tendered Project.

3.2 Financial Capacity and Creditworthiness:

Threshold: *This section of the Project Submission should establish that the Bidder has, or has a viable plan to secure access to, sufficient financial resources to enable it to successfully develop and operate the Project in accordance with the terms of an Awarded EPA. The plan should include third party funding commitments and/or internal funding authorizations. The Risk Assessment will recognize that Projects may be financed using a range of equity and debt structures, including "on balance sheet" or non-recourse project finance, and using a range of equity and debt investments. However, in that the EPA is not "subject to financing", it is important to the Risk Assessment that the Bidder have in place when Tenders are submitted funding commitments or an internally-approved allocation of its own financial resources that are adequate in amount and not subject to any conditions that could not reasonably be expected to be fulfilled, so that development and operation of the Project may proceed in accordance with a schedule consistent with the tendered COD. These commitments should include a commitment from a bank or financial institution meeting the creditworthiness standard set out in the EPA to provide the*

Performance Security under an Awarded EPA, subject only to conditions which could reasonably be expected to be fulfilled by the time the security must be delivered.

3.2.1 Financing Plan:

- (a) Describe the proposed method of financing the Project during each of the development, construction, and operating phases, including a description of:
 - Capital structure;
 - Sources of equity and debt financing, including any guarantor support;
 - Form of equity financing (e.g. cash injection, contributions in kind); and
 - The lead arranger or underwriter for the required debt/equity, if applicable.

3.2.2 Status of Financing:

- (a) Describe the status of efforts to secure equity and debt financing including:
 - A financing schedule that outlines all key financing-related milestones; and
 - The status of the Bidder's discussion with lenders/underwriters to secure both construction and long-term funding (including both equity and debt).
- (b) Describe the principal outstanding conditions to completing and closing any equity and/or debt financing and the Bidder's plan to satisfy those conditions.
- (c) Provide as an Exhibit to the Project Submission copies of equity and/or debt commitments (e.g. term sheets, letters of offer or executed financing documents) and/or internal funding authorizations, if any.

3.2.3 Performance Security:

- (a) Provide a copy of a commitment letter from a bank or financial institution, which meets the credit rating requirements of not less than Standard & Poor's A-, Moody's A3 or DBRS A (low), confirming that the bank or financial institution will provide the required Performance Security as required under an Awarded EPA.

3.2.4 Financial Capability and Creditworthiness:

- (a) *For rated Projects, Bidders, equity providers and/or guarantors* – For any or all (i) Projects, (ii) Bidders, (iii) persons committing significant equity funding (i.e. 10% or more) for the Project and (iv) persons committing debt guarantee support for the Project, which have an established credit rating, specify the rating agency and rating for each of them.
- (b) *For unrated Bidders, equity providers and/or guarantors* – For any or all (i) Bidders, (ii) persons committing significant equity funding (i.e. 10% or more) for the Project and (iii) persons committing debt guarantee support for the Project, which do not have an established credit rating, provide sufficient evidence to show that the proponent has access to sufficient financial capability and creditworthiness to develop and operate the Project in accordance with the terms of an Awarded EPA. Such evidence may include

(as an Exhibit to the Project Submission) audited, or if statements are not subject to audit, unaudited financial statements for the last 3 completed fiscal years and the most recent unaudited quarterly or semi-annual financial statement.

- (c) *Other Projects* – Briefly describe significant capital projects (other than the Project tendered) currently planned or in development by the Bidder and/or its Affiliates, including the nature, location, order of magnitude of the capital cost and financing arrangements of the project. Include sufficient information to indicate the extent of funding for which the Bidder and/or its Affiliates are responsible. For this purpose a “significant capital project” is any project having an order of magnitude capital cost equal to or greater than 50% of the estimated capital cost of the Project tendered.

3.3 Project Development Schedule:

Threshold: *This section of the Project Submission should establish that the Bidder has a detailed Project development schedule that (i) identifies key Project development milestones and the critical path, (ii) is consistent with the tendered COD and includes an adequate pre-COD period for commissioning and testing, and (iii) is realistic and achievable.*

