PUBLIC VERSION

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICA FRE TRAD AGREEMENT AN TH 197 UNCITRAL ARBITRATI N RULES

BETWEEN:

RESOLU E FORE T PRODUC S INC.

Claimant

AND:

GOVERNME T F CANADA

Respondent

P A CA E N . 2016-

REJOIND R WITNE S STATEME T F MURR Y COOLIC

Mar h , 20

I, Murray Coolican, of [redacted], the City of Halifax, in the Province of Nova Scotia, hereby AFFIRM as follows:

1. I provide this second witness statement to respond to certain statements made in Resolute's December 6, 2019 Reply Memorial and in the witness statement of Mr. Richard Garneau filed on the same date.[1] I also elaborate further on certain points described in my first witness statement dated April 17, 2019. The fact that I have not addressed all of Resolute's characterizations of facts and events other than those I discuss in this witness statement should not be taken to mean that I agree with them.

RESOLUTE'S STATEMENTS REGARDING THE BOWATER MERSEY AND PORT HAWKESBURY MILLS

2. Mr. Garneau wrote at paragraph 9 of his statement that the "GNS had done nothing during NSUARB proceedings to meet Resolute's and NewPage-Port Hawkesbury's request for a lower electricity rate for Bowater Mersey." While I am not privy to the details in that same paragraph that are redacted, I believe this statement standing alone is sufficiently clear to merit a response.

3. As I noted in my first witness statement, the Government of Nova Scotia ("GNS") does not set electricity rates in the Province,[2] so it could not have "met" Resolute's "request for a lower electricity rate for Bowater Mersey" as Mr. Garneau suggests. Resolute was free to make an application to the Nova Scotia Utility and Review Board ("UARB") for a particular load retention rate ("LRR") that it felt was economically feasible for its mill, but it would still have to pass the general regulatory requirement of leaving the Province's electricity ratepayers better off than they would be without the mill load.

4. Bowater Mersey and NewPage jointly applied to the Nova Scotia Utility and Review Board ("UARB") in June 2011 for a load retention rate based on economic distress.[3] Both

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[1] The version of the witness statement I was provided contained redactions at paragraph 9, 14 and 15. I therefore cannot comment on the statements made by Mr. Garneau which have been redacted.

[2] Witness Statement of Murray Coolican, 17 April 2019 ("Coolican First Statement"), ¶¶ 2-3.

[3] **R-162**, *New Page Port Hawkesbury Corporation (Re),* Letter re: Proposed Amendments to Nova Scotia Power Inc.'s.

companies had been in Nova Scotia for many years and were very familiar with NSPI and electricity regulations in Nova Scotia, including UARB proceedings. I understand that Bowater Mersey and NewPage retained their own expert to advocate for their LRR application before the UARB.[4] It was also my understanding that the Bowater Mersey-NewPage joint application to the UARB did not involve complicated and out-of-the-ordinary proposals for electricity efficiency and variable pricing mechanisms – as would be the case with the subsequent PWCC-NSPI application in 2012 – but was rather a request for a LRT to apply in circumstances of economic distress of a large industrial customer (the first time ever approved by the UARB) and for a fixed LRR.[5]

5. Mr. Garneau states that the GNS never offered to Resolute the kind of "assistance" that was provided to PWCC in its discussions with NSPI for the purchase of the Port Hawkesbury mill (e.g., retaining Mr. Todd Williams, allowing him to testify at the NSUARB hearing).[6] I do not recall Resolute ever making such a request with respect to purchasing Port Hawkesbury. It was my understanding that Resolute was not selected by the Monitor at the end of October 2011 as one of the qualified bidders for the Port Hawkesbury mill.

6. With respect to PWCC, that company was new to Nova Scotia and had no prior experience with NSPI and how the Province`s electricity system operated. As I wrote in my first witness statement,[7] PWCC came with novel ideas from its experience in the deregulated regime in Alberta for improving energy efficiency and reducing electricity costs at Port Hawkesbury that had never been undertaken previously in Nova Scotia. PWCC's plan to shut down the newsprint machine meant the mill would have significant excess in pulping capacity and energy storage, which it wanted to translate into cost savings by pulping during the time of day when the costs to generate electricity were lowest and when the electricity demand of the

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Load Retention Tariff, M04175 NPB-1 (Jun. 6, 2011).

[4] See e.g., **R-383**, *Re NewPage Port Hawkesbury Corporation,* Direct Evidence and Exhibits of Dr. Alan Rosenberg on behalf of NewPage Port Hawkesbury Corp and Bowater Mersey Paper Company Limited, M04175 (Jun. 22, 2011).

