

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT
AND THE ICSID ARBITRATION (ADDITIONAL FACILITY) RULES

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant/Investor

AND:

GOVERNMENT OF CANADA

Respondent

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

WITNESS STATEMENT OF JIM SCOURAS

CONTENTS

A.	BACKGROUND INFORMATION	2
B.	BC HYDRO’S POWER ACQUISITION: AN OVERVIEW	3
C.	THE PROCUREMENT OF POWER FROM SELF-GENERATORS BY BC HYDRO.....	5
1.	BCUC Order G-38-01, the Provinces’ 2002 Energy Plan, and BC Hydro’s 2002 Customer-Based Generation Call for Power	5
a)	The California Energy Crisis and BCUC Order No. G-38-01	5
b)	The 2002 Energy Plan and the 2002 Customer-Based Generation Call for Power	7
2.	The Province’s 2007 Energy Plan and the Bioenergy Call for Power - Phase I	10
a)	The 2007 Energy Plan and the 2008 Bioenergy Strategy	10
b)	The Bioenergy Call for Power – Phase I.....	10
c)	The Celgar Mill’s Proposed “Biomass Realization Project”	14
d)	Celgar’s 2009 EPA with BC Hydro, the Side Letter Agreement, and Seller-Consumed Eligible Electricity	16
3.	BC Hydro’s Integrated Power Offer	20
4.	Bilaterally-Negotiated Agreements.....	22
D.	Conclusion	23

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

I, Jim Scouras, declare:

A. BACKGROUND INFORMATION

1. I was born on [REDACTED]. I presently reside at [REDACTED]
[REDACTED]
2. I am currently a Regional Relationship Manager within BC Hydro's Aboriginal Relations department. I was appointed to this position in May 2013. From 2001 to 2013, I was involved in numerous positions related to power procurement at BC Hydro. In particular, I was involved in the 2002 Customer-Based Generation call for power, the 2008 Bioenergy Call for Power Phase I ("Bioenergy Phase I"), BC Hydro's Integrated Power Offer, and several bilateral agreements for power. My involvement in these procurement activities culminated with my role as the Manager of Commercial Acquisitions in BC Hydro's Energy Planning and Economic Development group from 2011 to May 2013. I attach my curriculum vitae to this witness statement as **Appendix A**.
3. As a result of my work in connection with power procurement at BC Hydro, I was involved in implementing BC Hydro's policies with respect to its power acquisition activities. I also have a broad understanding of the provincial policy and regulatory framework applicable to electric utilities in British Columbia ("B.C.") and the steps taken by BC Hydro to ensure compliance with this framework.
4. In Section B of this witness statement, I will describe BC Hydro's general approach to power acquisition, including an explanation of the objectives of BC Hydro's power acquisition activities and the reasons reason why BC Hydro procures electricity from industrial customers with self-generation capability.
5. In Section C, I will describe various government policies and corresponding procurement initiatives launched by BC Hydro in relation to self-generators in the Province. In particular, I will first discuss British Columbia's 2002 Energy Plan and BC Hydro's 2002 Customer-Based Generation Call for power, which was the first time that BC Hydro implemented the concept of the generator baseline ("GBL") in a formal call. Second, I will explain the Province's 2007 Energy Plan and BC Hydro's corresponding 2008 Bioenergy Phase I call for power. Third, I will discuss briefly the federal government's Pulp and Paper Green Transformation Program ("PPGTP") and BC Hydro's Integrated Power Offer ("IPO"). Finally, I will explain certain policies surrounding BC Hydro's procurement of power through bilateral agreements.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

6. I have personal knowledge of the matters deposed to in this witness statement, except where the knowledge is based on information and belief, in which case I indicate the source of the information and my belief that it is true.

7. I have reviewed the relevant documents attached to this witness statement for the purposes of preparing it.

B. BC HYDRO'S POWER ACQUISITION: AN OVERVIEW

8. BC Hydro has an obligation to provide electrical service to all existing and future customers located in its service area. To determine its resource needs, BC Hydro employs long-term planning in its Integrated Resource Plan,¹ which assesses and outlines BC Hydro's resource options that can be used to fill the gap between electricity demand and supply. These options are typically divided into demand-side measures and supply-side measures.

9. BC Hydro views conservation as its preferred choice to ensure that electricity supply meets demand. Conservation is a demand-side measure since it aims at reducing consumer need for power through energy optimization measures. For example, in the late 1980s BC Hydro implemented a program named Power Smart, which continues to this day and is aimed at developing energy savings strategies in collaboration with its residential, commercial and industrial customers.²

10. Although conservation is BC Hydro's preferred choice, it is not in and of itself sufficient to meet forecasted customer demand. BC Hydro's Integrated Resource Plans thus typically recommend supply-side measures as well, which can include the development of generation and transmission resources (e.g. new or upgraded hydroelectric facilities) and procuring electricity from third parties. BC Hydro has generically described these three resource options as Conserve, Build and Buy.³

11. BC Hydro operates 31 hydroelectric facilities and three thermal generating plants, representing an annual supply of approximately 12,000 megawatts ("MW"). The hydroelectric

¹ More information on the Integrated Resource Plan can be found on BC Hydro's website. BC Hydro, Integrated Resource Plan, online: https://www.bchydro.com/energy-in-bc/meeting_demand_growth/irp.html, **R-103**.

² More information on the Power Smart program can be found on BC Hydro's website. BC Hydro, Power Smart, online: <https://www.bchydro.com/powersmart.html>, **R-104**.

³ BC Hydro's Service Plan (2010/11 – 2012/13) provides a description of the core strategy for closing the gap between electricity demand and supply. BC Hydro Service Plan 2010/11 – 2012/13, at 4-5, **R-105**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

facilities were generally built in the 1960s, 1970s, and 1980s and provide over 95% of the total electricity generated by BC Hydro.⁴

12. BC Hydro is also currently party to 86 executed Electricity Purchase Agreements (“EPAs”) for which the projects have commenced commercial operation and deliver electricity to BC Hydro.⁵ These agreements have been concluded with municipalities, First Nations,⁶ independent power producers, and utility customers with self-generation facilities.⁷

13. BC Hydro has procured power from independent power producers and customers with self-generation facilities, through three different processes: calls for power; standing or open offers; and bilateral negotiations. Calls for power are most often initiated through either a Call for Tenders or a Request for Proposals, pursuant to which proponents are invited to submit bids aimed at yielding a pre-established target of incremental generation to meet BC Hydro’s supply needs. The successful bids are evaluated and selected in accordance with a competitive process, and proponents are required to meet pre-established deadlines for the submission of their applications and the commencement of their generation projects.