3.3.1 Detailed Schedule:

- (a) Provide as an Exhibit to the Project Submission a detailed Project schedule, identifying the critical path and showing particularly all key dates associated with permitting, design, engineering, procurement, construction and commissioning activities, including all key Project development milestones and a scheduled COD not later than the Guaranteed COD (for Large Projects) or Target COD (for Small Projects).
- (b) Describe how the duration of activities on the critical path were derived and how they compare to the Bidder’s experience, if any, on other comparable projects, including any such projects used as references in the Project Submission (see 3.1.2(a)). Describe typical contingency measures available to recover lost time due to delays, including those effectively employed by the Bidder on other comparable projects, if any.
- (c) Describe the status of Project preliminary and detailed engineering, including percentage complete, and a description of the status of Project construction and equipment procurement, including a description of any commitments (conditional or otherwise) made with contractors and/or suppliers.
- (d) Describe any known pending or threatened legal actions, suits or proceedings, or other events or circumstances, which could reasonably be expected to adversely impact efforts to meet the Project schedule, including any measures taken or planned by the Bidder to avoid or mitigate such impacts.

3.4 Site Acquisition/Control:

Threshold: *This section of the Project Submission should establish that (i) the Bidder has either acquired, has the right to acquire, or in the case of Crown lands can reasonably be expected to acquire, title or another form of tenure for a term not less than the tendered Term, of a Project site suitable for the development and operation of the Project, and (ii) the Site is not subject to any charges or adverse claims, which could reasonably be expected to prevent or delay the development of the Project, or its operation, in accordance with the terms of an Awarded EPA.*

3.4.1 Site Description:

- (a) Describe the location of the site, by latitude/longitude, identify any municipal, regional, or other local government area in which the site is located, and the nearest city or town and proximity thereto. Provide the site legal description, if any.
- (b) State the current zoning, if any, of the site.

3.4.2 Titled Land:

- (a) Provide as an Exhibit to the Project Submission a copy of the Certificate of Title, and of each lien, charge and encumbrance (“charges”) registered on title, and confirmation that such charges will not prevent or delay construction and operation of the Project, or alternatively the Bidder’s plan and schedule for the discharge or amendment of such charges to avoid any such prevention or delay.
- (b) State whether the site is or will be owned, leased or held under another form of tenure, which other form should be specified.
- (c) State whether the site is currently owned or otherwise held by the Bidder, and if not owned, provide as an Exhibit to the Project Submission a copy of the lease or other instrument under which the Bidder holds the site or an interest therein. If not currently owned or held by the Bidder, provide as an Exhibit to the Project Submission a copy of any option or other agreement under which the Bidder has the right to acquire ownership or an other appropriate interest in the site.
- (d) If the site on which the Project will be located is part of a larger parcel, which has not been subdivided, provide details of any planned subdivision, including (i) the status, and schedule for completion, of the subdivision, and (ii) a list, and the status and schedule for, all approvals required to complete the subdivision.

3.4.3 Untitled Land:

- (a) If the site is currently untitled (e.g. untitled Crown land), describe the status of the Bidder’s efforts to acquire an appropriate right of occupancy and use. Provide as an Exhibit to the Project Submission copies of any filed applications, licenses and/or leases.

3.5 Permits:

Threshold: *This section of the Project Submission should establish that the Bidder has (i) identified all material permits, certificates and approvals, including an environmental assessment certificate, water licenses or other permits required for the use of the Project’s energy source, and air and water emission permits, as applicable, for the development and operation of the Project, (ii) made application for such permits, (iii) prosecuted such applications to a stage that is consistent with the Bidder’s Project development schedule and where it may reasonably be expected that any currently unissued permits are likely to be issued as contemplated by that schedule and on conditions that will permit the Project to be developed and operated in accordance with the terms of an Awarded EPA. Where a Project requires rezoning, the submission should establish that a rezoning by-law has received at least first reading by the relevant local government.*

3.5.1 List of Required Permits:

- (a) Provide a complete list of all permits required for construction and operation of the Project. For the purpose of this Instruction, “permit” means permits, licenses, rezoning

or zoning variances, and all other approvals required of any federal, provincial or local government or governmental agency or authority required for the development and operation of the Project, including without limitation any environmental assessment certificate required under federal or provincial legislation and any permit or license required to use the energy source for the Project (e.g. water license).

3.5.2 Issued Permits:

- (a) Provide as an Exhibit to the Project Submission a copy of each issued permit.
- (b) Disclose the existence, status and the Bidder's assessment of any pending or threatened legal action, suit or proceeding and any appeal in respect of any issued permit.

3.5.3 Unissued Permits:

- (a) For each unissued permit, provide:
 - A permitting schedule showing, for each unissued permit, the planned application, sequencing and issue date for each permit, which is consistent with the Bidder's Project schedule, and
 - As an Exhibit to the Project Submission a copy of any pending permit application, a description of the status of the application, any known opposition to the issue of the permit and the expected impact thereof on the permitting schedule and any planned measures which the Bidder intends to implement to avoid or mitigate any anticipated delay in issue of the permit.

