

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

AND:

GOVERNMENT OF CANADA

Respondent

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

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WITNESS STATEMENT OF LES MACLAREN

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I, Les MacLaren, declare as follows:

**A. Introduction**

1. I was born on [REDACTED]. I currently reside at [REDACTED]  
[REDACTED]. I am currently the Assistant Deputy Minister of the Electricity and Alternative Energy Division of the British Columbia Ministry of Energy and Mines. I was appointed to this position in 2008.
2. I first joined BC's public service in 1991 as an economist in the Electricity Policy Branch of the Ministry of Energy, Mines, and Petroleum Resources. From 1998 to 2008, I worked at the Crown Corporations/Agencies Secretariat in the BC Ministry of Finance and in the Office of the Premier where I was responsible for the governance and performance of provincial Crown agencies. During that period, I remained active in the areas of electricity policy, the regulation of public utilities,<sup>1</sup> and was part of the team that developed the Province's 2002 Energy Plan.
3. Prior to joining the BC public service, I worked in oil and gas exploration and development in western Canada and Australia as a geologist/geophysicist.
4. My experience in the BC public service supporting (and now responsible for) the development of policies related to electricity and utility regulation gives me hands-on experience in matters relevant to this arbitration. That experience includes: being co-chair of the Pulp and Paper Self-Generation Working Group (Working Group) which dealt with matters related to the sale of self-generated electricity; my direct dealings with Mercer International, Inc. (Mercer) at meetings of the Working Group; and participating in meetings between Mercer and Ministers of the BC Government regarding the Celgar pulp and paper mill.

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<sup>1</sup> *Utilities Commission Act*, R.S.B.C. 1996, c. 473 ("*Utilities Commission Act* or *UCA*"), **RA-1**. "Public utility" is defined in s. 1 of the *Utilities Commission Act*. In part, it defines it as "a person ... who owns or operates in British Columbia, equipment or facilities for: (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas or steam ... to or for the public or a corporation for compensation".

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5. I hold a Bachelor of Science Degree (Honours) in Geology from Queen's University and a Masters of Business Administration from the University of British Columbia.
6. I attach my resume to this witness statement as Appendix A.
7. In the present witness statement, I will focus on two broad topics: i) the organization and structure of the BC electricity sector; and ii) provincial policy with respect to sales of energy by self-generators.
8. 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.
9. I have reviewed the relevant documents associated with this file for the purposes of preparing this witness statement.

**B. The Organization and Structure of the BC Electricity Sector**

**1. Introduction to the Main Characteristics and Key Participants in the BC Electricity Sector**

10. Electric utilities in BC are regulated by the British Columbia Utilities Commission ("BCUC") which establishes rates based on a traditional cost of service model. That is to say, rates are set by the BCUC to allow utilities to recover all of their production and distribution costs, including a fair return on invested capital.<sup>2</sup>

11. The British Columbia Hydro and Power Authority ("BC Hydro") is a government-owned, vertically integrated<sup>3</sup> utility that serves approximately 95% of BC's population.<sup>4</sup> FortisBC is an investor-owned, vertically integrated utility that serves the

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<sup>2</sup> British Columbia Utilities Commission, Organization Profile, online: <<http://www.bcuc.com/CorpProfile.aspx>>, **R-1**.

<sup>3</sup> The term "vertically integrated" refers to the fact that the utility owns and operates generation, transmission and distribution assets used to serve its customers.

<sup>4</sup> British Columbia Hydro and Power Authority, "Quick Facts for the Year ended March 31, 2013", online: <<http://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/financial-reports/annual-reports/quick-facts-for-year-ended-march-31-2013.pdf>> ("BC Hydro - Quick Facts 2013"), **R-2**.

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majority of BC's population not otherwise served by BC Hydro. FortisBC's service territory is located in the south central portion of the province covering the West Kootenay and Okanagan regions.<sup>5</sup> The Claimant's Celgar pulp mill is located in FortisBC's service territory. BC also has five municipally-owned utilities – four in FortisBC's service territory and one in BC Hydro's – and a small number of electric utilities serving resort communities. I will provide further detail on both BC Hydro and FortisBC in sections B3 and B4 of this witness statement.

12. BC is part of the Western Interconnection ("WI") area of the North American Grid which includes BC, Alberta, parts or all of 14 U.S. western states, and parts of northern Mexico. Within the WI, utilities balance the electric system in real time to maintain the same voltage and frequency throughout the covered area.<sup>6</sup>

13. BC has high voltage transmission lines that interconnect to Alberta and the United States, allowing for increased reliability and electricity trading.

14. BC has over 17,500 megawatts of installed capacity,<sup>7</sup> consisting of capacity from assets owned or operated by BC Hydro (68%; 43 facilities); industrial self-generators, namely industrial customers with their own electricity generation facilities located on the

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<sup>5</sup> FortisBC explains on its website that: "[w]e provide electrical service to approximately 111,500 customers in the south central part of the province including Kelowna, Osoyoos, Trail, Castlegar, Princeton and Rossland. We also service approximately 48,500 customers through the wholesale supply of power to municipal distributors in the communities of Summerland, Penticton, Kelowna, Grand Forks and Nelson." FortisBC, Electricity utility, Electricity Service Areas, online: <<http://www.fortisbc.com/About/ServiceAreas/ElectricityUtility/Pages/default.aspx>> ("FortisBC Service Area"), **R-3**. Note that FortisBC purchased the utility assets of the City of Kelowna in 2013.

<sup>6</sup> The Western Electricity Coordinating Council (WECC) is the Regional Entity responsible for coordinating and promoting Bulk Electric System reliability in the Western Interconnection. Western Electricity Coordinating Council, online: <<http://www.wecc.biz/About/Pages/default.aspx>>, **R-4**.

<sup>7</sup> Capacity (or peak) refers to the highest sustainable level of electricity that a utility can produce or deliver at any instant. For residential customers, capacity is measured in kilowatts (KW). Peak demand on the electrical system is measured in megawatts (MW), or millions of watts. Energy (or consumption) refers to the total amount of electricity that the utility supplies or a customer consumes over a period of time. The amount of energy used in households is measured in kilowatt-hours (KWh), and typically averages about 11,000 kWh per year per household. The energy supplied to all BC Hydro customers is measured in gigawatt-hours (GWh). A gigawatt hour is equivalent to one million kilowatt-hours. For example, running a 100 W light bulb for 10 hours (h) requires 1,000 Wh of power, or 1 KWh. Similarly, 1 MWh of generation for one year (8,760 hours) produces 8,760 MWh or 8.76GWh. BC Hydro, "Energy and Capacity Information Sheet", November 2004, online: <[http://www.bchydro.com/content/dam/hydro/medialib/internet/documents/info/pdf/info\\_iep\\_energy\\_capacity.pdf](http://www.bchydro.com/content/dam/hydro/medialib/internet/documents/info/pdf/info_iep_energy_capacity.pdf)>, **R-5**.

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customer's side of the point of interconnection between the utility system and the customer's electric system (14%; 37 facilities); independent power producers (IPPs), namely entities that own and operate facilities to generate electricity for sale to others (in practice, IPPs sell electricity almost exclusively to utilities under long term contracts), (18%; 85 facilities); and FortisBC (1%; 4 facilities).

15. BC has a long history of industrial self-generation, with hydro-electric generation constructed to serve smelters in small towns, such as Trail and Kitimat, and generation integrated into forestry sector mills.

16. Powerex, a subsidiary of BC Hydro, is a power marketing organization that optimizes the capability and profitability of BC Hydro's flexible hydro-electric power system through electricity trade.<sup>8</sup> Powerex also has a power marketing authorization from the US Federal Energy Regulatory Commission (FERC). Powerex engages in electricity trading activities in both western and eastern North America, including transactions that occur entirely within the United States. Its trading activities generate significant revenue which is used to offset BC Hydro expenses, helping to keep BC Hydro's rates among the lowest in North America.

## **2. The BC Ministry of Energy and Mines**

17. BC's Ministry of Energy and Mines ("the Ministry") is responsible for the province's electricity sector, its clean and renewable energy sector, and its mining and mineral sectors. Each sector is composed of companies that develop electricity, energy from clean or renewable resources,<sup>9</sup> coal, minerals, and renewable and low-carbon transportation fuels.<sup>10</sup> The Minister of Energy and Mines is responsible in the provincial

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<sup>8</sup> Other power marketers operating in BC include Northpoint based in Saskatchewan, and TransCanada which operates in western Canada, Ontario, and northeastern U.S.

<sup>9</sup> Section 1 of the *Clean Energy Act* defines "clean or renewable resource" as including biomass, biogas, geothermal heat, hydro, solar, ocean, and wind. *Clean Energy Act*, S.B.C. 2010, c. 22, s. 1 ("*Clean Energy Act*"), **RA-2**.

<sup>10</sup> British Columbia Ministry of Energy and Mines and Minister Responsible for Core Review, "2014/15-2016/17 Service Plan", February 2014, online: <<http://www.bcbudget.gov.bc.ca/2014/sp/pdf/ministry/mem.pdf>> ("BC 2014/15-2016-17 Service Plan") at 6, **R-6**.

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legislature to respond to questions related to BC Hydro and its activities, and provides direction to BC Hydro through an annual government letter of expectations which identifies what the province views as BC Hydro's priority actions and the province's performance expectations.<sup>11</sup>

18. The Ministry develops and implements policies and legislation pertaining to the electricity, energy and mining sectors in BC. In developing these instruments, the Ministry frequently consults with various stakeholders including other ministries and levels of government, energy, exploration and mining companies, First Nations, local communities, environmental and industry organizations, and the public.<sup>12</sup>

19. The Electricity and Alternative Energy Division (the Division) within the Ministry develops legislation, policies, and programs pertaining to: i) all forms of electrical power generation, transmission, and distribution; ii) regional electricity trading and electric system reliability and coordination including the Columbia River Treaty;<sup>13</sup> iii) province-wide energy conservation and efficiency measures; iv) energy development from clean or renewable resources; and v) the advancement of new energy technologies.