14. A standing or open offer is another procurement process that allows any independent power developer or self-generator who meets the pre-established eligibility criteria to submit an application to the program. Applicants do not compete against each other for an EPA, and the price paid for electricity purchased from eligible projects is determined in advance. Applicants are not constrained by rigid deadlines, since they are entitled to participate in a standing or open offer as long as the program stands. For instance, BC Hydro currently has a Standing Offer Program (“SOP”) for clean energy projects under 15 MW,⁸ for which there is no set expiry date.⁹

⁴ BC Hydro, Service Plan 2014/15–2016/17, February 2014, (“BC Hydro Service Plan”) at 6-7, **R-9**.

⁵ BC Hydro, Current IPP Supply, **R-106**.

⁶ BC Hydro, Overview of BC Hydro’s Energy Procurement Practices, November 2013 (“BC Hydro – Overview of Energy Procurement Practices”), at 1, **R-107**.

⁷ Self-generation facilities are electrical power generation facilities that are installed at the same site as the customer’s plant, on the customer’s side of the Point of Delivery, and are used to supply a portion of the customer’s plant load. BC Hydro, Application to Amend Tariff Supplement No. 74 (TS No. 74) – Customer Baseline Load (“CBL”) Determination Guidelines for RS 1823 Customers with Self-Generation Facilities, 2 November 2012 (“BC Hydro, Application to Amend TS74”), Appendix B - Attachment B Guidelines at 4, **R-87**.

⁸ More information on the SOP can be found on BC Hydro’s website: http://www.bchydro.com/energy-in-bc/acquiring_power/current_offerings/standing_offer_program.html?WT.mc_id=rd_standingoffer.

⁹ BC Hydro Standing Offer Program Frequently Asked Questions, Program Update – October 16, 2013, **R-108**.

15. Finally, BC Hydro also procures power through the conclusion of agreements negotiated on a bilateral basis with third parties. This procurement process can arise, for instance, in the context of an EPA renewal or with the acquisition of power from a project that may not be eligible in a competitive call.¹⁰

16. A document entitled *Overview of BC Hydro's Energy Procurement Practices* available publicly on BC Hydro's website describes in greater detail these procurement mechanisms.¹¹

C. THE PROCUREMENT OF POWER FROM SELF-GENERATORS BY BC HYDRO

17. In designing its procurement activities, BC Hydro is required to comply with the laws and policies implemented by the Province, as well as the directives of the British Columbia Utilities Commission ("BCUC"). Since the early 2000s, there have been several legal and policy developments that have shaped BC Hydro's procurement policies and processes. In this section, I will examine several BC Hydro procurement initiatives, and the legal and policy frameworks from which they emanated.

1. BCUC Order G-38-01, the Provinces' 2002 Energy Plan, and BC Hydro's 2002 Customer-Based Generation Call for Power

18. In 2002, BC Hydro launched a call for power directed at private sector producers, including utility customers with idle self-generation capacity. The call had its origins in the California energy crisis, and BCUC Order G-38-01, and was aligned with the Provincial Government's 2002 Energy Plan, which are discussed in greater detail below.

a) The California Energy Crisis and BCUC Order No. G-38-01

19. In the late 1990s, prior to the California energy crisis, BC Hydro implemented a *pro forma* open-access transmission tariff ("OATT"), consistent with North American industry practices, to allow generators located in BC Hydro's service territory to "wheel" their generated power on BC Hydro's transmission lines.¹² "Wheeling" means the transmission of electricity produced by a generator along a utility's transmission network. Before the implementation of a

¹⁰ BC Hydro – Overview of Energy Procurement Practices, at 2, 10, **R-107**.

¹¹ BC Hydro – Overview of Energy Procurement Practices, **R-107**.

¹² BC Hydro wheels power for eligible wheeling customers in accordance with its OATT. The latest iteration of OATT is available online at:

http://transmission.bchydro.com/regulatory_filings/tariff/tariff_documents/open_access_tariff.htm.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

pro forma OATT in North America, it was highly unlikely that a generator could transmit electricity to available markets.

20. In the years 2000 and 2001, an energy crisis hit the State of California, which caused the prices for electricity to increase exponentially in the U.S. Pacific Northwest, and thus provided an incentive for sales of power into these markets. Interested parties included BC Hydro industrial customers with on-site generation facilities that had typically been used to self-supply a portion of their plant load.

21. The Howe Sound Pulp and Paper mill (“Howe Sound”), located in Port Mellon, BC, was one such industrial customer. In 2001 it informed BC Hydro of its interest in entering into market sales. In turn, BC Hydro expressed concern to the BCUC over negative financial impacts that could result if it remained obligated to serve certain industrial customers with low regulated rate (the embedded cost of service rate for industrial customers or “embedded cost power”)¹³ while those industrial customers sold their self-generated power to market rather than using it to serve their own load.¹⁴

22. On April 5, 2001, the BCUC issued Order G-38-01, which found that BC Hydro was not required to supply embedded cost power to its industrial customers in order to replace self-generated electricity sold to market.¹⁵ It did, however, direct BC Hydro to work with its industrial customers to facilitate the sale of incremental self-generation by examining either “the historical energy consumption of the customer or the historical output of the generator”¹⁶ to determine a baseline above which the customer would be allowed to sell power to market without increasing demand for BC Hydro-supplied power.

¹³ Embedded cost power represents the weighted average of costs incurred by BC Hydro to obtain electricity from all sources. It is obtained adding the cost of all BC Hydro’s electricity resources (including conservation, generation and procurement) divided by the total electricity volume supplied to customers, in order to yield an average unit cost of electricity.

¹⁴ Letter from R. Aldeguer to R. Pellatt Re: BC Hydro Obligations to Serve Rate Schedule 1821 Customers with Self-Generating Capabilities, dated February 23, 2001, **R-81**. See also Letter from BC Hydro to Howe Sound Pulp and Paper Ltd. RE: Howe Sound Pulp and Paper (HSPP) Power Export Opportunities, dated February 12, 2001, **R-79**. See also BCUC, Order Number G-38-01, “British Columbia Hydro and Power Authority Obligation to Serve Rate Schedule 1821 Customers with Self-Generation Capability”, April 5, 2001 (“BCUC, Order Number G-38-01”), **R-19**.

¹⁵ BCUC, Order Number G-38-01, at 3, **R-19**.

¹⁶ BCUC, Order Number G-38-01, at 3, **R-19**.

23. The implications of Order G-38-01 are twofold. First, self-generating customers can take advantage of a market opportunity to make sales of power that they would not otherwise have made, provided that this power is incremental to (i.e., generated in excess of) the customer's historical generation. Second, a negotiated baseline provides a mechanism to allow customers to make such sales of electricity without entering into arbitrage that would be detrimental to other ratepayers.¹⁷

b) The 2002 Energy Plan and the 2002 Customer-Based Generation Call for Power

24. In November 2002, the B.C. Government initiated the 2002 Energy Plan, which recognized the value of BC Hydro's heritage assets (i.e., its generation assets, the investments in which are long paid for and hence yield low-cost electricity generation) and affirmed the Government's commitment to keep low tariffs for electricity service for all B.C. consumers.¹⁸ The 2002 Energy Plan also encouraged BC Hydro to procure electricity from the private sector in order to increase electricity security.¹⁹

25. Traditionally, self-generators only produced electricity on site to serve their own needs, with straight economics dictating how much the self-generator self-supplied and how much it purchased from BC Hydro to serve the remainder of its load. The point at which generating incremental electricity became more expensive than purchasing electricity was typically the point at which self-generators stopped producing power for themselves. Most self-generators in B.C. thus have idle capacity from which they could generate a greater amount of electricity if it were economical to do so. BC Hydro was and is of the opinion that acquiring a customer's incremental (otherwise idle) self-generation could be beneficial to it and its ratepayers, since these customers make use of existing infrastructure, and hence provide a cost-effective source of energy.