3.6 Community Consultation:

Threshold: *This section of the Project Submission should establish that, where required under any law, permit, regulatory or government (including local government) process or any other approval process of any kind applicable to the Project, the Bidder has issued a public notification in the local community where the Project will be located of its intention to develop the Project and has a viable plan to provide adequate information on the Project to the public in that community, and a reasonable opportunity for members of the community to provide a response to that information.*

- (a) Provide as an Exhibit to the Project Submission a copy of any public notification issued concerning the Project and a list of the media where it was published.
- (b) Provide a description and status report on all community consultations conducted and planned relative to the Project, including particulars of issues identified and whether and how each issue has been or will be addressed.
- (c) Where the Bidder has concluded that public notification and consultation is not required, provide supporting rationale for that conclusion.

3.7 First Nations Consultation:

Threshold: *This section of the Project Submission should establish that the Bidder has identified whether and which First Nations will be consulted concerning the Project, has communicated with those First Nations and provided to them sufficient information concerning the Project to enable those First Nations to take an informed view of the nature and extent of consultation required, and has afforded, or has a viable plan to afford, those First Nations a reasonable opportunity to pursue such consultations.*

- (a) Identify the First Nations which the Bidder believes should be consulted or intends to consult. The Project Submission should also indicate if no consultation will be carried out. Where the Bidder has concluded that First Nations consultation is not required, provide supporting rationale for that conclusion.
- (b) Provide as an Exhibit to the Project Submission a copy or description of information provided to First Nations concerning the Project, indicating when that information was provided.
- (c) Provide a description and status report on all First Nations consultations conducted and planned relative to the Project, including particulars of issues identified and how each issue has been or will be addressed.
- (d) Describe the material terms, or include as an Exhibit a copy of, any executed accommodation or similar letter of intent or agreement with any First Nations.

3.8 Site Services:

Threshold: *This section of the Project Submission should establish that the Bidder has (i) identified all site services (e.g. water supply, waste treatment/disposal, etc.) required for the development and operation of the Project in accordance with the terms of an Awarded EPA, (ii) has contracted or arranged, or has a viable plan for contracting and arranging, such services.*

3.8.1 Site Services Required:

- (a) Describe all site services required to support construction and operation of the Project, including water supply, wastewater treatment and/or disposal, and other utilities and services, and a description of the status and schedule for securing each utility or service.

3.8.2 Site Service Agreements:

- (a) Provide as an Exhibit to the Project Submission a copy of any executed letter of intent or similar preliminary commitment and any executed final agreement for provision of any required utility or service.

3.9 Fuel Supply:

Threshold: *This section of the Project Submission should establish that the Bidder has contracted for, or is reasonably assured of, the supply or availability, and if applicable the transport and storage of, fuel or other energy source, or sources required for the operation of the Project in accordance with the terms of an Awarded EPA. Primary and secondary or multiple fuels or energy sources, if any, should be addressed. Fuels which are available in current, reasonably liquid markets need not be under contract for the entire Term tendered, provided that a viable contracting strategy is described. In the case of hydroelectric or wind Projects, while only one full year's stream or wind data is required, historical data for the site over a longer period will be considered favourably in the Risk Assessment.*

3.9.1 Biomass-fired Projects:

- (a) Describe arrangements or strategies that the Bidder has made to procure fuel for the Project, including the name and location of the suppliers, source of biomass, status of negotiations with suppliers, a description of the market characteristics for the specific biomass, including supply and demand characteristics and any known or expected changes to such characteristics;

- (b) Provide as an Exhibit to the Project Submission copies of any executed letters of intent or other preliminary commitments and/or executed final agreements with fuel suppliers.
- (c) Describe viable alternate supply arrangements that the Bidder may access if planned or contracted fuel suppliers fail to perform.
- (d) Describe arrangements or strategies that the Bidder has made to deliver the fuel required for the Project from identified suppliers to the Project, including load-out facilities and the name of transporter(s), facility operators and method of transportation and evidence that required permits, if any, are readily obtainable.
- (e) Provide as an Exhibit to the Project Submission copies of any letters of intent or other preliminary commitments and/or executed agreements with fuel transporter(s).
- (f) Describe viable alternate transportation arrangements that the Bidder may access if planned, including load-out facilities should the contracted fuel transporter(s) fail to perform.
- (g) Describe any infrastructure improvements necessary to extract, process, transport, receive and store fuel, including status of the development of such improvements, identification of any permits or approvals required for such improvements, the schedule for completion of such improvements, and any known or expected obstacles for the development and construction of such improvements.
- (h) Describe the volume of on-site fuel storage that the Bidder has included in its Project design.

