IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE 1976 UNCITRAL ARBITRATION RULES

BETWEEN:

RESOLUTE FOREST PRODUCTS INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

PCA CASE No. 2016-13

Rejoinder Expert Report of Peter Steger

March 4, 2020

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SCHEDULES (SEE SEPARATE BRIEF)

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1.0 INTRODUCTION AND MANDATE

1. I, Peter Steger, of Cohen Hamilton Steger & Co. Inc. ("CHS"), previously issued an expert report in this matter dated April 17, 2019 ("Steger-1") on behalf of the Respondent Canada, wherein I:

    a) Provided my comments in respect of the expert report prepared for the Claimant Resolute by Dr. Seth Kaplan dated December 28, 2018 ("Kaplan-1");

    b) Provided my comments in respect of the expert report prepared for the Claimant Resolute by Dr. Jerry Hausman dated December 28, 2018 ("Hausman-2");

    c) Calculated the price erosion loss incurred by Resolute; and

    d) Prepared an EBITDA analysis in respect of the new owners of PHP (being PWCC), as between the GNS assistance versus PWCC's own initiatives.

2. In the current Rejoinder report herein ("Steger-2"), [1] I have been asked by Respondent Canada to:

    a) Provide my comments in respect of Dr. Kaplan's Reply report dated December 6, 2019 ("Kaplan-2");

    b) Provide my comments in respect of Dr. Hausman's Reply report dated December 6, 2019 ("Hausman-3");

    c) Provide my comments in respect of the Claimant's Reply Memorial dated December 6, 2019 ("Claimant's Reply Memorial") in respect of its comments on Steger-1; and

    d) Provide any necessary updates to my quantum analyses in Steger-1.

[1] The Steger-2 report herein uses the same defined terms, and is subject to the same scope of review (except for as supplemented herein) and statement of qualifications and independence, as Steger-1.

2.0 SUMMARY OF CONCLUSIONS

3. My comments in respect of Kaplan-2 are in Section 3.0; in respect of Hausman-3 are in Section 4.0; and in respect of Claimant's Reply Memorial are in Section 5.0.

4. In particular, in respect of Dr. Hausman, it is my view that his revised model and quantum conclusions in Hausman-3 remain untenable (as was the case for Hausman-2), in that:

    a) In Hausman-2, he concluded that the lower figure of his range of quantum was his "*final*" conclusion. Yet, in Hausman-3, he abandons this "*more conservative*" approach and now concludes that both the lower and higher figures of his range are applicable for no stated reason.

    b) Moreover, in Hasuman-3, he revises his model to incorporate Resolute's 2018 actual results (which were improved due to market increases in SC paper selling prices in 2018; and which were presumably further improved in 2019 due to even further increases in SC prices in 2019 which Dr. Hausman ignores). This he presents as new "*Option 1*". However, by simply reflecting the additional year of Resolute's 2018 actual results this now generates a negative lost profits conclusion in Dr. Hausman's model for 2018 and thereafter, effectively meaning that, as of 2018, Resolute is now better off with PHP's entry into the market compared to the but-for world of PHP's non-entry.

    c) To attempt to salvage his model and quantum conclusions, Hausman-3 also presents a new "*Option 2*", whereby he smooths 2018 results with 2017 and 2016 to project into the future. As a result, his negative lost profits of Option 1 are smoothed away and ratcheted artificially upwards into a position of positive lost profits in Option 2.

    d) Also new in Hausman-3 are a new set of quantum schedules that substitute the but-for prices he had derived from using the RISI October 2011 Five-Year Forecast (as utilized in new Options 1 and 2, as well as in Hausman-2) with but-for prices now derived from price elasticity calculations. However, as my sensitivity analysis shows, the loss quantum resulting from alternative price elasticity figures produce profoundly different results, which are best exemplified by simply comparing the untenable variability

resulting from his -1.5 price elasticity conclusion in Hausman-3 with his -2.1 price elasticity conclusion in Hausman-2.

e) Finally, Hausman-3 does not address, and therefore provides no rebuttal to, numerous other critique points made in Steger-1 regarding various of his inputs, assumptions, and conclusions.

f) Based on the foregoing, it is my view that the analysis, model and conclusions of Hausman-3 are flawed, lack coherent corroboration, are internally inconsistent and, thus, untenable as further described in Section 4.0 below.