20. The Division also: provides policy advice or direction to electrical utilities; fosters private sector and community investment in new electricity and alternative energy resources; and develops strategic policy relating to IPPs.<sup>14</sup>

21. The policies that the Ministry develops are subject to approval by the Minister and/or Cabinet.<sup>15</sup> The Minister is accountable to the BC legislature and the public for the

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<sup>11</sup> British Columbia, "Government's Letter of Expectations between The Minister of Energy and Mines and Minister Responsible for Core Review and the Chair of the British Columbia Hydro and Power Authority (BC Hydro) for 2014/15", online: <<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/openness-accountability/bch-GLE-2014-15.pdf>>, **R-7**.

<sup>12</sup> BC 2014/15 – 2016/17 Service Plan at 8, **R-6**.

<sup>13</sup> The Columbia River Treaty is a 1964 treaty between Canada and the US regarding the development and operation of four dams in the upper Columbia River Basin. The Treaty facilitates cooperation between the two countries regarding power generation and flood control by way of the dams.

<sup>14</sup> The Division also runs the Innovative Clean Energy Fund special account, which is governed under the *Special Accounts Appropriation and Control Act*, R.S.B.C. 1996, c. 436, **RA-3**. The Fund provides financial support to small-scale energy projects that use new technologies to harness clean or renewable resources with a view to accelerate and expand the use of energy technologies that use clean or renewable resources, or that promote energy efficiency and conservation.

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Ministry and for agencies such as BC Hydro for which he has been assigned responsibility by the Provincial Premier.

22. The Ministry records its electricity policies in various ways. Not all policies are enacted into law. For example, a central policy of BC's 2002 Energy Plan was that all new electricity generation in BC Hydro's service territory would be developed by the private sector, with BC Hydro restricted to improvements at existing plants. This policy has not been given the force of law, but it has been made clear through various Ministry publications and in debates in the province's legislature.

### **3. BC Hydro**

23. BC Hydro is a Crown corporation<sup>16</sup> created under BC's *Hydro and Power Authority Act*.<sup>17</sup> It is wholly-owned by the Province of BC and is an agent of the Crown. The provincial Cabinet appoints BC Hydro's Board of Directors and Chair. BC Hydro was created in 1961 as a result of the government of the day amalgamating the BC Power Commission, a public sector enterprise dedicated to acquiring small utilities and extending electrification in rural areas, and the BC Electric Company, one of the largest private utilities of the time.<sup>18</sup>

24. BC Hydro's mandate is "to generate, manufacture, conserve, supply, acquire, and dispose of [sell] power and related [energy] products".<sup>19</sup>

25. BC Hydro is the largest electric utility in BC, serving approximately 1.9 million customers, including 172 transmission service customers.<sup>20</sup> BC Hydro generates between 43,000 and 56,000 GWhs of electricity per year. Electricity is delivered to BC Hydro

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<sup>15</sup> In Canada, a provincial cabinet is an executive council comprising ministers of the Crown and the premier. The cabinet leads the government's public policymaking and administration.

<sup>16</sup> A Crown corporation is an enterprise owned by the Crown in right of the province of BC.

<sup>17</sup> *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, ("*Hydro and Power Authority Act*"), **RA-4**.

<sup>18</sup> BC Hydro, Corporate Information, History, online: <[https://www.bchydro.com/about/who we are/history.html](https://www.bchydro.com/about/who_we_are/history.html)>, **R-8**.

<sup>19</sup> *Hydro and Power Authority Act*, s. 12 (1.1)(a), **RA-4**.

<sup>20</sup> A transmission service customer receives electricity at a voltage of 60 kilovolts or higher and is connected directly to a utility's transmission line.



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customers through a network of over 76,000 kilometres of transmission and distribution lines, which are owned by BC Hydro.<sup>21</sup>

26. BC Hydro meets customer demand by generating electricity through its own assets, acquiring additional electricity from IPPs and the external market, and by reducing demand through energy efficiency and conservation programs (also known as demand-side management initiatives or DSM measures).

27. When managing its resources to meet customer demand, BC Hydro acquires new supply and promotes DSM measures at the least cost to ratepayers within the context of government policy objectives. In the normal course,<sup>22</sup> the BCUC reviews the prudence of utility expenditures on resource acquisition and can disallow the recovery of expenditures in rates if they are determined to be imprudent. If BC Hydro's expenditures are disallowed for recovery in rates, they must be borne by the shareholder instead. Since the shareholder of BC Hydro is the province of BC, any expenditures the BCUC determines to be imprudent will ultimately be borne by provincial taxpayers. I will describe the role of the BCUC further in section B5 of this witness statement.

28. BC Hydro's rates are among the lowest in North America.<sup>23</sup> Maintaining BC Hydro's relatively low rates has been a priority of the provincial government for the past two decades. For example, in 1996, BC Hydro's rates were capped through the *Tax*

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<sup>21</sup> A transmission line carries high voltage electricity from a generating source, such as a hydro-electric generation station, to a load centre for subsequent distribution to customers; a distribution line is used, in combination with substations and transformers, to carry electricity from a high voltage transmission system to (non-transmission service) customers for consumption at safe and usable voltage levels. BC Hydro - Quick Facts 2013, **R-2**; BC Hydro, "Service Plan 2014/15–2016/17", February 2014, online: <<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/regulatory-planning-documents/service-plans/bchydro-service-plan-2014-15-2016-17.pdf>> ("BC Hydro Service Plan"), **R-9**; BC Hydro, "BC Hydro Annual Report 2013", online <<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/financial-reports/annual-reports/bc-hydro-annual-report-2013.pdf>>, **R-10**.

<sup>22</sup> That is to say, unless the BCUC is prevented from conducting a prudence review as a result of a law such as a direction enacted under section 3 of the *Utilities Commission Act*, **RA-1**.

<sup>23</sup> Data supporting this conclusion can be found in the rate comparison report available online at: BC Hydro, Unplug this Blog, "BC Hydro's rates are among the lowest in North America", 16 October 2013, online: <[https://www.bchydro.com/news/unplug\\_this\\_blog/2013/rates-update-2013.html](https://www.bchydro.com/news/unplug_this_blog/2013/rates-update-2013.html)>, **R-11**.

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and *Consumer Rate Freeze Act*<sup>24</sup>, and they were subsequently frozen from December 10, 1997 through March 31, 2000 under the *British Columbia Hydro and Power Authority Rate Freeze and Profit Sharing Act*<sup>25</sup>. More recently, the provincial cabinet has established BC Hydro's rates for the 2012 to 2016 fiscal years<sup>26</sup> and has capped rate increases for the 2017 to 2019 fiscal years<sup>27</sup>.

29. In light of the province's policy to minimize rate increases, the Ministry takes care to analyze the fiscal impacts of proposals or policy initiatives affecting BC Hydro, whether they originate from within the provincial government or are proposed by others, such as Mercer.

30. I understand that the witness statements of BC Hydro's Lester Dyck and Jim Scouras address BC Hydro's method of acquiring electricity from customers with self-generation.

31. BC Hydro's tariffs, and in particular Tariff Supplements Numbers 5 and 6, set out the terms and conditions under which it provides service to transmission voltage customers.<sup>28</sup> BC Hydro's tariffs must be approved by, and filed with, the BCUC. Under the *Utilities Commission Act*, BC Hydro has an obligation to serve customers in its territory according to the terms of its tariffs.

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<sup>24</sup> *Tax and Consumer Rate Freeze Act* [Repealed], R.S.B.C. 1996, c. 447, **RA-5**.

<sup>25</sup> *British Columbia Hydro and Power Authority Rate Freeze and Profit Sharing Act*, S.B.C. 1998, c. 4, **RA-6**.

<sup>26</sup> *Direction No. 3 to the British Columbia Utilities Commission*, B.C. Reg. 105/2012, ("Direction No. 3"), **RA-7**; *Direction No. 6 to the British Columbia Utilities Commission*, B.C. Reg. 29/2014, ("Direction No. 6"), **RA-8**. The BC Government's and BC Hydro's fiscal year is April 1<sup>st</sup> to March 31<sup>st</sup>.

<sup>27</sup> *Direction No. 7 to the British Columbia Utilities Commission*, B.C. Reg. 28/2014, ("Direction No. 7"), **RA-9**.

<sup>28</sup> BC Hydro, "Electric Tariff", 1 April 2008 online: <<http://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/tariff-filings/electric-tariff/00-bchydro-electric-tariff.pdf>>, **R-12**.

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32. From 2003 to 2010, the British Columbia Transmission Corporation (BCTC) was responsible for planning, operating, and managing BC Hydro's transmission system. In 2010, for efficiency reasons, BCTC was reintegrated back into BC Hydro.<sup>29</sup>

#### **4. FortisBC**

33. FortisBC was incorporated in 1897 as West Kootenay Power and Light (WKP) pursuant to the *West Kootenay Power and Light Company, Limited, Act 1897*. WKP was founded by Teck Resources Ltd. (Teck, formerly the Consolidated Mining and Smelting Company (Cominco)) to develop an economical power supply for the growing copper and gold mines in south central BC. Over the course of the 20th century, WKP expanded its generation portfolio and transmission infrastructure to supply growing demand from the Trail smelter and regional communities. In 1987, WKP was purchased by Missouri-based Utilicorp. In 2004, Newfoundland-based Fortis Inc. acquired the utility and renamed it FortisBC.<sup>30</sup>

34. FortisBC is an investor-owned utility regulated by the BCUC. Like BC Hydro's, its rates are set by the BCUC based on FortisBC's cost of service. FortisBC provides electric service to approximately 111,500 customers, including Celgar, one of only four transmission voltage industrial customers, in the south central part of the province. FortisBC's service territory is bounded on the west by the Okanagan Valley south of Vernon, to the Slocan Valley and Kaslo in the north, Creston in the east, and the Canada-US border in the south. FortisBC also provides service to approximately 48,500

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<sup>29</sup> The BC Government created the BCTC in 2003 following the 2002 Energy Plan, which called for BC Hydro's transmission responsibilities to be separated to ensure that electricity suppliers and buyers had non-discriminatory transmission access, thereby aligning with FERC's Order No. 888 regarding open transmission access. The FERC Order was in response to utilities across North America, with both transmission and generation capabilities, favouring their own affiliated generators over other generators in terms of transmission access. This separation of transmission and generation functions was undertaken by many utilities in North America at that time to demonstrate that utilities' generation functions were not given preferential access to transmission and markets. After reviewing instances where integrated utilities were able to retain both generation and transmission functions with non-discriminatory access maintained by strict codes of conduct, however, the BC Government decided it was more cost-effective to consolidate transmission operations, planning, and management back into BC Hydro. In 2010, the *Clean Energy Act (RA-2)* legally re-integrated BC Hydro and the BCTC.