3.9.2 Coal-fired Projects:

- (a) Describe arrangements or strategies that the Bidder has made to procure fuel for the Project, including the name and location of the suppliers, source of coal, status of negotiations with suppliers, a description of the market characteristics for the specific coal, including supply and demand characteristics and any known or expected changes to such characteristics;
- (b) Provide as an Exhibit to the Project Submission copies of any executed letters of intent or other preliminary commitments and/or executed final agreements with fuel suppliers.
- (c) Describe viable alternate supply arrangements that the Bidder may access if planned or contracted fuel suppliers fail to perform.
- (d) Describe arrangements or strategies that the Bidder has made to deliver the fuel required for the Project from identified suppliers to the Project, including load-out facilities and the name of transporter(s), facility operators and method of transportation and evidence that required permits, if any, are readily obtainable.
- (e) Provide as an Exhibit to the Project Submission copies of any letters of intent or other preliminary commitments and/or executed agreements with fuel transporter(s).
- (f) Describe viable alternate transportation arrangements that the Bidder may access if planned, including load-out facilities should the contracted fuel transporter(s) fail to perform.

- (g) Describe any infrastructure improvements necessary to extract, process, transport, receive and store fuel, including status of the development of such improvements, identification of any permits or approvals required for such improvements, the schedule for completion of such improvements, and any known or expected obstacles for the development and construction of such improvements.
- (h) Describe the volume of on-site fuel storage that the Bidder has included in its Project design.

3.9.3 *Natural Gas-fired Projects:*

- (a) Describe the arrangements that the Bidder has made to procure fuel for the Project.
- (b) Provide, as an Exhibit to the Project Submission, copies of any executed letters of intent or other preliminary commitments and/or any executed final agreements with fuel suppliers.
- (c) Describe arrangements that the Bidder has made for firm transportation, and any non-firm transportation, to deliver the fuel required for the Project from identified suppliers or liquid trading hub(s) to the burner tip.
- (d) Provide as an Exhibit to the Project Submission copies of any executed letters of intent or other preliminary commitments and/or any executed final agreements with fuel transporter(s) and provide evidence that any required regulatory approvals have been obtained relative to those agreements.
- (e) Describe arrangements or strategies that the Bidder has made to procure and deliver alternate fuel, if any, to the burner tip for the Project.
- (f) Provide as an Exhibit to the Project Submission copies of any letters of intent or other preliminary agreements and/or final executed agreements with alternate fuel suppliers.
- (g) Describe any infrastructure improvements necessary to transport, receive and store fuel, including status of the development of such improvements, identification of any permits or approvals required for such improvements, the schedule for completion of such improvements, and any known or expected obstacles for the development and construction of such improvements.
- (h) Describe any on-site alternate fuel storage (including volumes) that the Bidder has included in its Project design.

3.9.4 *Hydroelectric Projects:*

- (a) Describe the expected stream flows based on at least one full year of onsite daily historical data. Bidders are encouraged to provide more than one year of onsite data, but if such onsite data is not available, Bidders may estimate the expected stream flows beyond one year based on recent multiple years of highly correlated representative stream flow data from another nearby location, if such data is available. For a Project utilizing multiple stream diversions, cumulative data should be provided as well as data for each diversion. Identify all sources of data.
- (b) Describe the storage capabilities, if any, of the Project.

3.9.5 Wind Projects:

- (a) Describe the expected wind velocities based on at least one full year of onsite historical anemometer data. Bidders are encouraged to provide more than one year of onsite anemometer data, but if such onsite data is not available, Bidders may estimate the expected wind velocities beyond one year based on recent multiple years of highly correlated representative wind velocity data from another nearby location, if such data is available. Identify all sources of data.

3.9.6 Other Fuels:

- (a) Describe the fuel or energy source.
- (b) Describe the Bidder's plan to procure, transport, and store the fuel, as applicable, in sufficient quantities to operate the Project in accordance with the terms of an Awarded EPA.
- (c) Provide as an Exhibit to the Project Submission copies of any preliminary or final agreements or commitments in implementation of the Bidder's plan.