26. Consistent with the directives of the BCUC in Order No. G-38-01, BC Hydro developed the GBL concept, pursuant to which a baseline is negotiated with the self-generating customer demarcating the extent of its current utilized generation under normal operations. The GBL serves the dual purpose of making existing, but idle, generation capacity eligible for EPA sales,

¹⁷ BCUC, Order Number G-38-01, at 3, **R-19**.

¹⁸ Energy For Our Future: A Plan for BC ("2002 Energy Plan"), Policy Action No. 1, at 26, **R-21**.

¹⁹The 2002 Energy Plan provided that "[t]he private sector [would] develop new electricity generation, with BC Hydro restricted to improvements at existing plants." 2002 Energy Plan, Policy Action No. 13, at 30, **R-21**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

and mitigating the risk of detrimental arbitrage. When setting GBLs, BC Hydro adopts an approach akin to that of taking a “snapshot” of the customer’s existing self-generation under normal operating circumstances so that entering into an EPA with this customer will not alter the customer’s normal self-supply activity and result in the replacement of otherwise self-supplied power with increased purchases from BC Hydro.

27. With these principles in mind, BC Hydro, on September 2, 2002, initiated the 2002 Customer-Based Generation call for power with a Call for Tenders.²⁰ The purpose of the call was to obtain new, competitively-priced electricity under long-term agreements from non-utility generation to meet BC Hydro's future demand.²¹

28. The 2002 Call for Tenders included detailed information and supporting materials for the call, all of which were made public and brought to the attention of the proponents.²² Only new or incremental generation was eligible under the call.²³ Where a proponent’s project involved a proposed increase in energy generation from existing assets, it was necessary to determine the self-generator’s historical generation level under normal operating circumstances, using the GBL concept.²⁴

29. In accordance with BC Hydro’s policy, a GBL was set with proponents based on the annual self-generation normally used by the customer to supply its load under prevailing

²⁰ Customer-Based Generation, 2002 Call for Tenders, September 6, 2002, (“2002 Customer-Based Generation CFT”), **R-109**.

²¹ 2002 Customer-Based Generation CFT, at 1, **R-109**.

²² 2002 Customer-Based Generation CFT, **R-109**.

²³ The Call for Tenders provided that “The proposed electricity supply must be incremental – that is electricity from new generation facilities or from an increase in the capacity of, or energy from, existing facilities resulting from capital modifications (other than normal capital maintenance programs). Facilities that have been operating for less than approximately one year may be considered new or incremental. Generation that directly or indirectly reduces electricity that would otherwise be available to BC Hydro under existing contracts or resulting from curtailment of other operations, whether for economic or other reasons, does not qualify.” 2002 Customer-Based Generation CFT, at 15, **R-109**.

²⁴ The Call for Tenders indicated that “As noted under Evaluation of Tenders and Prices/Award of EPAs, the proposed electricity supply must be new or incremental. Where the bidder’s project involves an increase in the capacity of, or energy from, existing facilities resulting from capital modifications, it is necessary to determine the generator’s historic generation capability. The historic generation capability is referred to in the Standard EPA as the Generator Baseline or “GBL”. For purposes of determining electricity eligible for sale to BC Hydro, the GBL will be deducted from the metered electricity. Except in very limited circumstances as described in the Standard EPA, BC Hydro will not purchase electricity that is part of the GBL.” 2002 Customer-Based Generation CFT, at 12 **R-109**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

conditions and absent the existence of an energy supply contract that might distort the customer's normal operations.

30. All proponents in the 2002 Customer-Based Generation call whose projects involved incremental generation from existing assets were required to submit a GBL application to BC Hydro in October 2002, which included, among other things, monthly operating data for at least three years representing normal operating conditions.²⁵ Upon receiving a complete GBL application, BC Hydro set the bidder's GBL in accordance with the information communicated. The call process included confidentiality undertakings to protect the business confidential information of the bidders, the disclosure of which could potentially be detrimental to their operations.²⁶

31. The 2002 Customer-Based Generation call for power only received bids from seven proponents. Two of these proponents involved existing self-generation of hydroelectric power. Ultimately, however, neither project was successful in the call. Only three EPAs were ultimately signed, none of which included incremental self-generation.

32. Although the call did not achieve its original 800 gigawatt hour ("GWh") annual target, likely due to the energy and fuel price risks faced by bidders, it served to introduce the idea of energy sales to BC Hydro to a broader set of potential proponents, along with procurement concepts and principles, such as green attributes and GBLs. To the best of my knowledge, forestry industry proponents were initially hesitant to engage in sales of electricity, due to the novelty of this business activity and the intrinsic risks it entailed, with which they were not familiar.

33. The idea of long-term firm electricity sales came over time with the maturation of the industry, mainly when B.C. pulp and paper actors noticed that some competing mills, in Europe and elsewhere, had added this source of revenue to their operations. But no significant opportunity arose for pulp and paper mills to engage in such sales in B.C. until 2007, when the B.C. Government implemented a new energy policy through its 2007 Energy Plan, the details of which I outline below.

²⁵ 2002 Customer-Based Generation CFT, at 12-13 and 40, **R-109**.

²⁶ 2002 Customer-Based Generation CFT, at 21, **R-109**. BC Hydro Standard Electricity Purchase Agreement for Customer-Based Generation, s. 20.8, **R-110**.