5. I further note that nothing contained in Kaplan-2, Hausman-3, Claimant's Reply Memorial, or the supplemental productions of the parties reviewed causes me to revise my quantum analyses in Steger-1.

3.0 DETAILED COMMENTS IN RESPECT OF KAPLAN-2

3.1 Summary of Dr. Kaplan's Replies in Kaplan-2

6. Dr. Kaplan provides his replies to my critique points made in Steger-1 in his sections A, B and D. In addition to my specific comments below, I maintain my critique points in Steger-1.

3.2 My Comments regarding Specific Replies in Kaplan-2

7. Dr. Kaplan states that he has *"put forth a framework of analysis to directly assess how re-entry of a large, low-cost SCP mill affects the prices and shipments in that market."*[2] [underlining added]

a) My comments: in my view, despite this statement, Dr. Kaplan's "framework" does not in fact prescribe how to assess Resolute's damages in that it does not measure or quantify the effects on volume (shipments) of Resolute's [redacted] paper, their pricing, or how long the effects last.

[2] *See* Kaplan-2 ¶16.

b) Instead, damages quantum is left to Dr. Hausman who has calculated a price-erosion claim only (i.e. no lost volumes) over a period spanning 16 years (2013-2028), for which Dr. Kaplan does not indicate whether he endorses Dr. Hausman's implementation of Dr. Kaplan's "framework". In this regard, Dr. Kaplan states that his report *"is on liability, not damages, so [he] was not asked to quantify the impact of PHP's re-entry on Resolute's profitability."*[3]

8. Dr. Kaplan states that he *"compared the equilibrium price and quantity of SCP with and without the presence of PHP production at a point in time. [His] method was not to trace the price of SCP over time and try to segregate the effects of changes in all possible supply and demand drivers including the PHP re-entry."*[4] [underlining in original via italics]

a) My comments: Similar to my point regarding Dr. Kaplan's "framework" above, Resolute's damages quantum is left to Dr. Hausman, for which Dr. Kaplan does not indicate whether he endorses Dr. Hausman's method of analyzing SCP pricing "over time" culminating in a purported loss period spanning 16 years (2013-2028) (see also Section 4.0 regarding my comments in respect of Hausman-3).

b) In addition, Dr. Kaplan does not address whether or when a new "equilibrium" in SCP pricing and quantities occurred as between customers' real-world purchases of SC paper and manufacturers' real-world production in his but-for (or "with and without") world.

9. Dr. Kaplan states: *"The Steger Report also claims that the differing product mix of the two firms [Resolute and PHP] precludes any injury to Resolute from the [PHP] re-start."*[5] [underlining added]

a) My comments: I have not precluded the assessment of injury to Resolute. To the contrary, in the event that the Tribunal finds that legal causation exists, I have calculated the "price bucket" erosion (which was followed by the absorption of PHP's added volumes in the

[3] *See* Kaplan-2 ¶58.
[4] *See* Kaplan-2 ¶50.
[5] *See* Kaplan-2 ¶63.

market with little impact, as observed by industry commentators at the time in 2013),[6] as the injury to Resolute at C$ 9.419 million (excluding interest, if any).[7]

10. Dr. Kaplan also states that my "price bucket" erosion time period was "*self-selected*"[8] and appears to suggest that I did not consider the appropriate but-for world.

    a) My comments: As I state in Steger-1, the time period of my "price bucket" erosion in the but-for world was informed by industry commentators at the time in 2013 and by the 2019 Pöyry Report (both of which concluded that the price effects of PHP's re-entry were temporary), and was not "*self-selected*."[9]

11. Based on the foregoing, nothing in Kaplan-2 causes me to revise my calculations in Steger-1.

4.0 DETAILED COMMENTS IN RESPECT OF HAUSMAN-3

4.1 Summary of Dr. Hausman's Quantum Conclusion in Hausman-3

12. Hausman-3 provides Dr. Hausman's *"preferred revised damage estimates….of [US]$103 million to [US]$149 million,"*[10] representing a reduction from his previous opinion in Hausman-2 of US$163.7 million to US$201.9 million.[11] The revision is on account of Dr. Hausman's incorporation of Resolute's newly disclosed 2018 actual results for its Dolbeau and Kénogami mills (which, in turn, reflected significant market price increases for SC paper in 2018 (and 2019)). As I set out below in Sections 4.2 and 4.3, my view is that Dr. Hausman's revised quantum estimates are still untenable.