<sup>30</sup> See Witness Statement of Dennis Swanson, dated August 22, 2014 ("Swanson Witness Statement"), ¶ 12.

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customers through the wholesale supply of power to municipal distributors in the communities of Summerland, Penticton, Grand Forks and Nelson.<sup>31</sup>

35. FortisBC meets customer demand by generating electricity through its own assets, purchasing electricity from BC Hydro under Rate Schedule (RS) 3808, purchasing electricity from Columbia Power Corporation affiliates, acquiring additional electricity from markets outside of BC and reducing new demand through energy efficiency and conservation programs. I understand that FortisBC's Dennis Swanson's witness statement provides greater detail regarding FortisBC as well as FortisBC's dealings with its customer, Celgar.

36. Historically, BC Hydro has provided power to WKP at cost-based rates. However, BC Hydro grew increasingly concerned that it was required to acquire new, higher cost supplies to meet WKP's growing energy needs, while selling its energy to WKP at lower, embedded cost rates.<sup>32</sup> That concern persists today because this arrangement essentially transfers the cost of new supply to serve WKP's growing demand to BC Hydro's customers.

37. Approved in 1993 by the BCUC,<sup>33</sup> RS 3808 formalized the "hybrid" relationship between BC Hydro and WKP. It recognizes BC Hydro's historical supply relationship with WKP as a customer, but also caps BC Hydro's supply obligation above which WKP, as a utility, must plan for and acquire new supply to meet its customers' needs.

38. RS 3808 also introduced protections against the risks of arbitrage, by prohibiting WKP from storing electricity purchased from BC Hydro under RS 3808 and by

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<sup>31</sup> FortisBC Service Area, **R-3**. See also Swanson Witness Statement.

<sup>32</sup> Embedded cost rates reflect the costs of both historic (and low cost) resources and more recent (and generally higher priced) acquisitions.

<sup>33</sup> BCUC, Order Number G-27-93, "Application by British Columbia Hydro and Power Authority for Rate Schedule 3808 and Revised Power Purchase Agreement with West Kootenay Power Ltd", Decision, 22 April 1993, online: <[http://www.bcuc.com/Documents/Decisions/1993/DOC\\_284\\_04-22-93\\_Decision-BCH-Rate-Schedule3808.pdf](http://www.bcuc.com/Documents/Decisions/1993/DOC_284_04-22-93_Decision-BCH-Rate-Schedule3808.pdf)> ("G-27-93 Decision"), **R-13**.

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prohibiting FortisBC from purchasing electricity under RS 3808 at any time when FortisBC was exporting power.<sup>34</sup>

**5. The British Columbia Utilities Commission**

39. The BCUC is an independent quasi-judicial regulatory agency of the Provincial Government that operates under and administers the *Utilities Commission Act*.<sup>35</sup> Its primary responsibility is the regulation of BC's natural gas and electric utilities to ensure that the rates charged by them are fair, just, and reasonable<sup>36</sup> and that utilities provide reasonable, safe, adequate, and fair service.<sup>37</sup> The BCUC approves utility projects and costs and sets utility rates.

40. As a quasi-judicial administrative tribunal, the BCUC is governed by the rules of procedural fairness and must act within its governing legislation and applicable provisions of the *Administrative Tribunals Act*. The BCUC has subpoena powers similar to a court's. Its proceedings can include expert testimony, cross-examination of evidence, and final (written or oral) arguments. When regulating utilities, including BC Hydro and FortisBC, the BCUC operates at arm's length from the BC Government. From time to time, the Ministry will register as an intervener in BCUC proceedings to make submissions on energy policy, but such submissions are not binding on the BCUC and are considered by the BCUC as part of the hearing record along with submissions of other interveners in any given proceeding.<sup>38</sup>

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<sup>34</sup> Order G-27-93, **R-13**. Paragraph 99 of this witness statement explains that RS 3808 was amended in 2009 to prevent arbitrage of BC Hydro power by FortisBC's customers, by prohibiting FortisBC from selling electricity delivered under RS 3808 to any FortisBC customer when that customer is selling self-generated electricity not in excess of that customer's load.

<sup>35</sup> *Utilities Commission Act*, **RA-1**.

<sup>36</sup> *Utilities Commission Act*, ss. 58-61, **RA-1**.

<sup>37</sup> *Utilities Commission Act*, ss. 23-26, **RA-1**.

<sup>38</sup> For example, the Ministry intervened in the BCUC proceeding that culminated in BCUC Order No. G-48-09. Ministry of Energy, Mines and Petroleum Resources, Final Argument, Re: BCH and Power Authority Application to amend s. 2.1 of Rate Schedule 3808 Power Purchase Agreement, 23 January 2009, online: <[http://www.bcuc.com/Documents/Arguments/2009/DOC\\_20839\\_01-23\\_MEMPR\\_Final-Argument.pdf](http://www.bcuc.com/Documents/Arguments/2009/DOC_20839_01-23_MEMPR_Final-Argument.pdf)> ("MEM Final Argument"), **R-14**.

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41. By law, the BC Government can, however, issue binding directions to the BCUC. Section 3 of the *Utilities Commission Act* allows Cabinet to enact regulations directing the BCUC to exercise a power or perform a duty, or to refrain from either. Section 3 also allows Cabinet to prescribe rules that the BCUC must follow when regulating utilities.

42. For example, in June, 2007, Cabinet issued Special Direction No. 10<sup>39</sup> to the BCUC, requiring it to regulate and set the rates for BC Hydro using the criterion that BC Hydro must achieve self-sufficiency by 2016 by holding the rights to enough electricity generated in BC to meet its customers' demand.

43. The BCUC sets the rates for electric utilities at the end of what are known as "revenue requirements proceedings". These are typically conducted every one to three years for each utility. Generally, each regulated utility files a revenue requirements application with the BCUC after which a hearing process ensues to examine the utility's cost structure and the prudence of its expenditures. This process typically includes one or more rounds of information requests from BCUC staff and interveners<sup>40</sup> with responses from the utility, a hearing process which may be oral or written, final and reply submissions from hearing participants, or a negotiated settlement that is endorsed by the BCUC. At the conclusion of the hearing or negotiated settlement process, the BCUC sets the utility's rates, on a prospective basis, and those rates must be filed as tariff sheets with the BCUC.<sup>41</sup>

44. In recent years Cabinet has established BC Hydro's rates by direction to the BCUC under section 3 of the *Utilities Commission Act*.<sup>42</sup>

45. When utilities make long term arrangements to acquire electricity from other electricity producers (such as IPPs or industrial self-generators), they must file their

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<sup>39</sup> *Special Direction No. 10 to the British Columbia Utilities Commission*, B.C. Reg. 245/2007, ("Special Direction No. 10"), **RA-10**.

<sup>40</sup> Among those who typically intervene in BCUC proceedings are groups representing residential, commercial and industrial ratepayer interests, and environmental organizations.

<sup>41</sup> See British Columbia Utilities Commission, Public Hearing Process, online: <<http://www.bcuc.com/hearing.aspx>>, **R-15**; *Utilities Commission Act*, s. 61, **RA-1**.

<sup>42</sup> Direction No. 3, **RA-7**; Direction No. 6, **RA-8**.

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energy supply contracts with the BCUC under section 71 of the *Utilities Commission Act*. The BCUC reviews such contracts to determine whether or not they are in the public interest having regard to a number of factors set out in section 71, including the price and quantity of the energy to be supplied under the contract. If the BCUC determines that an energy supply contract is not in the public interest, it may declare that the contract is unenforceable (in whole or in part). For example, the BCUC can declare an energy supply contract unenforceable under section 71 if the BCUC determines that the energy is not needed or the contract price is too high.<sup>43</sup>

46. Section 22 of the *Utilities Commission Act* authorizes the Minister to grant exemptions from regulation under Part 3, which contains the bulk of the BCUC's regulatory powers over utility projects and rates, and section 71, the provision under which the BCUC reviews and either accepts or rejects energy supply contracts, such as energy purchase agreements with industrial self-generators.

47. The Minister's exemption power is typically exercised where regulation by the BCUC is not required to protect ratepayer interests or where regulation would be redundant. For example, independent power producers and self-generators who sell power to BC Hydro are exempt, under section 22, from regulation under Part 3 and section 71 because they are selling power to a regulated utility, rather than serving customers, and BC Hydro must file its energy supply contracts with independent power producers under section 71, meaning that there is already a mechanism to protect ratepayer interests.<sup>44</sup>

48. The BC Legislature has also exempted certain BC Hydro projects and contracts from regulation by the BCUC. For example, section 7(1)(f) of the *Clean Energy Act*<sup>45</sup> exempted BC Hydro's Integrated Power Offer (IPO) from the BCUC's review process under section 71 of the *Utilities Commission Act*. The rationale for this exemption was to

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<sup>43</sup> In 2006, by Order G-176-06, the BCUC declared as fully unenforceable BC Hydro's EPA with Alcan Inc. because the BCUC was not persuaded that the pricing provisions under the EPA were appropriate.

<sup>44</sup> Ministerial Order M-22-0205, 6 June 2002, online: <http://www.bcuc.com/Documents/SpecialDirections/M202-MO22-0205.pdf>, **R-16**.

<sup>45</sup> *Clean Energy Act*, **RA-2**. See also *Exempt Projects, Programs, Contracts and Expenditures Regulation*, B.C. Reg. 302/2010, **RA-11**.

avoid the possible delay associated with a BCUC review of the IPO contracts, which could result in a lost opportunity to leverage significant federal funding for pulp and paper mills in the province.