2. The Province's 2007 Energy Plan and the Bioenergy Call for Power - Phase I

a) The 2007 Energy Plan and the 2008 Bioenergy Strategy

34. In 2007, the B.C. Government implemented a new Energy Plan,²⁷ which introduced specific directives impacting BC Hydro's power procurement activities. These included the requirements to attain provincial electricity self-sufficiency by 2016,²⁸ acquire 50% of incremental resource needs through energy conservation and efficiency by 2020,²⁹ ensure that all new electricity projects have zero net greenhouse gas emissions,³⁰ ensure that clean or renewable electricity generation continue to account for at least 90% of total provincial generation,³¹ and establish a standing offer program for clean power projects sized at up to 10 MW.³²

35. The Province also directed BC Hydro to work towards self-sufficiency utilizing clean or renewable energy generation by issuing "an expression of interest followed by a call for proposals for electricity from sawmill residues, logging debris and beetle-killed timber to help mitigate impacts from the provincial mountain pine beetle infestation."³³ This proposed bioenergy call was also intended as a response to the unprecedented mountain pine beetle infestation, which had affected several million hectares of trees throughout the Province.³⁴ The 2007 Energy Plan was followed by a 2008 Bioenergy Strategy, which indicated that BC Hydro would issue a two-phase Bioenergy Call for Power.

b) The Bioenergy Call for Power – Phase I

36. Shortly after the Provincial Government released the 2007 Energy Plan, BC Hydro issued a Request for Expressions of Interest ("RFEOI") to assess and identify potential bioenergy projects and proponents that could use residual wood, including sawmill residue, logging debris

²⁷ British Columbia Ministry of Energy, Mines and Petroleum Resources, "The BC Energy Plan: A Vision for Clean Energy Leadership" ("2007 Energy Plan"), **R-23**.

²⁸ 2007 Energy Plan, at 9, **R-23**.

²⁹ 2007 Energy Plan, at 5, **R-23**.

³⁰ 2007 Energy Plan, at 13, **R-23**.

³¹ 2007 Energy Plan, at 13, **R-23**.

³² 2007 Energy Plan, at 9 -10, **R-23**.

³³ 2007 Energy Plan, at 17-18, **R-23**.

³⁴ 2007 Energy Plan, at 18, **R-23**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

and beetle-killed timber for power production.³⁵ The RFEOI was also used to gain input from industrial customers into how BC Hydro might effectively design a call targeting these bioenergy projects.

37. BC Hydro received more than 80 submissions in response to the RFEOI from proponents located in most regions of the Province. Starting in April 2007, BC Hydro conducted interviews and discussions with most RFEOI respondents. On August 22, 2007 BC Hydro held an information session with the British Columbia Ministry of Energy, Mines and Petroleum Resources, the British Columbia Ministry of Forests and Range, the Council of Forest Industries and a number of RFEOI respondents to discuss mechanisms that could address the potential impact of the Bioenergy Call for Power on existing users of residual wood products in British Columbia.³⁶

38. BC Hydro issued the Bioenergy Call Phase I Request for Proposals (“Bioenergy Phase I RFP”) on February 6, 2008, which targeted the procurement of 1,000 GWh/year of firm energy.³⁷ The terms of the Bioenergy Phase I call were based on the consultations BC Hydro undertook during the RFEOI phase and the subsequent call design phase.

39. My responsibilities, as the Manager (power acquisition) of the Bioenergy Phase I call included building a team of competent personnel to oversee the different aspects of the call. The specific issue of GBLs required the involvement of Key Accounts Managers who are the primary point of contact between BC Hydro and its largest customers, including industrial customers with self-generation capability, and who therefore have a broad understanding of BC Hydro’s programs and policies impacting such customers. They are also cognizant of industry-specific issues faced by these customers. In this context, Bill MacMillan, a Senior Key Accounts Manager, and Lester Dyck, Sector Manager Pulp & Paper and Customer Generation, who also managed a team of Key Accounts Managers, played prominent roles in the determination of GBLs, while reporting to me as task managers on this issue. I understand that Mr. Dyck has

³⁵ For instance, Celgar responded to BC Hydro’s request and provided it with a response to its RFEOI form in April 2007. BC Hydro, *2007 Bioenergy RFEOI Form*, April 2007, **R-111**.

³⁶ A summary of the meeting can be found on BC Hydro’s website. Meeting with Stakeholders on the Bioenergy Call, August 22, 2007 – Vancouver, B.C., **R-112**.

³⁷ BC Hydro, Bioenergy Call for Power Phase 1, Request for Proposals, February 6, 2008 (“Bioenergy Phase 1 RFP”), at 1, **R-25**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

submitted a witness statement in which he provides more detail on his involvement in the Bioenergy Phase I call.

40. Section 14 of the Bioenergy Phase I RFP stated that eligible customer projects could include “[n]ew self-generation, or incremental self-generation, in any event excess of the Customer’s GBL at a Customer’s facility to serve the Customer’s industrial load at the facility (i.e., load displacement) and/or effect net energy export to the System (i.e. Customer Projects), but excluding generation projects, where the current output [was] under contract through a load displacement or demand side management agreement with BC Hydro.”³⁸ A customer was defined as “a customer of BC Hydro, or of any other public electric utility, taking industrial or commercial electricity service.”³⁹

41. Where customers intended to submit a proposal that involved incremental self-generation, they were required to have a GBL determined by BC Hydro to confirm their eligibility.⁴⁰ Customers were asked to provide data required by BC Hydro to determine the customer’s GBL for the applicable industrial facility.⁴¹ Confidentiality undertakings also formed part of the call process, which aimed to protect the exchange of business confidential information over the course of the call. Many, if not all proponents, requested that confidentiality undertakings be provided.⁴²

³⁸ Bioenergy Phase 1 RFP, s. 14, **R-25**.

³⁹ Bioenergy Phase 1 RFP, Appendix 1, s. 9, **R-25**.

⁴⁰ Bioenergy Phase 1 RFP, s. 13, **R-25**.

⁴¹ BC Hydro, Bioenergy Call for Power (Phase 1) – Request for Proposal – Addendum 1 (“Bioenergy Phase 1 RFP – Addendum 1”), at 3 and 5-8, **R-113**.

⁴² Bioenergy Phase 1 RFP, s. 22.8, **R-25**, provides that “BC Hydro shall endeavor to keep confidential information provided by Proponents in Proposals or otherwise in writing under or in relation to the RFP, other than information that is, or becomes, in the public domain as a result of disclosures not made by BC Hydro, which are not permitted hereunder. Notwithstanding the foregoing, BC Hydro may disclose information provided by a Proponent (i) to the Government of British Columbia, (ii) to BC Hydro’s directors, officers, employees, advisors and consultants on a “need to know” basis, (iii) as BC Hydro may consider necessary or desirable in connection with any regulatory proceeding or matter, (iv) as required to enforce any agreement with a Proponent arising from the RFP, or (v) as required by law. Proponents acknowledge that BC Hydro is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia), and accordingly, non-disclosure of information given to BC Hydro cannot be guaranteed in all circumstances.” The Specimen EPA for the Bioenergy call for Power Phase I, section 21, provides that “The RFP Confidentiality Agreement continues in full force and effect, and section 2.5 thereof is amended to provide that the obligations of the Parties thereunder shall expire two years following the Effective Date.” BC Hydro, Bioenergy Call for Power Phase 1, Specimen Electricity Purchase Agreement, s. 21.1, **R-114**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