13. In addition, Hausman-3 provides his replies to a portion of my critique points made in Steger-1 (see Section 4.4 below); however, he does not address, and therefore provides no rebuttal to, numerous

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6 *See* also Rejoinder Report of AFRY/Pöyry, 4 March 2020 ("AFRY/Pöyry-2") Section 3.2 and Figure 3.1.
7 *See* Steger-1 ¶93 and Schedule 1.
8 *See* Kaplan-2 ¶51.
9 *See* Steger-1 Section 7.2.
10 *See* Hausman-3 ¶2.
11 *See* Hausman-2 ¶15 and ¶48. Note, the latter figure of US$201.9 million is provided above for comparability of approaches used by Dr. Hausman as between Hausman-2 and Hausman-3; but, Dr. Hausman did, in fact, conclude in Hausman-2 that: *"I [Hausman] use the more conservative [US]$163.7 million as my [Hausman's] final damages calculation."* [underlining added]

other critique points made in Steger-1 regarding various of his inputs, assumptions, and conclusions (see Section 4.5 below).

4.2 Summary of Dr. Hausman's Seven Calculations to Date

14. With Hausman-3, Dr. Hausman has now provided seven different calculations of Resolute's damages (as summarized below). Of note, Hausman-3 still maintains Hausman-2's methodology of calculating Resolute's purported losses as a price erosion claim only[12] spanning 16 years (2013-2028), as follows:

Table A Summary of Dr. Hausman's Seven Calculations of Resolute's Damages (US$ millions)

	Hausman Report Reference:	**Resolute's but-for variable costs based on:**	
		RISI forecast ("RISI Costs")	**2% inflation ("Inflation")[13]**
Hausman-2:			
"Original method"	¶15, ¶48, Table 17&18, Exh 2	$ 201.9	$ 163.7 "*final*" conclusion
Hausman-3: Revised for Resolute's 2018 data ("Original Method" / "Main Calculation"):			
"Option 1" - Future Loss based on 2018 [14]	¶2, ¶30(b), Table 1, Exh 2	72.5	10.6
"Option 2" - Future Loss based on 2016-18 average [15]	¶2, ¶30(c), (d) Table 2&5, Exh 2	148.7 "*preferred*" range	103.0 [16] "*preferred*" range

[12] To the extent that the but-for world ought to consider whether Resolute suffered lost sales volumes in its product grades of [redacted] due to PHP's re-entry with its higher-grade [redacted] and some [redacted], such has not been claimed by Resolute nor calculated by Dr. Hausman (or Dr. Kaplan). In fact, Dr. Hausman's model explicitly calculates no change in Resolute's sales volumes as between his but-for world versus Resolute's actuals in the real world (*see* Hausman-3 Exhibits 1 (Actuals) and 2 (But-for) "Sales tonnages" lines).

[13] In Hausman-2, Dr. Hausman referred to this scenario as "Resolute's expectation" (¶32). In Hausman-3, he now refers to this as "Inflation" (¶30).

[14] Hausman-3's Option 1 continues the same model as Hausman-2, but incorporates Resolute's actual 2018 results in his lost profits calculation in the Past Loss Period (now 2013-2018) and as the basis for projecting Resolute's lost profits in his Future Loss Period (now 2019-2028).

[15] Hausman-3's Option 2 also incorporates Resolute's actual 2018 results in his lost profits calculation in the Past Loss Period (now 2013-2018), but 2018 actuals are now averaged with 2017 and 2016 to form the basis for projecting Resolute's lost profits in his Future Loss Period (now 2019-2028); and, Dr. Hausman's but-for calculations for 2018-17-16 are similarly averaged in his Future Loss Period. Dr. Hausman concludes that his Option 2 figures represents his *"preferred revised damage estimates…of [US]$103 million to [US]$149 million."* (¶2).

