

BEFORE THE ADDITIONAL FACILITY OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTE (ICSID)

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

ICSID CASE NO. ARB(AF)/12/3

SECOND WITNESS STATEMENT OF PIERRE LAMARCHE

23 March 2015

I, Pierre Lamarche, declare as follows:

1. This second witness statement responds to certain assertions that are made in the Claimant's Reply and its accompanying expert reports. In particular, I will address the Claimant's allegations as to how we arrived at a [REDACTED] MW threshold for Howe Sound in the 2001 Consent Agreement.¹ I will then discuss the [REDACTED] of the Consent Agreement.

2. As I explained in my first witness statement, Howe Sound [REDACTED] [REDACTED] in the fall of 2000.² This was because [REDACTED] [REDACTED] [REDACTED] The effect of these higher natural gas prices [REDACTED] [REDACTED] [REDACTED] Nevertheless, [REDACTED] [REDACTED] [REDACTED] [REDACTED] These factors came to a head in October 2000.

3. Between October 2000 and February 2001, Howe Sound [REDACTED] [REDACTED] [REDACTED] ³ [REDACTED] [REDACTED] These generation levels [REDACTED] [REDACTED] [REDACTED] ⁴

¹ Consent and Electricity Purchase and Sale Agreement between HSPP, Powerex and BC Hydro, 12 April 2001, **R-85**; Purchase Transaction Enabling Agreement between Powerex Corp and Howe Sound, 12 April 2001, **R-84**.

² Pierre Lamarche Statement I, ¶¶ 23-26.

³ Pierre Lamarche Statement I, ¶ 25.

⁴ See Pierre Lamarche Statement I, ¶ 26.

4. The Claimant writes in its Reply that “no one... can replicate, much less validate, the derivation of Howe Sound’s 2001 [REDACTED] MW GBL.”⁵ As I previously testified, to arrive at [REDACTED] MW, Howe Sound used [REDACTED]
[REDACTED]⁶ My colleague Jerry Peet, representatives from the Technical Department, and I compiled this detailed information, which Mr. Peet presented to, and discussed with, BC Hydro along with our proposal. Mr. Peet and Craig Folkestad, Howe Sound’s Key Account Manager at the time, had thorough discussions about the data before BC Hydro agreed to the threshold. I was kept up to date on these discussions by Mr. Peet, and provided input throughout the process.

5. The data from these [REDACTED]
[REDACTED] To illustrate this point, I have gathered averages of Howe Sound’s hourly generation from the period [REDACTED]
[REDACTED] The averages were calculated by dividing Howe Sound’s total generation in these months⁷ [REDACTED]
[REDACTED] a sales agreement— by the total number of hours in each month. Including the month [REDACTED]
[REDACTED]⁸ the straight average hourly generation at Howe Sound was [REDACTED] MW. If we were to [REDACTED] month [REDACTED] the straight average was [REDACTED] MW:

⁵ Claimant’s Reply, ¶ 268.

⁶ See Pierre Lamarche Statement I, ¶ 37. To reproduce the precise calculations we made at the time would require [REDACTED]

[REDACTED] As this was almost fifteen years ago, the mill no longer has this detailed information available.

⁷ See Pierre Lamarche Statement I, ¶ 24.

⁸ See Pierre Lamarche Statement I, fn 7 [REDACTED]
[REDACTED]

Month	Average Hourly Generation (MW)
[REDACTED]	

6. If we had adopted a more aggressive position, we would have proposed a threshold of [REDACTED] MW, or even [REDACTED] MW. But that would have been contrary to our mill's principles and gave us concern that interveners might feel we were gaming the system by using data from days where the mill was not operating at design. We understood that it was incumbent on us to run our mill at design, which is what we endeavoured to do. The Claimant infers that the GBL was lower than it should have been. But by taking only the [REDACTED] days, we proposed and ultimately agreed with BC Hydro to a [REDACTED]
[REDACTED]

7. The term of the April 2001 Consent Agreement was [REDACTED] Howe Sound and BC Hydro [REDACTED]
[REDACTED]
[REDACTED]⁹ [REDACTED]
[REDACTED]

[REDACTED] Our forecasts showed the price of natural gas escalating into the foreseeable future, and that is in fact what happened.¹⁰

⁹ See, for example, Letter from Pierre Lamarche to Lester Dyck, 17 March 2004, at 134936 and 134937, R-396.