42. BC Hydro held two information sessions in February/March 2008 followed by a proponent workshop on May 28, 2008 to provide guidance on proposal submissions.⁴³ At the information sessions, BC Hydro provided detailed information on the call (including GBL-related issues) and addressed questions from various parties, particularly from registered proponents.⁴⁴ BC Hydro advised all proponents that call eligibility was limited to new or incremental generation projects and that a GBL would be established for self-generation projects based on the proponent's use of historical self-generation. In particular, BC Hydro outlined the customer GBL requirements for the Bioenergy Phase I RFP,⁴⁵ stating that the initial estimated GBL was expected to reflect a 365-day annual period of normal operations and that the GBL might need to be adjusted for unique customer circumstances such as existing contracts and market sales. It is my understanding, based on my review of the registration forms and emails sent to BC Hydro from Zellstoff Celgar Limited Partnership ("Celgar") by Brian Merwin and Celgar's counsel, that Celgar representatives were registered and attended both information sessions and the workshop.⁴⁶

43. On February 26, 2008, BC Hydro issued RFP Addendum 1, which included a Preliminary GBL Data form to be submitted by those proponents seeking a GBL for their EPA.⁴⁷ For the "Section A – Estimated GBL" section of the form, proponents were required to insert the annual energy output for each generator for their customer baseline development year⁴⁸ – for most BC

⁴³ More information on the information sessions and the proponent workshop can be found on BC Hydro's website. BC Hydro, Phase I RFP Proponent Sessions, online: http://www.bchydro.com/energy-in-bc/acquiring_power/closed_offerings/phase_1_rfp/proponent_sessions.html, **R-115**.

⁴⁴ BC Hydro's Bioenergy Call for Power Phase I during the information sessions and the proponent workshop are available on its website. BC Hydro's Bioenergy Call, Kamloops, BC February 20, 2008, online: http://www.bchydro.com/content/dam/hydro/medialib/internet/documents/info/pdf/info_session_presentation_bch_feb_20_2008.pdf ("Bioenergy Phase 1 call, February 20, 2008 Information Session"), **R-116**. Bioenergy Call Phase I, Proponent Information Session March 26, 2008, online: http://www.bchydro.com/content/dam/hydro/medialib/internet/documents/info/pdf/phase_i_bcp_workshop_presentation.pdf, **R-117**.

⁴⁵ Bioenergy Phase 1 call, February 20, 2008 Information Session, at 22, **R-116**.

⁴⁶ BC Hydro, February 23, 2008 Bioenergy Call for Power Phase I Session Registrations, **R-118**; Email from Brian Merwin to BC Hydro RFP Administrator RE: Information Session, dated March 25, 2008, **R-119**; Email from Rod Talaifar (Sangra Molled, LLP) to BC Hydro RFP Administrator RE: May 28, 2008 Proponent Workshop (the "Workshohp" [sic]), dated May 15, 2008, **R-120**.

⁴⁷ Bioenergy Phase 1 RFP – Addendum 1, **R-113**.

⁴⁸ Bioenergy Phase 1 RFP – Addendum 1, at 5, **R-113**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

Hydro customers the customer baseline development year was 2005.⁴⁹ The GBL application form served the purpose of providing BC Hydro with information on the proponents' self-generation output under normal operating circumstances.

44. Under Addendum 8, BC Hydro clarified that incremental self-generation from customer projects could “[include] generation from existing, installed capacity that (i) [had] been idle for not less than two years, and/or (ii) [had] been sold to third parties” provided that the existing contract could be lawfully terminated by the proponent prior to the guaranteed Commercial Operation Date in the EPA.⁵⁰

45. The conditions for setting GBLs under the Bioenergy Phase I RFP were similar to those under the 2002 Customer-Based Generation call as they were both informed by the same requirement: to identify the proponent's historical generation level under normal operating circumstances so that only incremental (rather than existing) electricity is procured.

c) The Celgar Mill's Proposed “Biomass Realization Project”

46. On March 6, 2008, Celgar submitted a registration form under the Bioenergy Phase I call for two projects – the Biomass Realization Project (52 MW existing generator) and the Green Energy Project (a proposed new 35 MW generator) – and proposed an estimated GBL of 300.2 GWh per year (i.e. approximately 34 MW).⁵¹

47. I understand from conversations held with my colleague Lester Dyck that he and other BC Hydro personnel met with Celgar representatives in early April 2008 to better understand Celgar's proposals. Based on Celgar's representations, it was understood that the Green Energy Project proposal was to install a new turbine in order to generate electricity. Under the terms of the Bioenergy Phase I RFP, this electricity would be “new” and thus eligible.

⁴⁹ In April 2006, the new BC Hydro Rate Schedule 1823 came into force for transmission voltage service to industrial customers, which put in place an inclining block conservation rate. Under this rate schedule, purchases are applied a low-cost rate to the first 90% of the customer's historical annual consumption (“Tier 1”), and a higher rate to the remaining 10% of the customer's historical annual consumption (“Tier 2”). The purpose of this inclining block conservation rate is to elicit energy efficiency and other demand side measures in response to the Tier 2 price signal. In accordance with this rate schedule, a customer baseline load (“CBL”) was established to represent the normal historical annual energy purchases of an industrial customer. BC Hydro, Application to Amend TS74, at 4, 5, **R-87**.

⁵⁰ BC Hydro, Bioenergy Call for Power (Phase 1) - Addendum 8, s. 8, **R-121**.

⁵¹ BC Hydro Bioenergy Call for Power (Phase I) – Registration Forms, dated March 6, 2008, MER00278895 at **R-123**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

48. With respect to the Biomass Realization Project, however, Celgar confirmed that it was proposing to sell all of the electricity generated by its existing 52 MW generator as indicated in its registration form.⁵² While the 52 MW generator had historically been used to serve the mill's electricity needs, Celgar was now proposing to purchase its electricity needs from its utility, FortisBC, and sell what it had historically self-supplied to BC Hydro.

49. Celgar's proposal raised concerns because of the new demand it would impose on FortisBC's utility system. FortisBC was a customer of BC Hydro and we were thus concerned that FortisBC would meet the new demand imposed by Celgar with electricity purchased from BC Hydro. I was aware at the time that Lester Dyck participated in a phone call with representatives from FortisBC who confirmed that they would draw their additional electricity needs from BC Hydro under the 1993 Power Purchase Agreement ("1993 PPA" or "PPA").⁵³ For this reason, Celgar's Biomass Realization Project would not fit within the terms of the Bioenergy Phase I RFP because it would not add any "new" or "incremental" electricity into BC Hydro's resource pool, which was the very intent of the call for power. Moreover, the proposal would be detrimental to BC Hydro ratepayers with the benefit going to FortisBC (who would be able to sell more electricity to Celgar at a higher cost than it would purchase it from BC Hydro) and Celgar who would benefit by arbitraging BC Hydro power.