[16] Hausman-3 Exhibit 2 calculates at US$ 103.967 million, but the report body conclusion (¶2) rounds down to US$ 103 million.

Table A (continued)

	Hausman Report Reference:	Resolute's but-for variable costs based on:	
		RISI forecast ("RISI Costs")	**[redacted] ("Inflation")[13]**
Hausman-3: New scenario using -1.5 Price Elasticity, and PHP volume capacity of 360,000MT:			
"Option 1"	Exh 4	232.9	169.4
"Option 2"	¶34, Table 6, Exh 4	216.2	169.8
Hausman-3: New scenario using -1.5 Price Elasticity, and PHP volume production of [redacted]:			
"Option 1"	¶32, Table 3, Exh 3	153.1	89.8
"Option 2"	¶32, Table 4, Exh 3	138.7	92.6

15. Of note in Table A, in the prior Hausman-2 report Dr. Hausman had concluded on the lower figure of US$ 163.7 million derived from his "Inflation" costs scenario as his "*final*" conclusion.[17] However, in Hausman-3, he abandons such selection of the lower figure for no stated reason, reverting instead now to the range of his lower-damages inflation costs scenario (US$103 million) and his higher-damages RISI costs scenario (US$149 million).

4.3 Flaws in Dr. Hausman's Calculation Models

16. In my view, Dr. Hausman's many scenarios are disparate and not corroborative of each other. In fact, Dr. Hausman's many models each have numerous flaws which render them untenable, as follows.

4.3.1 Dr. Hausman's Main Calculations (i.e. without Price Elasticities)

17. Dr. Hausman's main calculations underlying his "*final*" conclusion in Hausman-2 and his "*preferred*" conclusion in Hausman-3 are prepared without price elasticities; and, instead use the [redacted].

[17] *See* Hausman-2 ¶48.

18. The revision in Dr. Hausman's main conclusion in Hausman-3 is on account of *"[his] damage estimates [in Hausman-2] did not expect [actual market] prices to increase significantly [in 2018]."*[18] In response, Hausman-3 now presents two options:

    a) In Option 1, Dr. Hausman reflects the 2018 actual market price increases via Resolute's 2018 P&Ls (or "Scorecards") that show Resolute's increased actual profits which, in turn, are used in his model calculation of: but-for profits – actual profits = lost profits. Thus, the higher are Resolute's actual profits, the lower the lost profits claimed.

        i. However, by simply reflecting the additional year of Resolute's 2018 actual results in Dr. Hausman's original model in Hausman-2, this generates a negative lost profits conclusion for the Dolbeau and Kénogami mills in each of Dr. Hausman's model calculations in 2018 in Hausman-3.[19] A negative lost profit result effectively means that, as of 2018, Resolute is now better off with PHP's entry into the market compared to the but-for world of PHP's non-entry. In my view, this is clearly an untenable result in Dr. Hausman's (and Dr. Kaplan's) but-for (or "with and without"[20]) analysis.

        ii. Further, by continuing the negative lost profits calculated in 2018 to Dr. Hausman's future loss period (now 2019-2028), this reduces his loss quantum in Option 1 to as low as US$10.6 million (see Table A above). Dr. Hausman concedes that this *"does not make economic sense."*[21] In my view, this is because his model is untenable by virtue of being completely upended by one year (2018) of market price recovery (not to mention a second year of continued price recovery in 2019 which Dr. Hausman ignores).

    b) To attempt to salvage his original model, Hausman-3 presents his new Option 2, whereby he maintains the aforementioned negative lost profits figures from his 2018 calculation;

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18 *See* Hausman-3 ¶29.
19 *See* Hausman-3 Exhibit 2: second and sixth pages for Dolbeau's RISI and Inflation scenarios, respectively, and 10th and 14th pages for Kénogami's RISI and Inflation scenarios, respectively.
20 *See* Kaplan-2 ¶5 and ¶16 footnote 10.
21 *See* Hausman-3 ¶30(b).

but, for his future loss period (now 2019-2028) Dr. Hausman smooths Resolute's improved 2018 actual results with its less-robust actual results of 2017 and 2016 to project Resolute's revised expected actual profits into the future. He also similarly smooths his 2016-2018 but-for world calculations to project into the future.

i. In my view, this smoothing in Option 2 alters the original model's premise in Hausman-2.[22]

ii. Further, Option 2 is still untenable because: (i) it still means that Resolute is better off with PHP in the market in 2018 (see (a)(i) above); (ii) it creates a new, but artificial lost profits spread in Dr. Hausman's future loss period between his but-for world and Resolute's actual results; and (iii) it does not consider 2019's continued market price increases (see below).