¹⁰ See Pöyry Expert Report I, Figure 6, at 19; National Energy Board, Energy Facts, October 2011, Figure 6 at 4, C-047.

8. The Claimant suggests in its Reply that natural gas prices had fallen back to their pre-crisis levels and remained low through mid-2002. On this basis, they suggest that “there would have been every reason to believe that it would have been economical for Howe Sound to resume burning natural gas and generating electricity at pre-2000 levels, without the incentive of its market price arrangement with Powerex.”¹¹

9. As I previously mentioned, Howe Sound had been [REDACTED]
[REDACTED]
[REDACTED] Based on my review of the data below and my recollection of the mill’s operations at that time, I believe the approximate price at which it would have become uneconomic for the mill to buy natural gas [REDACTED]
[REDACTED] delivered to the mill. As I recall, prices for natural gas were well below this price in the early to mid-1990s.

10. The Sumas Hub is a trading hub for natural gas used in BC, and is located on the US side of the Canada-US border near Vancouver. I note that the prices in the chart below do not represent what Howe Sound would actually have been paying at the mill; we also had transportation costs. Because of its location, Howe Sound had to use one of the more expensive pipelines in the Province to transport natural gas from the hub to the Howe Sound mill.¹² The prices we were paying at the mill were therefore higher than the prices shown in the following chart for 2002:¹³

<<Natural Gas Prices at Sumas Hub – 2002>>
(US\$/MMBtu)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
[REDACTED]											

¹¹ Claimant’s Reply, ¶ 342.

¹² As I recall, we were paying roughly [REDACTED] in transportation costs.

¹³ I understand that the data in this chart was provided as Exhibit R-439, appended to the Witness Statement of Michael MacDougall.

11. I note that the price of natural gas in January and February 2002, when we would have been discussing the renewal of the term of the agreement for the first time, was right around [REDACTED] before delivery to the mill. Accounting for the exchange rate and the delivery cost, I calculated that the lowest price we could have paid for natural gas in the months of January and February 2002, delivered to the mill, was [REDACTED]¹⁴ [REDACTED]

Even so, the dip still [REDACTED]
By the time the [REDACTED] Consent Agreement's term began, [REDACTED]¹⁵ natural gas prices were up even higher, around [REDACTED] before delivery to the mill, the same price that they were at in mid-2000.

* * *

12. I affirm that the information provided above is true and correct.

13. I affirm this witness statement in support of Canada's Rejoinder Memorial in the *Mercer International Inc. v. Government of Canada* NAFTA arbitration and for no improper purpose.

AFFIRMED BEFORE ME)
at the City of Chilliwack)
in the Province of British Columbia,)
this 23 day of MARCH, 2015.)

_____)
A Commissioner for taking Affidavits for)
British Columbia)
HEATHER E. WAAL)
Notary Public)
9086 Young Road)
Chilliwack, BC V2P 4R5)
604-795-0070)

_____)
PIERRE LAMARCHE

PERMANENT COMMISSION

¹⁴ To be conservative, I calculated this figure using the lowest daily exchange rate in those two months: US\$1 US = CA\$1.5885: see **R-439**. [REDACTED] (the lowest price of natural gas in those two months) x \$1.5885 = [REDACTED]. Adding in the transportation cost of [REDACTED] (see fn 12 above), I arrived at [REDACTED].

¹⁵ Consent and Electricity Purchase and Sale Agreement between HSPP, Powerex and BC Hydro, 28 February 2002, s. 6, at 021715, **R-160**.