50. Our concerns with Celgar's proposed Biomass Realization Project were well expressed in a briefing note dated April 9, 2008, which I reviewed and approved: "If BC Hydro were to agree to the purchase of energy from the existing generator at the Celgar mill, then BC Hydro would essentially be paying Celgar for using energy it generates to serve its own load. Assuming Celgar's average annual mill load is 300 GWh, BC Hydro's tariff rate is \$36/MWh and a contract firm energy price of \$85/MWh for the Celgar's generation output, the net cost to BC Hydro for this arrangement which results in no new energy supply, would be \$15 million per year."⁵⁴

⁵² BC Hydro Bioenergy Call for Power (Phase I) – Registration Forms, dated March 6, 2008, MER00278895 at MER00278903 to MER00278907, **R-123**. Power Acquisitions Bioenergy RFP - Phase I Briefing Note on Celgar, **R-124**.

⁵³ Email from Lester Dyck to Judy Baum, Bill MacMillan RE: Bioenergy Call - Celgar proposals, dated April 8, 2008, **R-125**.

⁵⁴ Power Acquisitions Bioenergy RFP - Phase I Briefing Note on Celgar, **R-124**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

51. For these reasons, on May 2, 2008, we sent a letter to Celgar informing it that we could accept only new or incremental electricity under the terms of the Bioenergy Phase I call for power and not electricity the mill had historically used to self-supply.⁵⁵ We indicated that, to the extent its Biomass Realization Project involved selling energy it was using to supply its own load, BC Hydro did not consider this portion of generation to be eligible under the call. BC Hydro invited Celgar, if it intended to submit a proposal including generation from its existing turbine generator, to submit additional historical generation data to set an annual GBL for the EPA.⁵⁶

d) Celgar’s 2009 EPA with BC Hydro, the Side Letter Agreement, and Seller-Consumed Eligible Electricity

52. On May 7, 2008, Celgar submitted historical generation data, which was passed on to Lester Dyck in our Key Accounts Management Division.⁵⁷ It is my understanding that, in the weeks following Celgar’s letter of May 7, Lester Dyck continued discussions with Celgar to set a GBL for the Celgar mill based on the mill’s historical generation data. Ultimately, the GBL was set at 349 GWh/year (or 40 MW), which reflected the mill’s self-supply level for the most recent year of normal operations, 2007. Celgar used the 349 GWh/year GBL in its formal submission under the Bioenergy Phase I call on June 10, 2008,⁵⁸ and that figure remained unchanged throughout the call proposal process and is reflected in the 2009 EPA.

53. On September 30, 2008, BC Hydro and Celgar held an initial negotiation meeting to discuss certain Bioenergy Phase I call for power issues and to do a “page turn” of the draft EPA.⁵⁹ Contrary to the allegations made by Mr. Brian Merwin in his witness statement,⁶⁰ BC Hydro never accepted Celgar’s suggestion that it could sell energy below its GBL to third

⁵⁵ Letter from BC Hydro RFP Administrator to Brian Merwin Re: Zellstoff Celgar Limited Partnership (‘Celgar’) – Biomass Realization Project, dated May 2, 2008, MER00037192_CONFIDENTIAL, **R-126**.

⁵⁶ Letter from BC Hydro RFP Administrator to Brian Merwin Re: Zellstoff Celgar Limited Partnership (‘Celgar’) – Biomass Realization Project, dated May 2, 2008, MER00037192_CONFIDENTIAL at MER00037192 and MER00037193, **R-126**.

⁵⁷ Letter from Brian Merwin to BC Hydro RFP Administrator, Re: Zellstoff Celgar Limited Partnership – Biomass Realization Project and Celgar Green Energy Project, dated May 7, 2008, **R-127**.

⁵⁸ Bioenergy Call for Power Phase 1, Commercial Proposal, Zellstoff Celgar Limited Partnership, June 9, 2008, MER00015612 at MER00015621, **R-128**.

⁵⁹ Letter from BC Hydro RFP Administrator to Brian Merwin re: Bioenergy Call for Power, Phase I – Meeting Request, dated September 25, 2008, MER00074485_CONFIDENTIAL, **R-129**.

⁶⁰ Witness Statement of Brian Merwin, ¶¶ 103-105.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

parties. In fact, the draft EPA provided by BC Hydro to Celgar prior to the “page turn” was sent on September 25, 2008, and contained section 7.4(b), which prohibited the sale of electricity to third parties below the GBL (the “exclusivity provision”).⁶¹ As follow-up to this meeting, on October 8, 2008, Celgar sent a redlined copy of the EPA to BC Hydro with proposed changes and comments. One such change was a revision to the exclusivity provision of the EPA, which would have allowed it to sell below-GBL electricity to third parties.⁶² Celgar’s amendment departed substantially from the previous version of the EPA, and on October 17, 2008, BC Hydro sent Celgar a letter indicating it continued to have a concern regarding Celgar’s request to modify the EPA such that they would be able to sell power below the GBL regardless of mill load.⁶³

54. BC Hydro never agreed to Celgar’s proposed amendment, and the final version of the EPA, which Celgar and BC Hydro signed on January 27, 2009, retained the original language of the exclusivity provision of the draft EPA that was submitted to Celgar on September 25, 2008.⁶⁴ Hence, Mr. Merwin’s allegation to the effect that BC Hydro “amended” this provision at the last minute and departed from previously agreed language is inaccurate.⁶⁵

55. In addition, this clause is a standard provision in EPAs involving the settlement of a GBL and is there to ensure that customers with existing self-generation will continue to use their own generation to serve their load in accordance with their historical normal operations rather than selling it to market and purchasing replacement power from BC Hydro. [REDACTED]

⁶¹ Letter from BC Hydro to Zellstoff Celgar Limited Partnership RE: Bioenergy Call for Power, Phase I, dated September 25, 2008, MER00074485_CONFIDENTIAL, **R-129** attaching the Draft BC Hydro Electricity Purchase Agreement, Bioenergy Call for Power – Phase I, Celgar Green Energy, September 25, 2008, MER00074297_CONFIDENTIAL, **R-130**.

⁶² Email from Brian Merwin to Bioenergy Call re: Zellstoff Celgar Limited Partnership – Electricity Purchase Agreement, dated October 8, 2008 MER00078079 **R-131** attaching the Letter from Brian Merwin to BC Hydro RFP Administrator re: Zellstoff Celgar Limited Partnership (“Celgar”) – Celgar Green Energy Project, dated October 8, 2008, MER00078080, **R-132** and BC Hydro Red-line Electricity Purchase Agreement, October 8, 2008, s. 7.4(b), MER00078083 at MER00078101, **R-133**.

⁶³ Letter from BC Hydro RFP Administrator to Brian Merwin, RE: Bioenergy Call for Power - Phase I, Celgar Green Energy Project, dated October 17, 2008, bates 030681, **R-134**.

⁶⁴ See BC Hydro and Zellstoff Celgar Limited Partnership Electricity Purchase Agreement, Bioenergy Call for Power – Phase I, dated January 27, 2009 (“Celgar 2009 EPA”), s. 7.4(b), MER00279985 at MER00280002, **R-135**.

⁶⁵ Witness Statement of Brian Merwin, ¶104.