19. In addition to the foregoing, Dr. Hausman states that the 2018 market price increase was "*unexpected*" and *"likely short-lived*",[23] an *"outlier",*[24] and *"anomalous."* [25] Yet, in contrast, SC prices continued to climb in 2019 (which ought to have been known to Dr. Hausman at the time of his December 6, 2019 Hausman-3 report), such that the average 2019 prices ([redacted]) were even higher than the average 2018 prices [redacted].[26] Therefore, I query whether and how Dr. Hausman would revise his damages assessment again with another year of higher actual market prices in 2019 (and presumably commensurately higher Resolute actual profits in the real world versus his but-for world profits, thereby lowering his damages quantum again).

20. The above-noted flaws in Dr. Hausman's models are particularly illustrated in the graphs below[27] which depict his Option 1 (with 2018 improved actual results not smoothed) versus his Option 2 (with 2018 improved actual results smoothed via 2016-18), whereby his negative lost profits of

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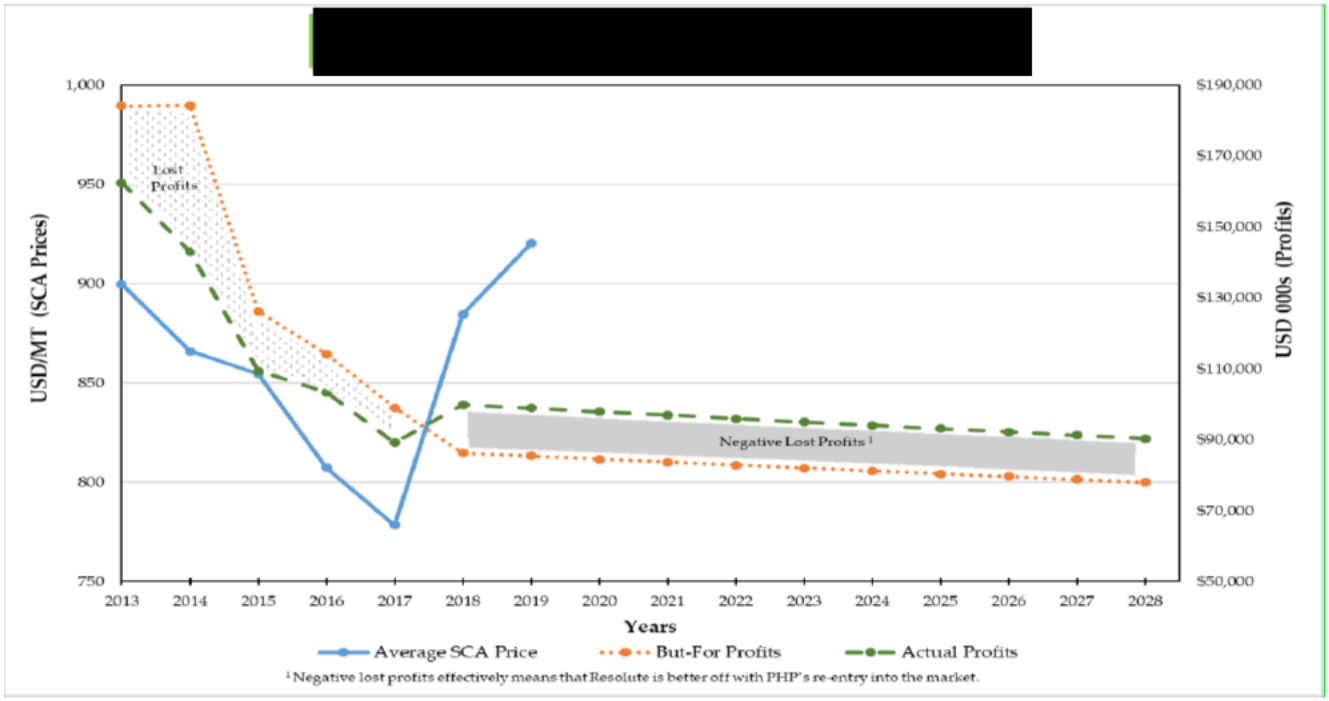
22 *See* Hausman-3 Exhibit 2: fifth and ninth pages for Dolbeau's RISI and Inflation scenarios, respectively, and 13th and 17th pages for Kénogami's RISI and Inflation scenarios, respectively.
23 *See* Hausman-3 ¶29.
24 *See* Hausman-3 ¶30(d).
25 *See* Hausman-3 pg 1.
26 *See* Schedule 100. *See* also **R-426**, "RISI Prices - UM Grades [2018-19]".
27 For brevity, the graphs are in respect of Dr. Hausman's "[redacted]" scenario only. A similar illustration would apply for his "RISI Costs" scenario.