**C. Provincial Policy with Respect to Sales of Energy by Self-Generators**

**1. Regulatory Decisions Arising from Sales of Self-Generated Electricity**

49. RS 3808 was the first instance of which I am aware in which the BCUC considered the need to address the risks that could arise where a party sold its self-generation at the same time that it purchased embedded cost power from a utility. When the BCUC approved RS 3808 in 1993, it contained provisions prohibiting FortisBC from storing or exporting power supplied by BC Hydro. It also contained a provision prohibiting FortisBC from exporting out of its service area during any hour while it is taking supply from BC Hydro under the Agreement.<sup>46</sup> These provisions were designed to protect BC Hydro and its ratepayers from arbitrage of RS 3808 power by FortisBC.

50. In 2000 and 2001, California utilities were faced with power shortages and high demand which led to high prices in both California and Pacific Northwest power markets. These high prices led to efforts by industrial self-generators that had both active and idle electricity generation to investigate whether their self-generated electricity could be sold into these high price markets.

51. For instance, in 2001, Pacifica Papers Inc., which owned a pulp and paper mill, formed Powell River Energy Inc. (PREI) as a separate entity to own and operate its two hydroelectric facilities at Powell River and Lois Lake, BC. The hydroelectric facilities supplied power to the mill. Pacifica sought to sell a half interest in PREI to a subsidiary of a predecessor of Brookfield Power for ██████████, which Pacifica indicated it would reinvest in capital improvements to the mill.<sup>47</sup>

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<sup>46</sup> 1993 Power Purchase Agreement between FortisBC and BC Hydro, 1 October 1993, s. 8.4, **R-17**.

<sup>47</sup> Minister's Order No. M-22-0101, 30 January 2001, bates 059125-059129 at 059126, **R-18**. After the hydroelectric assets were transferred to PREI in January 2001, Pacifica was sold to Catalyst a few months later.



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52. As a separate entity selling power to Pacifica, PREI fell within the definition of “public utility” under section 1 of the *Utilities Commission Act* and, therefore, was subject to regulation by the BCUC. It is my understanding that Brookfield did not want its new power generation assets to be subject to regulation and so the parties included a condition of sale which contemplated that PREI would be exempt from regulation.<sup>48</sup> By Ministerial order M-22-0101, the Minister exempted PREI from BCUC regulation on the condition that PREI continue to supply power to the mill at rates similar to BC Hydro’s industrial rates.<sup>49</sup>

53. The BC Government wanted to ensure that BC Hydro ratepayers were protected from any potential harm caused by Pacifica should it decide to arbitrage BC Hydro power, which Pacifica could have done by: i) dissociating PREI from the mill; ii) selling its power to a third party at a premium; and iii) seeking to supply the mill’s load with embedded cost BC Hydro power.

54. Around the same time, Howe Sound Pulp and Paper Port Mellon (Howe Sound) was looking to sell idle self-generation on the spot market under circumstances that would not require BC Hydro to supply it with additional electricity under Rate Schedule 1821.<sup>50</sup> As stated by Howe Sound, high natural gas prices had caused it to idle some of its self-generation capacity. It was uneconomic for Howe Sound to use its self-generation capacity for self-supply. Howe Sound therefore urged the BCUC to direct BC Hydro to permit and facilitate the sale of incremental generation that Howe Sound had not otherwise been using for self-supply.

55. In response to Howe Sound’s proposal to sell its previously idle self-generation, BC Hydro requested that the BCUC initiate a public process to review issues arising out of the desire of industrial customers served under RS 1821 to sell their self-generated electricity on the open export market. BC Hydro was concerned that significant harm

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<sup>48</sup> Typically, IPPs want to avoid being regulated by the BCUC either to avoid the administrative cost of complying with the *UCA*, or because rate regulation is inflexible.

<sup>49</sup> Minister’s Order No. M-22-0101, 30 January 2001, s. 1, bates 059125-059129, **R-18**.

<sup>50</sup> Rate Schedule 1821 is a schedule to BC Hydro’s electric tariff which sets out the terms and conditions by which BC Hydro served its industrial customers at 60,000 volts or higher. In 2006, RS 1821 was discontinued and now such customers are served under RS 1823, the so called “stepped rate”.

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could ensue for its ratepayers if industrial customers were allowed to take their self-generation to market and serve their load (otherwise served though self-supply) with embedded cost power supplied by BC Hydro.

56. The BCUC held a workshop and accepted written submissions on this matter. Ultimately, it issued Order No. G-38-01 which directed BC Hydro to allow industrial customers with idle self-generation to sell excess self-generation on the condition that those customers do not arbitrage between cheaper embedded cost rates and higher market prices by replacing electricity otherwise used for self-supply with electricity purchased from BC Hydro.<sup>51</sup> The order stated that BC Hydro would not be required to supply any additional embedded cost power to industrial customers who were selling self-generation output to market.

57. In order to ensure this principle was applied, the BCUC directed BC Hydro to establish an industrial customer baseline, based on either a customer's historical energy consumption or its historical generation output, above which industrial customers could sell excess self-generation.

58. Similarly, beginning in 1998, Riverside Forest Products (now Tolko Kelowna) entered into discussions with then WKP (now FortisBC), regarding Riverside's plan to increase its self-generation capacity above its historical capacity of 2MW. The mill wanted to sell all of its self-generation above 2MW to third parties. At the time and until recently, Riverside was a customer of the City of Kelowna (a municipal utility not regulated by the BCUC) who itself was a customer of WKP.

59. In May 2001, Riverside applied to the BCUC for an order exempting Riverside and the purchasers of Riverside's power from regulation under the *Utilities Commission Act*. Riverside's application requested an exemption in respect of sales of incremental power above its historical 2MW capacity, as well as sales to the City of Kelowna for

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<sup>51</sup> BCUC, Order Number G-38-01, "British Columbia Hydro and Power Authority Obligation to Serve Rate Schedule 1821 Customers with Self-Generation Capability", 5 April 2001, online: <[http://www.bcuc.com/Documents/Orders/Orders2001\\_2/G2\\_Orders/G38\\_BCH.pdf](http://www.bcuc.com/Documents/Orders/Orders2001_2/G2_Orders/G38_BCH.pdf)> ("Order G-38-01"), s.1, **R-19**.

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portions of the mill's average 2MW not required by the facility.<sup>52</sup> Since Riverside proposed to sell electricity only to power marketers, the City of Kelowna or other public utilities, Riverside took the position that BCUC oversight was not warranted.

60. The BCUC was satisfied that Riverside's application was in the public interest and asked the Government to authorize an exemption under s. 88 of the *Utilities Commission Act*. On October 18, 2001, Cabinet agreed that Riverside's application was in the public interest and approved the exemption.

61. The BCUC subsequently issued Order G-113-01, exempting from regulation Riverside's sales of self-generated electricity above a 2 MW baseline. In its Order, the BCUC signalled its awareness of the potential harm cause by arbitrage and therefore concluded that "... the exclusion of the first 2 MW of generation each hour from the definition of Incremental Power and the relatively constant production level associated with the generators will protect WKP [now FortisBC] and its customers from arbitrage with respect to the initial 2 MW or other impacts".<sup>53</sup>

62. Although the Minister and the BCUC issued three orders to facilitate sales of self-generation (Ministerial order M- 22-0101, BCUC Orders G-38-01, and G-113-01), my understanding is that the only transactions that actually took place were Riverside's sales on a net-of-load basis to its utility, the City of Kelowna, and Howe Sound's sales of its incremental generation to Powerex on an *ad hoc* basis.

63. As far as I am aware, unlike PREI, Howe Sound, and Riverside, Celgar has never applied for an exemption from regulation by the BCUC in respect of Celgar's proposals to sell its self-generation to parties other than BC Hydro.<sup>54</sup>

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<sup>52</sup> BCUC, Order Number G-113-01, "An Application by Riverside Forest Products Limited for an Exemption from Certain Provisions of the Utilities Commission Act", 25 October 2001, online: <[http://www.bcuc.com/Documents/Orders/Orders2001\\_2/G5\\_Orders/G113\\_Riverside.pdf](http://www.bcuc.com/Documents/Orders/Orders2001_2/G5_Orders/G113_Riverside.pdf)> ("Order G-113-01") at 1, **R-20**.

<sup>53</sup> Order G-113-01 at 1, **R-20**. On October 18, 2001, the Lieutenant Governor in Council issued an Order in Council giving advance approval for the exemption as required under s. 88 of the *UCA* and the BCUC granted the exemption on October 25, 2001.

<sup>54</sup> Celgar is exempt from regulation as a public utility in respect of its sales to BC Hydro by virtue of a Ministerial exemption under section 22 of the *Utilities Commission Act*, **RA-1**.

64. The examples of Riverside Forest Products applying to sell increased energy production, the process to consider idle generation sales by Howe Sound, and the BCUC's resulting decision establishing generator base lines to ensure that self-generators in BC do not engage in arbitrage, were available to Mercer during its due diligence on whether to acquire the Celgar Mill, as well as during the period when it chose to invest to make the Celgar Mill self-sufficient in terms of power generation.

## **2. The 2002 Energy Plan and the Heritage Contract**

65. In 2001, a new government came into power in BC. It commenced a Core Services Review of ministries and crown agencies to reassess mandates and service delivery.

66. Part of the process of reviewing BC Hydro included an assessment of BC's electricity market by the BC Energy Policy Task Force led by the then Deputy Minister responsible for the Ministry. The Task Force considered whether to deregulate the BC electricity market by implementing market pricing, separating generation, transmission and distribution functions, and selling BC Hydro's assets.

67. I was seconded from the Crown Agencies Secretariat in the Office of the Premier to a small team led by former Deputy Minister Chris Trumpy that developed the policy options for consideration of Cabinet, and then drafted the resulting 2002 Energy Plan.

68. The BC Government ultimately decided that deregulation was not in the public interest based on stakeholder concerns regarding rate impacts, reliability, and security. That decision was also informed by the experiences of Alberta and California, which saw significant market volatility and high prices following market restructuring and deregulation.

69. Instead of deregulation, the 2002 Energy Plan<sup>55</sup> called for existing generation assets to remain in the possession of BC Hydro. It also called for the creation of a market for new supply through competitive procurement from independent power producers and

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<sup>55</sup> British Columbia Ministry of Energy, Mines and Petroleum Resources, Energy For Our Future: A Plan for BC ("2002 Energy Plan"), **R-21**.