[REDACTED]

[REDACTED].⁶⁶

56. To the best of my knowledge, no mill had ever before requested the right to sell below its GBL to third parties under an EPA with BC Hydro. Celgar however claimed that it was unique and should be treated differently than BC Hydro customers because its operations are located in FortisBC service area.

57. By the time BC Hydro and Celgar were prepared to execute the EPA in January, 2009, BC Hydro had filed an application to the BCUC requesting an amendment to its 1993 PPA with FortisBC to prohibit FortisBC from selling PPA power (referred to as “Rate Schedule 3808” power) to its customers in order to facilitate arbitrage. The genesis of the application was an agreement FortisBC had signed with the City of Nelson to allow the City to buy low-cost PPA power and sell it at higher prices.

58. In response to BC Hydro’s application, which would have implications on Celgar’s agreement with FortisBC that facilitated the arbitrage of PPA power, and to resolve the impasse surrounding the exclusivity provision in the draft EPA, Celgar proposed that the BC Hydro and Celgar enter into a “Side Letter Agreement” that would eliminate the restriction on below-GBL third-party sales if the BCUC were to issue an Order directing FortisBC to permit its customers to arbitrage BC Hydro’s power under the 1993 PPA.

59. In light of the ongoing proceedings before the BCUC and in order to accommodate Celgar, we signed the Side Letter Agreement⁶⁷ concurrently with the EPA on January 27, 2009,⁶⁸ which provided that Celgar would be entitled to sell electricity generated below its GBL to third parties, in the event that a future BCUC ruling deemed such sales to be acceptable.

60. On May 6, 2009, the BCUC rendered Order No. G-48-09, amending the 1993 PPA so that FortisBC could not use PPA purchases from BC Hydro to allow its customers to arbitrage,

⁶⁶ [REDACTED]

⁶⁷ Side Letter Agreement between BC Hydro and Zellstoff Celgar Limited Partnership, RE: Electricity Purchase Agreement, with Effective Date of January 27, 2009 (“EPA”), dated January 27, 2009, **R-138**.

⁶⁸ Celgar 2009 EPA, **R-135**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

which it found to be “unjust and unreasonable” and contrary to the “public interest.”⁶⁹ In particular, it indicated that substantial harm to BC Hydro ratepayers could ensue.⁷⁰

61. The 1993 PPA amendment issued by the BCUC placed a limit on FortisBC’s ability to purchase Rate Schedule 3808 power from BC Hydro and sell it to customers selling their own self-generation below their loads. It stated that FortisBC could only sell such electricity to such customers when the customers are “net of load.” It is my understanding that Order G-48-09 was a short-term solution to prevent the arbitrage of BC Hydro power while BC Hydro and FortisBC were negotiating terms for a new power purchase agreement.

62. The Order did, however, complicate the deliveries of power from the Celgar mill to BC Hydro under the EPA because the mill load at Celgar soon increased beyond the annual 349GWh/year (or 40 MW) figure set as the GBL in the EPA. While, under the EPA all self-generated electricity above the GBL figure and below the newly increased plant load was eligible for sales to BC Hydro, the BCUC’s decision in Order G-48-09 prevented FortisBC from serving Celgar with the replacement power necessary to serve the load increase above the GBL with electricity purchased under the 1993 PPA.⁷¹

63. To accommodate Celgar, BC Hydro agreed to enter into another special arrangement. BC Hydro and Celgar agreed on an accounting and metering formula, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁹ BCUC, Order Number G-48-09 and Decision, “Application by BC Hydro to Amend Section 2.1 of Rate Schedule 3808 Power Purchase Agreement”, 6 May 2009 (“BCUC, Order Number G-48-09”), Section 5.0 at 22, **R-32**.

⁷⁰ BCUC, Order Number G-48-09, Section 5.3 at 27, **R-32**.

⁷¹ FortisBC asserted that it was unable to ensure that service for Celgar’s increased load would not include RS-3808 power under the 1993 PPA. Letter from BC Hydro to Mercer International Inc. RE: Energy Purchase Agreement (the “EPA”) between Zellstoff Celgar Limited Partnership (“Celgar”) and British Columbia Hydro and Power Authority (“BC Hydro”), September 7, 2010, at s. 1(i), **R-139**.

[REDACTED].⁷² BC Hydro and Celgar have referred to this accommodation as the “Seller Consumed Eligible Energy.”⁷³

64. Overall, BC Hydro has consistently endeavored to accommodate Celgar’s unique circumstances, since Celgar was the only Bioenergy Phase I call proponent that was not a BC Hydro customer. These issues included for instance the difficult question of interconnection and transmission through FortisBC’s system, and BC Hydro worked closely with Celgar and FortisBC to find ideal solutions to these technical obstacles.

65. Further, since Celgar, as a FortisBC customer, did not have a BC Hydro Key Accounts Manager, normally associated with BC Hydro large customers, Lester Dyck filled this void so that Celgar could have a consistent point of contact throughout the call. In addition, no other party to an EPA with BC Hydro has ever been given the possibility, albeit speculative, to enter into third party sales of electricity below GBL, subject to BCUC approval; the Side Letter Agreement between BC Hydro and Celgar is one of its kind. The special Seller Consumed Eligible Energy accounting and metering mechanism is also an accommodation that is specific to Celgar’s unique circumstances.

3. BC Hydro’s Integrated Power Offer

66. In June 2009, the federal government introduced the \$1 billion Pulp and Paper Green Transformation Program (“PPGTP”) which provided funding to Canadian pulp and paper companies for innovation and investment in areas such as energy efficiency and renewable energy production technologies.⁷⁴ In mid-2009, BC Hydro initiated the Integrated Power Offer (“IPO”) to work with its pulp and paper customers to help them secure PPGTP funding and capitalize on the synergies of combining energy efficiency savings with electricity generation opportunities.⁷⁵ The intent of the program was that IPO projects would provide economic and

⁷² [REDACTED].
As such, the accounting mechanism mimics the financial effect that would occur if Celgar was a BC Hydro customer. [REDACTED]

⁷³ Letter from BC Hydro to Mercer International Inc. RE: Zellstoff Celgar EPA – Energy Payment, dated December 2, 2010, at 2, **R-140**.

⁷⁴ Natural Resources Canada, Pulp and Paper Green Transformation Program: Mission accomplished, available online: <http://www.nrcan.gc.ca/forests/federal-programs/13141>, **R-141**.