Option 1 are ratcheted artificially upwards into a position of positive lost profits in Option 2, as follows:

Graph 1



See Schedule 101

Graph 2

See Schedule 102

21. Based on the foregoing, in my view, the Hausman-3 "main" calculations (without price elasticities) are flawed and untenable.

4.3.2 Dr. Hausman's Calculations with Price Elasticities

22. In a new set of quantum schedules, Hausman-3 now also provides alternative but-for selling prices for Resolute (and thus also but-for profits and lost profits), by substituting the but-for prices he had derived from using the RISI October 2011 Five-Year Forecast with but-for prices now derived from price elasticity calculations.

23. Oddly, Dr. Hausman juxtaposes these new price elasticity calculations firstly using a [redacted][28] scenario for PHP's production upon re-entry in 2013 against his aforementioned new Option 2 "*preferred*" opinion (using RISI October 2011 Five-Year Forecast prices) of [redacted] to [redacted] which was based on an assumed 360,000 MT of new supply. I consider this juxtaposition inconsistent but also odd because, elsewhere in his report, Dr. Hausman states that he *"do[es] not accept"* my analysis leading to a 300,000 MT production conclusion (rather than PHP's capacity of 360,000 MT).[29]

24. However, I note that by using [redacted] in his price elasticity calculations, the results of such provide for values of approximately US$ 90 million to US$ 140 - $150 million (see Table A above), which appear to lend support (erroneously, in my view) to Dr. Hausman's aforementioned "Option 2" "*preferred*" opinion (using RISI October 2011 Five-Year Forecast prices) of [redacted] to [redacted]. In contrast, and to be consistent, if Dr. Hausman were to use his preferred view of 360,000 MT capacity, such calculations generate values of approximately US$ 170 million to US$220 - $230 million (see Table A above), which are even higher than the abandoned figures in Hausman-2 of US$ 163.7 million to US$ 201.9 million, and thus cannot be viewed as corroborative of his newly adopted "*preferred*" Option 2 calculation. In my view, this is an untenable result and an improper hodge-podge of numbers to fit a result.

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[28] Hausman-3 ¶¶30-34 incorrectly refers to tons and metric tonnes (MT) interchangeably. However, based on my reading of these paragraphs, the logic flows if one applies MT instead of tons to Dr. Hausman's figures.

[29] *See* Hausman-3 ¶21 and also my Section 4.4 below.

25. In addition to the foregoing, I have prepared a sensitivity analysis of Dr. Hausman's aforementioned -1.5 price elasticity calculations against the alternative price elasticities that he references of:

    a) -2.1 that Dr. Hausman had concluded in Hausman-2;[30] and

    b) -1 (unitary) as well as -2 to -4,[31] which are both referenced to the US ITC Report, which concluded:

> *"Based on the available information, the aggregate demand for SC paper is likely to be elastic. In the prehearing phase, a range of -2 to -4 was suggested. ... For grades on the high and low ends of the spectrum, therefore, or among the grades within the scope, the elasticity is likely to be higher, and in the range suggested. However, the elasticity of demand with respect to price changes in mid-range SC paper is likely to be lower. Thus, the overall elasticity of demand may be lower than originally suggested and closer to unitary."*[32, 33] [underlining added]