3.10 GHG Mitigation Strategy For Projects Consuming Fossil Fuel:

Threshold: *This section of the Project Submission should establish that the Bidder has demonstrated an awareness of its GHG emission offset obligations and has developed a reasonable and achievable GHG mitigation plan based on the applicable Province of British Columbia standard, or, in the absence of such a standard, a combined cycle gas turbine level.*

3.10.1 For all Projects consuming fossil fuel:

- (a) Provide a forecast of the Project's annual GHG emissions for firm and non-firm energy, including:
 - GHG intensity of the Project,
 - Fuel consumption,
 - Conversion factors, and
 - Annual electricity generation.
- (b) State the Bidder's status in respect of the Project under proposed/actual (as applicable) Large Final Emitter regulations.
- (c) Provide a description of the Bidder's federal GHG reporting requirements and any other required GHG reporting requirements.

3.10.2 For Projects consuming fossil fuel for which Bidder elects to retain GHG emission offset obligations:

- (a) Describe (i) the nature and extent of the Bidder's annual offset requirements to be retained by the Bidder, (ii) the means planned by the Bidder's for achieving compliance with those requirements, (iii) the measures in place or that will be put in place to ensure the Bidder can implement the mitigation plan throughout the EPA Term, and (iv) the

analysis and rationale to support the Bidder's position that it will be able to implement the mitigation plan throughout the EPA Term.

- (b) For Bidders that elect to make a GHG Compliance Commitment (i.e. commit to GHG mitigation measures beyond those required by all applicable laws and regulations), describe the nature, extent and the means by which the Bidder intends to meet its commitment.

3.11 Other Matters Affecting Tender Options, Project Development or Performance:

3.11.1 Pending Litigation:

- (a) To the extent not otherwise disclosed in the Project Submission, describe any pending or threatened claims or legal actions, suits or proceedings before any arbitrator, court or regulatory body affecting the Bidder, the Project, or any consultant, supplier, manufacturer or contractor engaged, or to be engaged, for the Project that could reasonably be expected to have a material and adverse effect on the ability of the Bidder to develop and operate the Project and comply with its obligations under an Awarded EPA.

3.11.2 Labour Disputes:

- (a) To the extent not otherwise disclosed in the Project Submission, describe any pending or threatened strikes, lockouts or labour disturbances affecting the Bidder, the Project or any consultant, supplier, manufacturer or contractor engaged, or to be engaged, for the Project that could reasonably be expected to have a material and adverse effect on the ability of the Bidder to develop and operate the Project and comply with its obligations under an Awarded EPA.

3.11.3 Other Matters:

- (a) To the extent not otherwise disclosed in the Project Submission, describe all other known facts or circumstances that could reasonably be expected to have a material and adverse effect on the ability of the Bidder to develop and operate the Project and comply with its obligations under an Awarded EPA.

4. SUPPLEMENTARY TENDER DATA:

4.1 Total Project Energy:

- (a) Provide an estimate of the total energy that is expected to be generated by the Project, for each month, in MWh.
- (b) Provide supporting calculations that show how the total energy estimate for each month is derived, including how the estimate is supported by the information provided in Instruction 3.9 – Fuel Supply.

4.2 BC Clean Electricity:

- (a) If a Bidder claims eligibility for its Project as BC Clean Electricity, include as an Exhibit to the Project Submission (i) a letter from the Minister of Energy, Mines and Petroleum Resources confirming eligibility for treatment of the Project as BC Clean Electricity, or a

letter from TerraChoice in substantially the form of the Form of TerraChoice Letter – Green, and (ii) copies of all applications and data provided in support of that letter.

4.3 Green:

- (a) If a Bidder claims eligibility for its Project as Green, include as an Exhibit to the Project Submission (i) a copy of a letter from TerraChoice in substantially the form of the Form of TerraChoice Letter – Green, and (ii) copies of all applications and data provided to TerraChoice in support of that treatment.

4.4 Seller's Plant Description:

- (a) Include as an Exhibit to the Project Submission a completed Seller's Plant Description (*CFT Form #2*), and a list of changes, if any, in that form by comparison to the version submitted before the Tender Closing Time under section 13.2 of the CFT.

4.5 Project-specific changes to EPA:

- (a) Provide as an Exhibit to the Project Submission a copy of BC Hydro's letter(s), if any, confirming approval of, or requiring, Project-specific changes to the EPA.

4.6 Form of Tender Security:

- (a) Provide as an Exhibit to the Project Submission a copy of BC Hydro's letter, if any, approving changes to the Form of Tender Security.