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access for large industrial BC Hydro customers to third-party electricity providers (“retail access”).<sup>56</sup>

70. BC’s 2002 Energy Plan called for the BCUC to conduct an inquiry to develop and make recommendations on two issues: (1) a Heritage Contract to secure benefits attributed to BC Hydro’s low-cost generation system; and (2) a more efficient use of energy resources and private investment in new generation to be fostered by a stepped rate structure.<sup>57</sup>

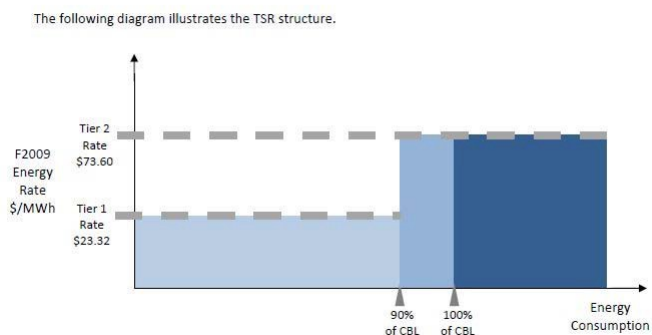
71. The ensuing inquiry resulted in BCUC recommendations on the establishment of a Heritage Contract as well as a stepped rate structure and retail access for transmission service customers.

72. The BC Government implemented the BCUC’s recommendations by enacting the *BC Hydro Public Power Legacy and Heritage Contract Act (HCA)*<sup>58</sup> and *Heritage*

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<sup>56</sup> While a retail access program was established in 2005, it was never used. The BCUC suspended the retail access program in 2012. The program was ultimately cancelled in March, 2014 under Direction No. 7.

<sup>57</sup> In a stepped rate structure, a specific annual Customer Baseline Load (“CBL”) is determined for each customer reflecting that customer’s historical consumption of electricity. A customer purchases energy at the Tier 1 rate up to 90% of their CBL and at the Tier 2 rate above 90% of CBL. The rate is designed to encourage customers to meet part of their electricity needs through energy efficiency and conservation measures by charging a rate that reflects the cost of new supply for higher consumption (“Tier 2”), combined with a lower rate (Tier 1). The stepped rate is designed to be revenue neutral to the utility compared to a flat rate structure when the customer purchases precisely 100% of its CBL. The diagram below shows the basic Tier 1 and Tier 2 structure for BC Hydro’s Transmission Service Rate (“TSR”). For more details, see BC Hydro, “Business Rates Prices”, online: <<https://www.bchydro.com/accounts-billing/customer-service-business/business-rates-overview/business-rates-prices.html>>, **R-22**.



<sup>58</sup> *BC Hydro Public Power Legacy and Heritage Contract Act*, S.B.C. 2003, c.86, (“HCA”), **RA-12**.

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*Special Direction No. HC2 (HC2)*.<sup>59</sup> The *HCA* prohibited the sale of BC Hydro generation assets<sup>60</sup> and set out regulation-making powers to establish the Heritage Contract. *HC2*<sup>61</sup> set out the provisions of the Heritage Contract, including direction to the BCUC on:

- i. The setting of BC Hydro's rates;<sup>62</sup>
- ii. BC Hydro's rate of return on deemed equity;<sup>63</sup> and
- iii. The design of stepped rates for transmission service customers.<sup>64</sup>

73. Aside from provisions relating to industrial stepped rates and the treatment of trade income,<sup>65</sup> *HC2* (and now Direction No. 7) essentially maintained the pre-existing principle of cost-based rates for BC Hydro.

74. BC Hydro currently supplies about 30% of FortisBC's load at embedded cost rates under RS 3808, which are comparable to the rates applicable to BC Hydro's large industrial customers. FortisBC customers receive the benefits of BC Hydro embedded cost electricity by virtue of the RS 3808 between BC Hydro and FortisBC.

75. Through the Heritage Contract, the benefits of low cost generation from BC Hydro's historic assets (i.e. generation from BC Hydro hydroelectric system and storage reservoirs built in the 1960s, 1970s and 1980s) continue to flow to its

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<sup>59</sup> *Heritage Special Direction No. HC2 to the British Columbia Utilities Commission*, B.C. Reg. 158/2005, O.C. 1123/2003, ("*HC2*"), **RA-13**. *HC2* requires the BCUC to treat the "Heritage Contract" as if it were a contract between BC Hydro's distribution and generation lines of business. The terms and conditions of the Heritage Contract can now be found in Appendix A to Direction No. 7.

<sup>60</sup> This prohibition was repealed from the *HCA* and re-enacted in section 14 of the *Clean Energy Act* in 2010, **RA-2**.

<sup>61</sup> *HC2* was repealed and replaced on March 5, 2014 by Direction No. 7, **R-14**.

<sup>62</sup> Direction No. 7, s. 5, **RA-9**.

<sup>63</sup> Direction No. 7, s. 4, **RA-9**. BC Hydro is allowed to earn an annual rate of return on deemed equity.

<sup>64</sup> Direction No. 7, s. 3, **RA-9**.

<sup>65</sup> The provision regarding trade income specifies how net revenues or losses of Powerex are to be allocated as between BC Hydro's ratepayers and the BC Government.

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ratepayers.<sup>66</sup> It is important to note, however, that nothing in the Heritage Contract gives rise to a specific entitlement for any individual customer to receive the energy generated by BC Hydro's historic assets.

**3. BC's 2007 Energy Plan and the 2008 Bioenergy Strategy**

76. BC's 2007 Energy Plan<sup>67</sup> and its resulting 2008 Bioenergy Strategy<sup>68</sup> reflected the BC Government's interest in addressing climate change by advancing clean and renewable energy development and, at the same time, addressing the impacts of the mountain pine-beetle epidemic that was ravaging certain areas of the province's forests. Both documents called for a competitive process by which BC Hydro would procure electricity from sawmill residues, logging debris and beetle-killed timber. This ultimately took place through BC Hydro's Bioenergy Calls for Power. Mercer's Celgar mill successfully negotiated an EPA under BC Hydro's Bioenergy Phase 1 Call for Power.

77. A central feature of the 2007 Energy Plan was the commitment for BC Hydro to achieve electricity self-sufficiency by the 2016 calendar year. In particular, the self-sufficiency policy required BC Hydro to acquire the rights to enough electricity generated in BC to meet its customers' needs, using the assumption that water inflows would be the same as the worst 4-year sequence on record (critical water conditions). Because BC Hydro relies on its hydroelectric dams to generate most of its electricity, the critical water assumption meant that BC Hydro would have to acquire a significant amount of energy from the private sector, and possibly build new generation, to ensure adequate

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<sup>66</sup> The Heritage Contract concept was influenced by Quebec's "heritage pool" requirement that Hydro-Québec Production provide an annual volume of fixed-price electricity to Hydro-Québec Distribution to ensure low and stable rates.

<sup>67</sup> British Columbia Ministry of Energy, Mines and Petroleum Resources, "The BC Energy Plan: A Vision for Clean Energy Leadership", online: <[http://www.energyplan.gov.bc.ca/PDF/BC\\_Energy\\_Plan.pdf](http://www.energyplan.gov.bc.ca/PDF/BC_Energy_Plan.pdf)> ("2007 Energy Plan"), **R-23**.

<sup>68</sup> British Columbia Ministry of Energy, Mines and Petroleum Resources, "BC Bioenergy Strategy: Growing our Natural Energy Advantage", online: <[http://www.energyplan.gov.bc.ca/bioenergy/PDF/BioEnergy\\_Plan\\_005\\_0130\\_web0000.pdf](http://www.energyplan.gov.bc.ca/bioenergy/PDF/BioEnergy_Plan_005_0130_web0000.pdf)>, **R-24**. BC Hydro, Bioenergy Call for Power – Phase I, Request for Proposals, 6 February 2008, online: <<http://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/independent-power-producers-calls-for-power/2008-phase-1-rfp/bioenergy-call-request-for-proposals.pdf>> ("Bioenergy Call for Power – Phase I, RFP"), **R-25**.

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electricity supply. The self-sufficiency policy also required BC Hydro to acquire an additional 3,000 GWh of “insurance” energy (i.e., beyond what was required to meet customers’ demand) by the year 2026.

78. The self-sufficiency requirement opened up opportunities for the private sector to sell clean and renewable energy to BC Hydro through a variety of competitive processes, including two Bioenergy Calls for Power. While in practice BC Hydro (through its trading arm, Powerex) continued both to import and to export electricity, it also conducted a series of acquisition processes to purchase the rights to electricity in BC to meet the self-sufficiency requirement because it could no longer rely on the spot market to meet electricity demand (as it had under previous planning assumptions that allowed for a “market allowance” during low water years).

79. Long term contracts with IPPs and industrial self-generators put upward pressure on BC Hydro’s electricity rates, as the cost of new supply was higher than the average cost of power generated by its depreciated heritage assets. A significant number of these contracts were filed with the BCUC under section 71 of the *Utilities Commission Act*.<sup>69</sup>

80. In an effort to mitigate rate increases, in 2011 and 2012, the original self-sufficiency policy and laws were modified to remove the requirement for “insurance” power and to adjust to the planning assumption that there will be average annual inflows into the BC Hydro reservoirs, rather than critical water conditions.

81. Another central feature of the 2007 Energy Plan was the policy that BC Hydro should acquire 50 per cent of incremental resource needs through conservation by 2020. This action led BC Hydro to rely significantly on energy savings from DSM programs or measures in resource planning in subsequent years.

82. Finally, the 2007 Energy Plan also contained a commitment to maintain BC’s “electricity competitive advantage”, meaning that it was the government’s intention to shape energy policies with a view to keeping electricity rates low relative to other jurisdictions in North America.

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<sup>69</sup> Section 7 of the *Clean Energy Act* exempted from BCUC review the contracts resulting from: Bioenergy Phase 2 Call for Power; BC Hydro’s 2008 Call for Power; the IPO; and the Standing Offer Program.