⁷⁵ BC Hydro’s, Integrated Power Offer For Pulp & Paper Customers, online: https://www.bchydro.com/powersmart/business/industrial/your_sector/pulp_paper/ipo.html, **R-56**.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

environmental benefits to British Columbia's pulp and paper industry and cost-effective energy solutions for BC Hydro and ratepayers.⁷⁶

67. Eight of BC Hydro's industrial customers received over \$500 million of federal PPGTP funding, with a large portion of these funds being invested in eligible capital projects in British Columbia.⁷⁷ BC Hydro launched the IPO in August/September 2009 by meeting individually with its pulp and paper customers and outlining the new program and its potential for providing win-win opportunities for both customers and BC Hydro. The IPO process mandated individual bilateral negotiations rather than competitive bids. BC Hydro maintained fairness for IPO participants by linking the EPA terms and conditions (including energy prices) to the Bioenergy Phase I RFP which entailed a competitive call process with the awarded contracts subject to BCUC approval.

68. Similar to the 2002 Customer-Based Generation call and the 2008 Bioenergy Phase I call, eligible pulp and paper customers were required to sign a Confidentiality Agreement with BC Hydro containing restrictions about the discussions and negotiations between the parties.⁷⁸ BC Hydro committed to keep confidential all information relating to proposals except for any necessary disclosure to government personnel and internal staff as well as to meet any regulatory and court/tribunal requirements.

69. In establishing the IPO, BC Hydro adhered to certain key policy principles, including acquiring up to 1,200 GWh/year of new firm energy generation and 200 GWh/year of demand-side savings, and restricting eligibility to those pulp and paper customers receiving PPGTP funding.⁷⁹

70. In late 2009, BC Hydro signed letters of intent with eligible pulp and paper customers which included the identification of near and long-term opportunities for demand-side measures

⁷⁶ See BC Hydro, Executive Summary, Pulp and Paper Green Transformation Program Update, Meeting of the Conservation Committee, November 3, 2009 ("BC Hydro PPGTP Executive Summary"), **R-142**.

⁷⁷ BC Hydro Briefing Note RE: Update on the Integrated Power Offer for Customers Eligible for Pulp & Paper Green Transformation Program Funding, dated September 16, 2009, bates 163386, **R-143**.

⁷⁸ BC Hydro, Integrated Power Offer Specimen Confidentiality Agreement, **R-144**.

⁷⁹ See BC Hydro PPGTP Executive Summary, bates 163272, **R-142**.

and power generation projects.⁸⁰ Subsequently, BC Hydro provided these customers with term sheets, project submission guidelines and draft agreements.⁸¹

71. The letters of intent and EPA term sheets stated that a GBL must be set for all customer-based generation projects involving incremental energy.⁸² From 2010-2013, BC Hydro conducted a series of bilateral discussions and negotiations with the six customers that chose to participate in the IPO by pursuing identified project opportunities. All GBLs during this process were set using the same methodology as previous calls namely, using historical generation data to determine the annual self-generation normally used by the customer to supply its load under prevailing conditions and absent the existence of any energy supply contract that might distort the customer's normal operations.

72. The British Columbia Legislature, through the *Clean Energy Act*⁸³ exempted EPAs under BC Hydro's IPO from the BCUC's review process pursuant to section 71 of the *Utilities Commission Act*. My understanding is that the rationale for this exemption was to avoid that there be delays associated with a proceeding before the BCUC for the review of the IPO contracts, which could impact on the eligibility of proponents under the federal PPGTP funding program.⁸⁴

4. Bilaterally-Negotiated Agreements

73. As a member of the Power Acquisitions management team during 2007 to 2013, I have a general awareness of the structure and policy principles for the bilateral EPA deals undertaken by BC Hydro.

⁸⁰ See BC Hydro's Integrated Power Offer Letter of Intent template, ("IPO Letter of Intent Template"), **R-145**.

⁸¹ BC Hydro Integrated Power Offer – Project Submission Guide, **R-146**; BC Hydro Integrated Power Offer, Revised Specimen Electricity Purchase Agreement, **R-147**; BC Hydro Integrated Power Offer – Commercial Proposal, **R-148**; BC Hydro Integrated Power Offer, Revised Specimen Umbrella Agreement, **R-149**; Power Smart Incentive Fund Agreement, Revised Specimen Form of Agreement for Integrated Power Offer, **R-150**; BC Hydro Integrated Power Offer, Energy Efficiency Agreement – Summary of Key Terms, **R-151**; BC Hydro Integrated Power Offer, Indicative Price Information Sheet, November 2009, **R-152**; BC Hydro Integrated Power Offer, Electricity Purchase Agreement – Summary of Key Terms, **R-153**.

⁸² IPO Letter of Intent Template, bates 041487, **R-145**; BC Hydro Integrated Power Offer, Electricity Purchase Agreement – Summary of Key Terms, bates 041395, **R-153**.

⁸³ *Clean Energy Act*, s. 7(1)(f) **R-154**; see also *Exempt Projects, Programs, Contracts and Expenditures Regulation*, B.C. Reg. 302/2010, **R-155**.

⁸⁴ See Les MacLaren Witness Statement, dated July 18, 2014, ¶ 48.

PUBLIC VERSION
CONFIDENTIAL AND RESTRICTED ACCESS INFORMATION REDACTED

74. Without counting the EPAs concluded within the framework of the IPO, BC Hydro has, since 2007, entered into 11 EPAs arising from stand-alone bilateral negotiations. Of the 11 independently negotiated bilateral agreements, three are for biomass projects, and of these three biomass projects only BC Hydro's EPA with Tembec (Skookumchuck), signed in 2009, required the setting of a GBL. It is my understanding that the GBL under the 2009 EPA with Tembec (Skookumchuck) was set using the same principle and methodologies applied in all other calls, as described above.

75. For bilateral arrangements, BC Hydro adheres to procurement principles and processes that are also common to all of its competitive calls. For example, the procurement procedures used for bilateral negotiations include: (1) proposal submission and evaluation; (2) contract preparation and execution; (3) regulatory review; and (4) contract management. The main procedural difference between bilateral negotiations relative to calls is that no stakeholder engagement or launch process is required for bilateral arrangements. A more detailed comparison of competitive calls, standard/open offers and bilateral arrangements can be found in Appendix 2 of the document entitled *Overview of BC Hydro's Energy Procurement Practices*.⁸⁵

76. Since bilateral arrangements do not entail competitive bids or pre-set energy prices, BC Hydro employs other mechanisms to ensure that the resultant EPAs provide a fair and balanced transaction for both proponents and ratepayers. To maintain cost-effectiveness, price benchmarks are used based on energy prices in prior calls as well as market electricity prices. BC Hydro also conducts bilateral negotiations on an "open-book" basis wherein proponents are required to provide, among other things, detailed financial information regarding their costs, investments, and risks. Like all other calls, proponents in bilateral arrangements often request that negotiations occur in confidence. For this reason, the parties typically sign confidentiality undertakings to protect sensitive business information.

D. Conclusion

77. I firmly believe that Celgar has been treated fairly in the determination and application of its GBL for EPA purposes. BC Hydro provided clear and transparent rules and standards that were applied to all proponents with self-generation in the Bioenergy Phase I RFP. Furthermore,

⁸⁵ BC Hydro – Overview of Energy Procurement Practices, Appendix 2, **R-107**.