4.7 EPA Notice Contacts:

- (a) Provide the information required to complete the Seller's contact information for notices under Appendix 9 (Large Project EPA) or Appendix 8 (Small Project EPA).

4.8 Other Data:

- (a) Bidders are invited to provide any other information concerning the Bidder and/or the Project which (i) is not addressed above, and (ii) which the Bidder believes is relevant and may impact the overall Tender assessment, having regard to Mandatory Requirements, Risk Assessment and/or non-price factors.

APPENDIX 1
PROJECT SUBMISSION CERTIFICATE

The undersigned certifies that:

1. This Project Submission is part of a Tender submitted by [NAME OF BIDDER] in respect of the [NAME OF PROJECT] Project.
2. To the best of the knowledge, information and belief of the undersigned, the information contained in this Project Submission is true and correct in all material respects.
3. The undersigned is duly authorized to execute this Certificate.

Dated at _____ on _____, 20__

Signature

Name: _____

Title: _____

APPENDIX 2
INDIRECT INTERCONNECTION – CONSENT TO DISCLOSURE

**[LETTERHEAD OF THIRD PARTY OWNER OF THE TRANSMISSION LINE THROUGH
WHICH THE BIDDER WILL TRANSMIT ENERGY TO THE TRANSMISSION SYSTEM OR
DISTRIBUTION SYSTEM]**

Date: _____, 2006

The undersigned hereby consents to the disclosure by BCTC to BC Hydro of:

- (a) the F2006 CFT Preliminary Interconnection Study Application submitted by the undersigned to BCTC, and any information submitted or to be submitted to BCTC relative thereto, and any study report resulting therefrom and any subsequent applications, studies and reports that contain information relevant to the interconnection of the _____ Project to the Transmission System or the transmission of energy from the _____ Project through the line owned by the undersigned to the point of interconnection between that line and the Transmission System;
- (b) all information with respect to Network Upgrades relating to the _____ Project, including any information provided by the undersigned to BCTC that relates to, or affects, Network Upgrades to facilitate the interconnection of the _____ Project to the Transmission System; and
- (c) any other information regarding the transmission line owned by the undersigned through which energy from the _____ Project will be transmitted to the Transmission System that is relevant to the evaluation of a Tender submitted to BC Hydro in respect of the _____ Project or the administration of any EPA awarded by BC Hydro in respect of the _____ Project.

Signed: _____

By: _____
Authorized Signatory

M 337

**MINISTER'S ORDER
M-22-0001**

IN THE MATTER OF THE SALE, PURCHASE OR PRODUCTION OF A POWER SERVICE AND AN EXEMPTION FROM THE PROVISIONS OF PART 3 AND SECTION 71 OF THE *UTILITIES COMMISSION ACT* R.S.B.C. 1996, c. 473, AS AMENDED (THE "ACT")

In this Order, the following definitions apply:

"BC Hydro" means British Columbia Hydro and Power Authority or its successors or assigns;

"Brilliant Project" means the electricity generation, transmission, transformation and interconnection facilities at the Brilliant Dam, including a dam, a spillway, a powerhouse which includes four turbines and generators, switchyards/substations, transmission lines and all related works;

"Brilliant Expansion Project" means the electricity generation, transmission, transformation and interconnection facilities to be and as constructed near the Brilliant Project, which may include any or all of an intake canal, a new powerhouse, a tailrace channel, a tailrace bridge, water transmission tunnels, a transmission link, switchyards/substations (which may also interconnect with the Brilliant Project and the transmission facilities of WKP) and all related works;

"CBT" means Columbia Basin Trust or its successors or assigns;

"Cominco" means Cominco Ltd. or its successors or assigns;

"CPC" means Columbia Power Corporation or its successors or assigns;

"CPC/CBT" means, as the context requires, any joint venture, corporation, partnership or other business entity in which CPC (or a CPC subsidiary) and CBT (or a CBT subsidiary) own all of the equity interests;

"CPC/CBT Power Service" means Power Service from a CPC/CBT Project or a CPC/CBT contractual entitlement to Power Service (whether related to a CPC/CBT Project or other CPC/CBT purchases for resale), including the Waneta Upgrade Power Service;

"CPC/CBT Projects" means the Keenleyside Project, the Brilliant Project, the Brilliant Expansion Project and the Waneta Expansion Project, including any upgrades, extensions or modifications that may be made from time to time;

"Energy Supply Contract" means energy supply contract within the meaning of section 68 of the Act;