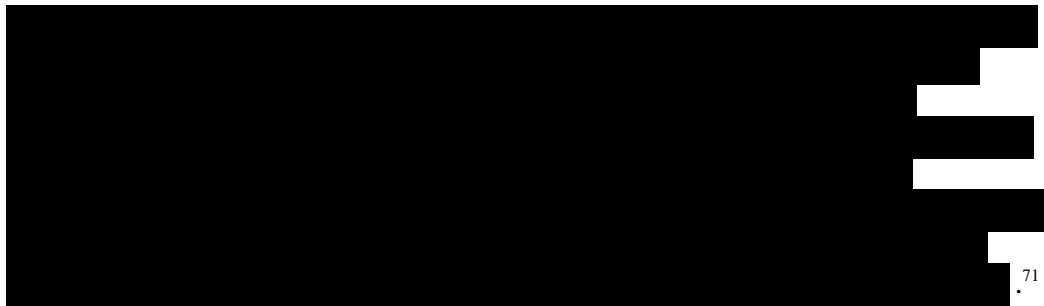


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83. In response to both the 2007 Energy Plan and the 2008 Bioenergy Strategy, BC Hydro's 2008 Bioenergy Call for Power invited proposals for "the supply of electrical energy generated from Forest-based Biomass by Projects located in British Columbia". I understand that Jim Scouras, one of BC Hydro's witnesses in this proceeding, explains the Bioenergy Call in more detail in his witness statement.

84. The early plans for BC Hydro's 2008 Bioenergy Call for Power, along with an inquiry from a potential bioenergy project proponent,<sup>70</sup> prompted Ministry staff to confirm provincial policy regarding the conditions under which electricity produced by self-generators could be sold to BC Hydro.

85. Ministry staff determined that any strategy addressing this issue would need to:



86. After considering a number of options, Ministry staff recommended that new self-generated electricity should be eligible for acquisition by BC Hydro, to ensure incremental self-generated electricity is treated no differently than an IPP's electricity. In other words, new generation, whether from an IPP or an industrial self-generator, should be eligible for sale to BC Hydro. Incremental self-generated electricity would not need to be net of the industrial customer's load.

87. The Ministry's 2007 analysis and recommended policy informed the approach I took in 2008 during discussions with industrial self-generators when meeting with the

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<sup>70</sup> Catalyst Paper Corporation approached the Ministry to understand more clearly the provincial position on the circumstances under which self-generators could sell electricity to BC Hydro.

<sup>71</sup> Ministry of Energy, Mines, and Petroleum Resources, Discussion Paper, BC's Self Generator Sales Policy, 18 September 2007, bates 054314-054318, **R-26**. I reviewed this Ministry Discussion Paper, which was initially drafted in light of the 2007 Energy Plan and as a result of Catalyst Paper approaching the province to understand BC's position on the circumstances under which self-generators could sell electricity to BC Hydro.

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Pulp and Paper Self-Generation Working Group, as I explain in section C4 of this witness statement.

**4. The Pulp and Paper Task Force Report**

88. The BC Pulp and Paper Task Force (Task Force) was an industry group formed in 2007 and made up of senior industry executives from most of BC's pulp and paper manufacturers at the time. The Task Force had a mandate to review competitive pressures facing the BC pulp and paper industry and make recommendations to improve BC's competitiveness in the global pulp and paper market.<sup>72</sup> David Gandossi, Mercer's Chief Financial Officer, was the chair of the Task Force.<sup>73</sup>

89. On November 22, 2007, the Task Force published a "Position Paper on Electricity Conservation & Generation," which recommended that all existing pulp and paper mill self-generation should be purchased by BC Hydro, priced at the higher Tier 2 Transmission Service Rate.<sup>74</sup> It also recommended that incremental generation and conservation should be priced at the highest rate BC Hydro was offering to IPPs in energy purchase agreements at the time via the Bioenergy Call for Power.<sup>75</sup> This proposal contemplated that industrial self-generators would be allowed to serve their entire load with embedded-cost power purchases from BC Hydro, regardless of the portions of their load that they had historically self-supplied, amounting to a significant subsidy to the pulp and paper sector in return for absolutely no new electricity generation in the province.

90. The Task Force's recommendation was unacceptable to the BC Government whose position was (and remains) that the sale of existing self-generation historically used to meet a self-generator's load is not an option, given that it would increase revenue

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<sup>72</sup> BC Ministry of Forests and Range, "Information Bulletin: Pulp and Paper Task Force to Revitalize Sector" (2007FOR0022-000189), 27 February 2007, online: <[http://www2.news.gov.bc.ca/news\\_releases\\_2005-2009/2007FOR0022-000189.htm](http://www2.news.gov.bc.ca/news_releases_2005-2009/2007FOR0022-000189.htm)>, **R-27**.

<sup>73</sup> Witness Statement of David Gandossi, dated March 28, 2014 ("Gandossi Witness Statement"), ¶ 7.

<sup>74</sup> Pulp and Paper Task Force, "Position Paper on Electricity Conservation & Generation", 22 November 2007, bates 063271-063285 at 063274, **R-28**.

<sup>75</sup> Pulp and Paper Task Force, "Position Paper on Electricity Conservation & Generation", 22 November 2007, bates 063271-063285 at 063275, **R-28**.

requirements for the utility and thereby put upward pressure on rates. Accordingly, the BC Government's position was that only incremental electricity generation (i.e., incremental to the amount of generation historically used to meet mill load) should be valued at market prices.

91. [REDACTED]

### **5. The Pulp and Paper Self-Generation Working Group**

92. The Pulp and Paper Self-Generation Working Group (the Working Group) was formed following a November 2007 presentation to the BC Government by the Task Force on their "Position Paper on Electricity Conservation & Generation" recommendations. The Working Group, consisting of government and industry representatives, was formed to review electricity generation and conservation pricing options and to provide recommendations to the BC Government regarding how self-generation should be treated.

93. David Gandossi of Mercer was copied on meeting materials and notes that documented the BC Government's consistent position in the Working Group.<sup>77</sup>

94. The BC Government's stated position, from the first meeting of the Working Group on February 7, 2008, was that sales of existing self-generation that had historically been used to meet the self-generator's own load was not an acceptable option given ratepayer impacts, and that only incremental self-generation should be priced on the margin (i.e., at the then current cost of new power supply).<sup>78</sup> Just such an opportunity had been created with the announcement of Bioenergy Calls for Power in the January 2008 Bioenergy Strategy.

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<sup>76</sup> BC Hydro, Briefing Note, Customer Self Generation, 24 June 2009, bates 022831-022834, **R-29**.

<sup>77</sup> Draft Meeting Notes, Pulp & Paper Self-Generation Working Group, 24 June 2008, bates 000082-000084, **R-30**.

<sup>78</sup> Draft Meeting Notes, Pulp & Paper Self-Generation Working Group, 24 June 2008, bates 000082-000084 at 000083, **R-30**.

**6. BCUC Order G-48-09**

95. In 2008 FortisBC entered into agreements with both Celgar and the City of Nelson to supply their electrical needs and to allow them to sell their self-generated electricity to third parties at market prices, thus replacing the electricity these customers had historically used for self-supply with embedded-cost electricity purchases. To meet this increased demand, FortisBC planned to increase its purchases of power from BC Hydro under RS 3808.<sup>79</sup> The agreements with the City of Nelson and Celgar were designed to mitigate the risk that sales to these customers would occur in a manner that would harm FortisBC or FortisBC's ratepayers.<sup>80</sup> Moreover, FortisBC stood to profit from the proposed arrangements with the City of Nelson, because the rate at which FortisBC purchased electricity from BC Hydro under RS 3808 was lower than the rates under which FortisBC sold electricity to the City of Nelson.<sup>81</sup>

96. On June 24, 2008, FortisBC filed for BCUC approval its agreements with the City of Nelson relating to this proposed arrangement.

97. On June 25, 2008, the BCUC sought comments from BC Hydro on FortisBC's agreements with the City of Nelson.

98. On September 16, 2008, BC Hydro filed an application with the BCUC to amend RS 3808 in order to clarify that electricity purchased by FortisBC under RS 3808 could not be sold to a FortisBC customer to replace self-generated electricity that was intended for sale.

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<sup>79</sup> BC Hydro, "Application to Amend Section 2.1 of the Rate Schedule 3808 Power Purchase Agreement", BCUC Information Request No. 3, 31 December 2008, online: [http://www.bcuc.com/Documents/Proceedings/2008/DOC\\_20678\\_C4-8\\_FortisBC-IR3-Resps\\_BCUC.pdf](http://www.bcuc.com/Documents/Proceedings/2008/DOC_20678_C4-8_FortisBC-IR3-Resps_BCUC.pdf) ("Exhibit C4-8, Responses to Information Requests"), **R-31**. Exhibit C4-8 in the proceeding sets out some of FortisBC's evidence in this proceeding, and FortisBC's responses to information requests A1.7.1, A1.7.2 and A5.2 of that exhibit demonstrates that FortisBC intended to use electricity sourced under RS3808 to meet the increased sales to Celgar and the City of Nelson.

<sup>80</sup> Exhibit C4-8, Responses to Information Requests, A2.2 and A2.10, **R-31**.

<sup>81</sup> Exhibit C4-8, Response to Information Requests, A2.10, **R-31**.

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99. The Ministry intervened in the ensuing BCUC proceeding held to consider BC Hydro's application to amend RS 3808. The Ministry's final argument<sup>82</sup> supported BC Hydro's application and described the Heritage Contract policy and legislative framework. It noted that the Heritage Contract was intended to ensure that BC Hydro's customers collectively receive the benefit of BC Hydro's heritage assets on a cost-of-service basis, thereby helping to keep electricity rates relatively low. The Ministry noted that, absent BC Hydro's proposed amendment, FortisBC's self-generating customers would be able to increase their purchases of electricity from FortisBC to replace electricity that the self-generators sold to third parties, and that BC Hydro would then be required to provide additional electricity to FortisBC under RS 3808. This, in turn, would require BC Hydro to acquire more electricity or forego trading opportunities (in the export market) that benefit all ratepayers, thereby putting upward pressure on BC Hydro rates. The cost of acquiring this electricity would not be incurred to serve a corresponding increase in electricity consumption. Instead, it would be incurred for the sole purpose of facilitating arbitrage of embedded cost-electricity by FortisBC's customers. The Ministry pointed out that giving FortisBC's self-generating customers the unique ability to engage in such arbitrage to the detriment of BC Hydro ratepayers would be contrary to the goal of the Heritage Contract to ensure all of those served by BC Hydro collectively benefit from the heritage assets.