[5] **C-138**, *In re an Application by the NewPage-Port Hawkesbury and Bowater Mersey Paper Company*, Decision (Nov. 29, 2011).

[6] Witness Statement of Richard Garneau, 6 December 2019 ("Garneau Statement"), ¶ 19.

[7] Coolican First Statement, ¶ 14.

mill could be used t provid ancillar benefit t NSP i balancin the overa l syst m demand or electrici y. Since NS I is a pr vate co pany hich supplies elect ic ty i Nova Scoti , in my role at OE w s not in a po ition to evaluat wh ther the in ovati ns being propos d by WCC cou d feasibly be i pleme ted nor cou d t e GNS c mpel NSPI to agree to w at WC was proposi g. I as in t is context hat dec de in D cember 20 1 hat it co ld be he pf l to retai Mr Williams t facili ate he iscussions betw en WCC and NSPI. Neithe he nor the GN coul dictate the out ome of th se neg tiations an PW C had to fo low the same UARB L R appli ation process a did Bowater ersey in order to esta lis that r tep yers woul be b tt r ff ith the roposed LRR than t ey w uld be if the ustomer left he system.

THE PORT HAWKESBURY MILL ND ADDIT ONAL RENEWABLE EL CTRIC TY STAN ARDS (RES COSTS AND BI MAS

7. Whil my f rst itness statement u ly e pl ins the con ext o the Ju y 20, 2 12 l tter hat I sent to the AR ,[9] I ould like to provide some brief additional com ents in light of Resolute's Re ly. As I explain d previously, this l tter explained a long-s an ing overnment polic t wards firm ren wable e ectr city tar ets which e we e c nfide t would be ful y met oing forwar with existing a d f ture wind a d o her sour es coming online (e g., hydro from Newfoundland and abr dor via the Mar time Lin).[10] C nsider ng the ell known re ul tory rol that t e GNS had lr ady occupie i th s space, it oe not su prise e that the UARB was i terested n info mat on on th possi ility if any, o f tu e govern ent act on with res ec to RES and ho it might aff ct o her rate ayers f it a proved he LRR as prop sed by PWCC. It wa m understa ding that the UARB felt t eeded furt er clarit on what the G S planned o do in the area o rene ab e ener y i order to assist it n answer ng the r gulato w th or t o t PWCC s ro os d LRR.[11] My le ter

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R-425, [redacted].

[9] **-179**, *In r a App icatio by Pa ific West Comm rcia Corporat on and Nova Sc tia Powe Inco por ted*, G ve nment of Nova cotia Lett r egardi g WCC Lo d et nt on Tariff H ar ng (NSU RB) Jul. 20, 2 12).

[10] Coo ica Fir t Stat ment, ¶¶ 21-31.

[11] **-397**, *n re a Applic tion by Pa i ic W s Comm rci l Corp ra ion and Nova Scoti Power Inc rpora ed*, 04 62 T0 44 Heari g T anscript Part A (Jul. 1 , 0 2), at pp 159-161: "THE C AI : ou agre w th e that, if inde d t e renewab e tar ets changed as a result of government action or if certain of the renewables that are currently being

confirmed what the GNS already knew – that Port Hawkesbury would not trigger an incremental RES obligation over the term of PWCC's proposed LRR pricing mechanism – and committed that any unanticipated incremental costs would not be imposed on PWCC or NSPI's other ratepayers. As I noted in my first witness statement, just as the DOE assessed and expected, the Port Hawkesbury mill's load has never triggered an additional RES obligation and has never resulted in incremental costs.[12]

8. With respect to Resolute's comments on the Biomass Plant and amendments to the Renewable Electricity Standard Regulations,[13] NSPI had negotiated commercial terms with PWCC whereby NSPI would continue to own the Biomass Plant and deliver steam to the mill. In light of questions raised by the Board during the LRR hearing, my July 20, 2012 letter stated that proposed regulatory amendments from 2011 "would result in the obligation to run the biomass plant…whether the mill is in operation or not. The policy intention has not changed." In other words, the RES regulatory amendments were not newly conceived to deliver a specific LRR to PWCC, they were a continuation of the GNS' regulatory interest in transitioning the Province away from excessive reliance on fossil fuels, in part through base load generation that meets environmental criteria. My letter provided clarity to the UARB that the GNS' pre-existing policy to designate the biomass plant as "must run" had not changed since 2011 and would be finalized.

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I affirm that the foregoing is true and correct.

Dated: March 4, 2020

Murray Coolican

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contemplated couldn't be built that there is a risk with respect to other ratepayers having to pick up the cost of renewables serving your load?")

[12] Coolican First Statement, ¶ 31.

[13] Claimant's Reply, ¶ 61.