"Keenleyside Project" means the electricity generation, transmission, transformation and interconnection facilities under construction and as constructed near the Hugh Keenleyside Dam, including two turbine and generator units, powerhouse, approach channel upstream of the existing dam, tailrace channel, switchyards/substations and the transmission line to the Selkirk substation, but excluding BC Hydro's storage dam and related facilities;

"Minister" means the Minister of Employment and Investment or successor Minister responsible for the Act;

"Minister's Order M-22-9803" means Minister's Order No. M-22-9803, dated November 25, 1998, issued under section 22 of the Act;

"Power service" means power service within the meaning of section 22 of the Act;

"Waneta Expansion Project" means the electricity generation, transmission, transformation and interconnection facilities to be and as constructed near the Waneta Dam, which may include any or all of an intake canal, an intake tunnel, a new powerhouse, a tailrace channel, a tailrace bridge, water transmission tunnels, a transmission link, switchyards/substations and all related works;

"Waneta Upgrade Power Service" means the additional energy and capacity from the upgrades to four turbines at Cominco's Waneta Dam, for which Cominco has received approval under the *Environmental Assessment Act*, R.S.B.C. 1996, c. 119; and,

"WKP" means West Kootenay Power Limited or its successors or assigns.

WHEREAS, CPC is a corporation incorporated under the laws of the Province of British Columbia, all of the outstanding shares of which are owned by the Crown and CBT is a corporation pursuant to the *Columbia Basin Trust Act*, all the outstanding shares of which are owned by the Crown;

AND WHEREAS, CPC and CBT each have a mandate to develop, construct, own and operate power projects for the economic, social and environmental benefit of the citizens in the Columbia-Kootenay Region;

AND WHEREAS, Minister's Order M-22-9803 exempted:

- CPC/GBT from the provisions of Part 3 and section 71 of the Act in respect of CPC/GBT Projects and the sale, purchase or production of Power Service from CPC/GBT Projects to public utilities in the Province and to Wholesalers, as those terms were defined in the Minister's Order M-22-9803; and,
- public utilities in the Province or Wholesalers who, under an Energy Supply Contract, purchase Power Service from CPC/GBT Projects;

AND WHEREAS, pursuant to Minister's Order M-22-9803 the Minister issued a letter dated November 25, 1998 approving the Brilliant Project as an Approved Project under the terms of Order-22-9803;

AND WHEREAS, pursuant to section 22 of the Act, the Minister may exempt persons or classes of persons who sell, purchase or produce a power service and the related equipment, facility, plant, project or system from any or all of the provisions of Part 3 and section 71 of the Act;

AND WHEREAS, the Minister considers that CPC/GBT and CPC/GBT Projects should be exempt, in respect of the sale, purchase, transmission or production of CPC/GBT Power Service, from Part 3 and section 71 of the Act;

AND WHEREAS, pursuant to the Columbia Basin Accord, CPC and GBT may undertake other power projects in the Columbia-Kootenay Region which may include equity interests by other persons and accordingly CPC and GBT may request amendments or supplements to this Order to allow such other power projects to proceed;

NOW THEREFORE, by this Order the Minister:

- 1) Rescinds Minister's Order-22-9803;
- 2) Issues this Order pursuant to section 22 of the Act in its place;
- 3) Exempts, pursuant to section 22 of the Act:
 - (a) CPC/GBT from Part 3 and section 71 of the Act in respect of the sale, purchase or production of CPC/GBT Power Service;
 - (b) the CPC/GBT Projects from Part 3 and section 71 of the Act;
 - (c) persons, other than CPC/GBT, from section 71 of the Act in respect of Energy Supply Contracts for the purchase of CPC/GBT Power Service; and,

- (d) Cominco from section 71 of the Act in respect of Energy Supply Contracts with CPC/GBT for the production and sale of Waneta Upgrade Power Service

ORDERED this 3 day of October, 2000.



Minister of Employment and Investment

Rationale for the Attrition and Outage Ranges

BC Hydro selected a range of 25% to 40% as being appropriate for the combined amount of attrition and outages to use in estimating the amount of electricity from awarded EPAs that will ultimately be available to BC Hydro once the respective projects enter into commercial operation. Following is the rationale with respect to each of Attrition and Outages that was behind this selection.

Range of Attrition

BC Hydro used historical data from existing IPP contracts dating back to the 2000 RFP up to and including the 2003 Green Power Generation (GPG) call to estimate the expected attrition rate for the firm energy contracted under the F2006 Call. In total, this data base provided 43 sample contracts.