100. The Ministry's final argument acknowledged that there may be circumstances where it is appropriate for self-generators to sell electricity above an historical generation baseline. Given the opposition by FortisBC, the City of Nelson and Celgar to the proposed amendment, however, the Ministry understood that, without FortisBC's support,<sup>83</sup> it would not be possible to amend RS 3808 in a way that would allow FortisBC to sell electricity sourced under RS 3808 to FortisBC customers who were selling their

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<sup>82</sup> MEM Final Argument, **R-14**.

<sup>83</sup> FortisBC was not prepared to support this approach at the time. FortisBC's position in the proceeding was to oppose BC Hydro's application for an amendment. As is evident in its final argument, FortisBC took the view that electricity it purchased from BC Hydro under RS3808 should be available for sale to FortisBC customers who chose to sell self-generation previously used to serve their own loads. As a result, FortisBC was not prepared to provide or interested in providing information to BC Hydro on the historical loads of its self-generating customers.

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generation output above a historical generation baseline. BC Hydro's response to an information request by the British Columbia Old Age Pensioners' Organization et al<sup>84</sup> explained that, at that time, BC Hydro had no ability to determine historical generator output and load for FortisBC customers.

101. The BCUC's Order G-48-09<sup>85</sup> approved BC Hydro's application to amend section 2.1 of RS 3808, clarifying that electricity provided under RS 3808 could not be sold to any FortisBC customer when that customer was selling self-generated electricity not in excess of its load.

102. Celgar was disappointed by the BCUC's decision. Thereafter, Celgar and representatives of Mercer launched a series of efforts to persuade the BC Government to find a way to allow the Celgar mill to sell more of its self-generation.

**7. Mercer's Attempt to Persuade Ministry Officials and Ministers that Celgar Should Be Allowed to Sell its Existing Self Generation to Market**

103. Notwithstanding the consistent position expressed by both the Ministry and BC Hydro throughout 2008 in the Working Group process, Mercer continued to attempt to persuade Ministry officials and Ministers that Celgar should be allowed to sell all of its existing self-generation to market while meeting its mill load with embedded cost utility supply.

104. On October 1, 2008, I met with David Gandossi and Brian Merwin, who pressed for revaluation of existing generation at the Celgar mill on the basis that continued self-

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<sup>84</sup> The British Columbia Old Age Pensioners' Organization formed a coalition along with other groups representing low and fixed income ratepayers to intervene in this proceeding. *See* BC Hydro's Response to BCOAPO et al. Information Request No. 2.4.3, which the Ministry cited in its final argument.

<sup>85</sup> BCUC, Order Number G-48-09, "British Columbia Hydro and Power Authority and Application to Amend Section 2.1 of Rate Schedule 3808 Power Purchase Agreement", 6 May 2009, online: <[http://www.bcuc.com/Documents/Orders/2009/DOC\\_21825\\_G-48-09\\_BCH\\_Amend%20Section%2021%20RS%203808%20PPA.pdf](http://www.bcuc.com/Documents/Orders/2009/DOC_21825_G-48-09_BCH_Amend%20Section%2021%20RS%203808%20PPA.pdf)> ("Order G-48-09"), **R-32**.

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generation was uneconomic due to fuel costs and overhead.<sup>86</sup> To my knowledge, Celgar never ceased self-generating despite these claims.

105. In response to Mercer's continued lobbying, in an October 20, 2008 Briefing Note that was approved by the then Minister of Energy, Mines and Petroleum Resources, the Ministry [REDACTED]

[REDACTED]

[REDACTED]<sup>87</sup>

106. Mercer met with the Minister of Forests and Range in mid-September 2009 and provided briefing materials claiming competitor mills had been given preferential treatment by BC Hydro with respect to their self-generation.<sup>88</sup> As a remedy, Mercer sought support from government to have the mill's previous owners' 1993 investment in a 52 MW turbine retroactively recognized as incremental, and thus allow the mill to have a generation base line of 3.5 MW.<sup>89</sup> I am not aware of how the Minister of Forests and Range responded to Mercer's request at that meeting.

107. In September 2009, Mercer met with BC Hydro and alleged that there was an unlevel playing field among pulp and paper self-generators, as Mercer's Celgar mill is the only pulp mill located in FortisBC's service territory. At this time the Claimant was expressing concern that pulp mills in BC Hydro's service territory had different opportunities under the federal Green Transformation Program than those available to

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<sup>86</sup> Email exchange re meeting between Mercer and Ministry of Energy and Mines, 27 September 2008, bates 000345-000347, **R-33**; Mercer International, Celgar Self Generation, Presentation re Confidential Discussion with MEMPR, October 2008, MER00065540, **R-34**.

<sup>87</sup> British Columbia Ministry of Energy, Mines and Petroleum Resources Briefing Note for Decision, 20 October 2008, bates 012253-012258, **R-35**.

<sup>88</sup> Email exchange re meeting between Mercer and Ministry of Energy and Mines, 22 October 2009, bates 001282-001290, **R-36**.

<sup>89</sup> British Columbia Ministry of Energy, Mines and Petroleum Resources Briefing Note, File 280-20/121958, bates 012950-012975, **R-37**; British Columbia Ministry of Energy, Mines and Petroleum Resources Briefing Note re Celgar Existing Generation, 1 September 2009, bates 001680-01682, **R-38**; Mercer Presentation, Celgar's Existing Generation, Presentation to Minister Bell, September 2009, MER00018401, **R-39**.

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them from FortisBC. BC Hydro, unlike FortisBC, developed the IPO to leverage the federal funding along with BC Hydro's own incentives.<sup>90</sup>

108. On October 29, 2009, I, and staff from the Ministry of Energy, Mines, and Petroleum Resources, met with Brian Merwin, Mercer's Vice President of Strategic Initiatives. Mr. Merwin stated that a generation baseline [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>91</sup>

109. Mercer arranged for a meeting that I attended with the then new Minister of Energy, Mines, and Petroleum Resources, Blair Lekstrom, and the Minister of Forests and Range, Pat Bell, on November 24, 2009. At that meeting, Mercer once again sought a generation baseline of [REDACTED]. In his witness statement, Brian Merwin misquotes my response to a question from Minister Bell regarding whether Celgar had suffered bad luck or had been placed at a disadvantage by government.<sup>92</sup> In fact, what I said was that, since it was located in a different utility service territory, Celgar may have been at a disadvantage. Following the meeting, Minister Lekstrom, in a response dated February 22, 2010, reiterated government policy that re-pricing of existing self-generation was not supported.<sup>93</sup>

110. Despite the Minister's reiteration that the province would not support a lower generation baseline for the Celgar mill, Mercer continued to lobby elected officials. As a

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<sup>90</sup> Email exchange between R. Marchant and L. MacLaren re Mercer International/Celgar, 28 October 2009, bates 001310-001311, **R-40**.

<sup>91</sup> Mercer Briefing Note, Leveling the Playing Field – Briefing Note, 26 October 2009, MER00000016, **R-41**.

<sup>92</sup> Witness Statement of Brian Merwin, dated March 28, 2014, ("Merwin Witness Statement"), ¶ 128.

<sup>93</sup> Letter from Minister Blair Lekstrom to David Gandossi and Brian Merwin (Mercer), 22 February 2010, MER00186107, **R-42**.



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result, further interactions took place between representatives of Mercer and Ministry staff, to support the Ministers' requests for further information and analysis.

111. On August 17, 2011 David Gandossi and Brian Merwin met with the Minister of Energy, Mines and Petroleum Resources, Rich Coleman, and his staff. Mr. Merwin stated that Celgar was at a competitive disadvantage, because it lacked the opportunities given to its competitors in BC Hydro territory<sup>94</sup>. Mr. Merwin once again requested government support to establish a new, lower generation baseline. Mr. Merwin, however, did not suggest how a lower generation baseline would be established and did not address the fact that Celgar's EPA with BC Hydro included a generation baseline. Mercer noted in its presentation that, "The fix that is needed for Celgar does not need to impact other producers. Celgar is the only Pulp mill operation outside BC Hydro's jurisdiction."<sup>95</sup>

112. Brian Merwin organized a meeting on January 24, 2012 with Minister Rich Coleman to request Celgar's EPA with BC Hydro be amended to allow for below generation baseline sales when the replacement power is being supplied by FortisBC alone, that is without recourse to BC Hydro's RS 3808 power.<sup>96</sup> Mr. Merwin also indicated that Mercer was considering filing a complaint under the NAFTA.<sup>97</sup> Mr. Merwin ultimately cancelled the meeting at the last minute. On January 26, 2013 Mercer served a Notice of Intent to Submit a NAFTA Claim to Arbitration on the Government of Canada.

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<sup>94</sup> Although I did not attend this meeting myself, I received and reviewed a copy of the presentation that Mercer provided at the meeting.

<sup>95</sup> Mercer Presentation with Minister Rich Coleman, 17 August 2011, MER00192341-MER00192352 at MER00192352, **R-43**.

<sup>96</sup> BCUC, Order Number G-188-11, "Zellstoff Celgar Limited Partnership Complaint Regarding Failure of FortisBC Inc. and Celgar to complete a General Service Agreement and FortisBC's Application of Rate Schedule 31 Demand Charges", 14 November 2011, online: <[http://www.bcuc.com/Documents/Orders/2011/DOC\\_29472\\_G-188-11\\_Celgar-FortisBC-Complaint.pdf](http://www.bcuc.com/Documents/Orders/2011/DOC_29472_G-188-11_Celgar-FortisBC-Complaint.pdf)> ("Order G-188-11"), **R-44**; Letter from Brian Merwin (Mercer) to Olha Lui (BC Hydro) re Electricity Purchase Agreement between Zellstoff Celgar Limited Partnership and British Columbia Hydro and Power Authority, 23 January 2012, **R-45**.