The following table summarizes the results of the historical analysis:

	On-time and Delivering	Behind but Likely Proceed	Terminated or Unlikely to Proceed
Contracted Energy (GWh/y)	36%	45%	19%

This table does not include the Duke Point Power Plant that was signed under the 2003 Vancouver Island Call for Tenders, which BC Hydro subsequently terminated.

In terms of estimating of the lower limit of the expected attrition range, the table above reveals that 19% of BC Hydro's existing IPP contracts are either terminated or are unlikely to proceed, so this implies a minimum attrition rate of 19% for BC Hydro's existing IPP contracts.

⇒ **Lower estimate of expected attrition = 19%**

In terms of estimating the upper limit of the expected amount of attrition, the recommendation is to apply the percentage of energy categorized as "Terminated or Unlikely to Proceed" to the percentage of energy categorized as "Behind but Likely to Proceed" and add this to the percentage of energy categorized as "Terminated or Unlikely to Proceed", as shown in the following calculation:

⇒ **Upper estimate of expected attrition = 19% + (19% * 45%) = 28%**

The rationale for this upper limit is that the energy categorized as "Behind but Likely to Proceed" may also suffer some attrition as many of BC Hydro's existing IPP contracts are for projects which are currently in progress and for which the results are still unknown. Therefore, treating this energy like a subsample and applying the minimum expected attrition rate for the sample to this subsample yields the additional amount of attrition one could expect over and above 19%.

Conclusion: The expected attrition for the F2006 Call is in the range of 19% - 28%

It is difficult to estimate expected attrition because there are many factors and risks involved in the development of power plants and many potential reasons why certain projects may not successfully reach COD. BC Hydro believes that using aggregated information regarding existing contracts to make inferences about the potential attrition for the F2006 Call is a sound approach. BC Hydro also recognizes that this approach may have some limitations, including

those listed below, that increase the uncertainty (error band) of the estimated attrition range for the F2006 Call:

- The statistical analysis is based on a limited sample size of contracts (43 in total). In addition, the various contracts within the sample have different attributes and external influences than those anticipated for the contracts under the F2006 Call.
- Of the 43 contracts in the sample, most were contracted when construction cost increases were fairly modest and predictable. The 16 GPG contracts were awarded just prior to a significant, and unexpected, increase in construction costs. The F2006 Call contracts will likely experience a significant, but expected, escalation in construction costs.
- The F2006 Call was designed to reduce attrition by encouraging bidder self-selection via higher security requirements and a Risk Assessment. However, the current observation is that the lower Tender Security relative to the higher Performance Security may simply mean that more projects fall off the table prior to contract signing, so the overall attrition may not be reduced as much as what was anticipated.
- Projects developed under the current market conditions in British Columbia may experience lower equipment and EPC contractor availability due to the booming economy, thereby increasing attrition relative to recent calls.
- The F2006 Call includes technologies which have not previously been permitted in British Columbia (e.g. coal and wind), which may increase attrition relative to recent calls.

In recognition of the uncertainty of the estimation, BC Hydro uses a rounded range of 20 to 30% in the F2006 Call Report.

Although BC Hydro acknowledges that there are limitations in using the methodology outlined, it maintains that observations based on existing contracts is the most objective and reasonable means currently available to BC Hydro of determining the percentage of contracted firm energy that may not be realized from the F2006 Call.

Range of Outages

In F2006 Call, Bidders were instructed to bid a firm energy amount without taking planned outages into account (CFT Bid Price/Options Form). Further, in section 12.2 of the Large Project EPA, a 10% allowance is provided before delivery shortfall triggers any payment of Liquidated Damages. Therefore, for planning purposes, energy tendered in the F2006 Call is assumed to be before the effect of forced and planned outages.

To determine the appropriate range of outages to be applied to the firm energy, BC Hydro reviewed the following availability statistics reported by North American Electric Reliability Council¹ for the period of 2000-2004.

Hydro – 0 MW to 29 MW	90%
Hydro – 30 MW and above	89%
Coal – 1 MW to 99 MW	88%

¹ 2000-2004 Generating Availability Report, September 2005, North American Electric Reliability Council.

Coal – 100 MW to 199 MW 89%

Wind and biomass projects are not reported but are believed to be in the range cited above.

After taking age of facility into account (the generation units reported had been in service for 40 to 60 years), a 5%-10% factor to reflect the effect of outages was selected.