<sup>97</sup> Email from T. Myers to L. MacLaren, 24 January 2012, bates 000434, **R-46**; Briefing Note, Celgar Pulp Mill Power Generation, bates 000253, **R-47**; on January 13, 2012, David Gandossi emailed Rich Coleman and Brian Merwin a four page document entitled "Celgar Energy Issue" that referenced a NAFTA claim as one of Mercer's remedies, bates 001455-001458, **R-48**.

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113. Throughout the Ministry's meetings with representatives of Mercer, Ministry staff listened to Mercer's concerns about the generation baseline in the EPA between Celgar and BC Hydro as well as Mercer's concerns regarding the development of the rules governing sales of self-generation in FortisBC's service territory. The Ministry determined, however, that there was no compelling reason to change to the generation baseline in the EPA. In contrast, the Ministry was concerned about the rules governing self-generation in the FortisBC service area. As a result, the Ministry decided to intervene in the BCUC proceeding on FortisBC's 2012 compliance filing on Guidelines for Establishing Entitlement to Non-PPA Embedded Cost Power. The Ministry took the position that consistent regulatory principles governing self-generation, including the requirement to mitigate the risks of arbitrage, should apply throughout BC. The Ministry submitted that, to protect the interests of all utility customers, the key objective should be to ensure that regulated utilities do not supply increased embedded cost power to self-generating customers where those customers sell to market self-generation previously used to serve their own loads.<sup>98</sup> Having conveyed its views, the Ministry then accepted that it was the role of the BCUC to determine the rules governing FortisBC's obligation to serve customers, such as Celgar, who engaged in sales of self-generation.

**8. Natural Resources Canada's Pulp and Paper Green Transformation Program and BC Hydro's Integrated Power Offer**

114. The Government of Canada's 2009 Pulp and Paper Green Transformation Program (PPGTP) provided funding to pulp and paper manufacturers in Canada to match subsidies being provided to their competitors in the United States. Unlike the US program, the Canadian Government's \$1 billion PPGTP required that any payment, based on production volume of black pulping liquors,<sup>99</sup> should be invested in energy efficiency, renewable energy or environmental projects.

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<sup>98</sup> BCUC proceeding to consider FortisBC Inc. Guidelines for Establishing Entitlement to Non-PPA Embedded Cost Power and Matching Methodology (Compliance Filing to Order G-188-11), Exhibit C2-2, online: <[http://www.bcuc.com/Documents/Proceedings/2012/DOC\\_30995\\_C2-2\\_MEM-Comments.pdf](http://www.bcuc.com/Documents/Proceedings/2012/DOC_30995_C2-2_MEM-Comments.pdf)>, **R-49**.

<sup>99</sup> Black liquor is a by-product of pulp production. It can be burned in a recovery boiler to produce power and steam.

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115. Examples of funding that came from the PPGTP include the following awards<sup>100</sup>:

- Howe Sound Pulp and Paper was awarded a [REDACTED] black liquor credit allocation that it used [REDACTED]<sup>101</sup>
- Canfor Pulp's Northwood mill in Prince George was awarded a [REDACTED] black liquor credit allocation [REDACTED].<sup>102</sup>
- Mercer received a \$57.7 million black liquor credit allocation, \$46.8 million of which it directed toward a new 48MW steam turbine and other upgrades.<sup>103</sup>

116. The objective of BC Hydro's IPO<sup>104</sup> was to maximize the volume of energy that pulp and paper customers could displace or supply by leveraging PPGTP funds, with BC Hydro energy efficiency incentives and EPAs.

117. BC Hydro assigned a team of experts to work with each pulp and paper mill customer to develop an inventory of potential energy efficiency, demand response and power generation opportunities that would be eligible for PPGTP funds, BC Hydro energy efficiency incentives, and/or BC Hydro electricity purchase agreements.<sup>105</sup> The *Clean Energy Act* exempted BC Hydro's IPO procurement contracts from BCUC s.71 review because the BC Government was concerned that any delay associated with a BCUC proceeding to review the IPO contracts could result in a lost opportunity to leverage federal funding.

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<sup>100</sup> List of Natural Resources Canada supporting credits for pulp and paper mills, bates 061820-061822, **R-50**.

<sup>101</sup> Natural Resources Canada, News Release, 2010/68, "Day: Government Boosting Forestry Sector through Environmental Improvements at Howe Sound Pulp and Paper", 8 September 2010, online: <<http://www.nrcan.gc.ca/media-room/news-release/2010/2781>>, **R-51**; Natural Resources Canada, News Release, 2010/18, "Government of Canada Invests in Clean Energy at Howe Sound Pulp and Paper", 16 April 2010, online: <<http://www.nrcan.gc.ca/media-room/news-release/2010/2619>>, **R-52**.

<sup>102</sup> Natural Resources Canada, News Release, 2010/49, "Government of Canada Leading Forest Sector Renewal: New Investment Announced for Environmental Improvements at Canfor Pulp's Prince George Pulp and Paper Mill", 7 July 2010, online: <<http://www.nrcan.gc.ca/media-room/news-release/2010/2715>>, **R-53**; Natural Resources Canada, News Release, 2011/05, "Harper Government Protects Jobs in Canada's Forest Sector", 6 January 2011, online: <<http://www.nrcan.gc.ca/media-room/news-release/2011/2237>>, **R-54**.

<sup>103</sup> Celgar Green Energy Project, Final Report, 17 June 2011, MER00000542 at MER00000562, **R-55**; Mercer's Memorial, ¶ 313; Merwin Witness Statement, ¶ 113; Gandossi Witness Statement, ¶¶ 48-51.

<sup>104</sup> BC Hydro, "Integrated Power Offer for Pulp & Paper Customers", online: <[http://www.bchydro.com/powersmart/business/industrial/your\\_sector/pulp\\_paper/ipo.html](http://www.bchydro.com/powersmart/business/industrial/your_sector/pulp_paper/ipo.html)>, **R-56**.

<sup>105</sup> See Witness Statement of Jim Scouras, dated August 21, 2014 ("Scouras Witness Statement"), ¶¶ 66-72.

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118. In 2010, Mercer added a new 48MW turbine costing \$62.5 million, of which \$46.8 million was contributed by the PPGTP.<sup>106</sup> Even with this contribution, Mercer has continued to lobby government officials and elected representatives about how it believed it was being treated unfairly.

**9. Different Utilities Adopt Different Rates and Measures**

119. It is important to understand that it is entirely normal for different utilities in the same province to adopt different rates and measures with respect to their customers. Indeed, the BCUC explicitly made note of such difference in Order G-110-12 where it wrote:

that the two companies operate with a different set of supply resources and a different customer base in terms of geography, population density and the residential/commercial/industrial mix. Therefore the Panel is of the view that there is no mandate nor would it be appropriate to expect FortisBC to have programs and rates that mirror those of BC Hydro.<sup>107</sup>

120. To this list of differences I would add that different policy constraints apply to the two utilities. For example, the self-sufficiency policy and DSM target, both introduced in the 2007 Energy Plan, apply only to BC Hydro. In addition, FortisBC was not seeking to buy power or pursue significant DSM measures at the time of the IPO.

121. The fact that Celgar operates in a different utility service territory than the mills that it wishes to compare itself with goes some way to explaining why FortisBC did not offer Celgar the same opportunities that BC Hydro offered its own customers (such as LDAs and other DSM measures).

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<sup>106</sup> Celgar Green Energy Project, Final Report, 17 June 2011, MER00000542 at MER00000562, **R-55**; Mercer's Memorial, ¶ 313; Merwin Witness Statement, ¶ 113.

<sup>107</sup> BCUC, Order Number G-110-12, "FortisBC Inc. 2012-2013 Revenue Requirements and Review of 2012 Integrated System Plan", 15 August 2012 ("Order G-110-12"), online: <[http://www.bcuc.com/Documents/Orders/2012/DOC\\_31458\\_G-110-12\\_FBC-2012-13RRA\\_Decision.pdf](http://www.bcuc.com/Documents/Orders/2012/DOC_31458_G-110-12_FBC-2012-13RRA_Decision.pdf)>, **R-57**; BCUC, Order Number G-110-12, "FortisBC Inc. 2012-2013 Revenue Requirements and Review of 2012 Integrated System Plan", Decision, 15 August 2012, online: <[http://www.bcuc.com/Documents/Decisions/2012/DOC\\_31457\\_G-110-12\\_FBC-2012-13RRA\\_Decision-WEB.pdf](http://www.bcuc.com/Documents/Decisions/2012/DOC_31457_G-110-12_FBC-2012-13RRA_Decision-WEB.pdf)> at 1-2, **R-58**.

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122. In this context, I understand that in his witness statement, FortisBC's Dennis Swanson recounts how I had called him in late 2009 or early 2010 regarding DSM options for Celgar. During that call, Mr. Swanson explained to me that, in order for FortisBC to provide such DSM measures to Celgar, the load served by FortisBC would need to decrease (as opposed to additional power being available for Celgar to sell) or it would result in further upward pressure on FortisBC rates. In other words, any FortisBC expenditure on DSM for Celgar would need to be justified by a reduction in Celgar's demand on the FortisBC system. Since Celgar was generating enough electricity to serve its load (except during brief periods when the generators are not in operation), there is very little value to FortisBC's efforts to reduce Celgar's demand on the FortisBC system.

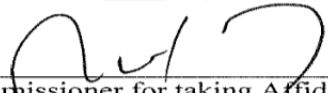
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123. Based on my first-hand experience with Mercer and many other industrial self-generators, and on my review of the pertinent documents, I see no evidence of Mercer being treated unfairly by the BC Government, BC Hydro, or the BCUC. To the contrary, the record is clear that Mercer was at all times treated fairly and conscientiously.

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

125. I produce this witness statement in support of Canada's Counter-Memorial in the *Mercer International Inc. v. Government of Canada* NAFTA arbitration and for no improper purpose.

SWORN BEFORE ME at the City )  
of Victoria, in the Province of British )  
Columbia, this 26th day of August, 2014. )

  
\_\_\_\_\_  
A Commissioner for taking Affidavits for )  
British Columbia. )

  
\_\_\_\_\_  
Les MacLaren

**Jonathan Eades**  
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