26. As illustrated below in Table B [redacted] scenario) and Table C (360,000 MT scenario), the use of such alternative elasticities produce profoundly different results. In fact, by simply using Dr. Hausman's conclusion of -2.1 from Hausman-2 (instead of the current -1.5 in Hausman-3, for which the sole justification for its selection is that is *"in the middle of the range discussed in the ITC report and what I found in my first report"* and without reconciliation to the previous -2.1 in Hausman-2),[34] Dr. Hausman's loss calculation would be reduced to:

    a) as low as turning negative in his [redacted] scenario calculations (Table B); and

    b) as low as approximately one-fifth of his 360,000 MT scenario calculations (Table C), as follows:

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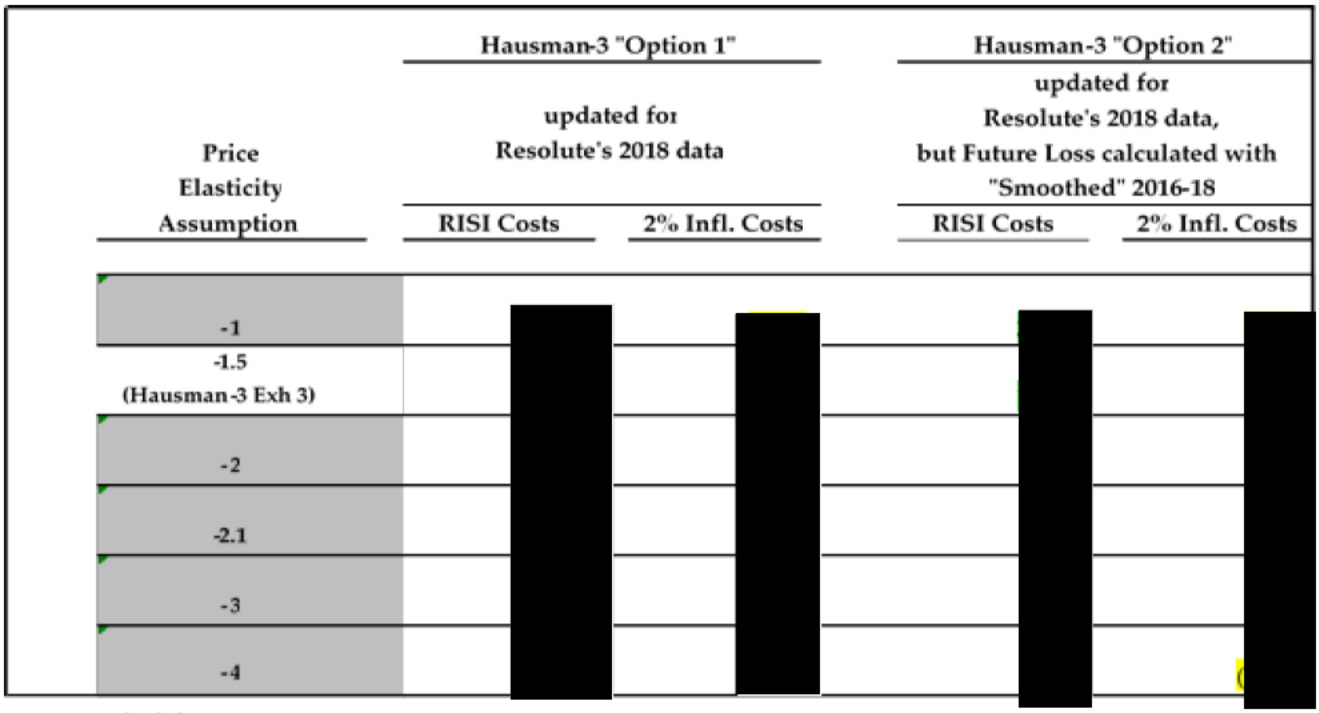
30 *See* Hausman-2 ¶25.
31 *See* Hausman-3 ¶31 and Hausman-2 ¶25.
32 *See* **C-237**, USITC Supercalendered Paper from Canada Dec. 2015, pg. II-25.
33 *See* also AFRY/Pöyry-2 Section 2.2.
34 *See* Hausman-3 ¶31.

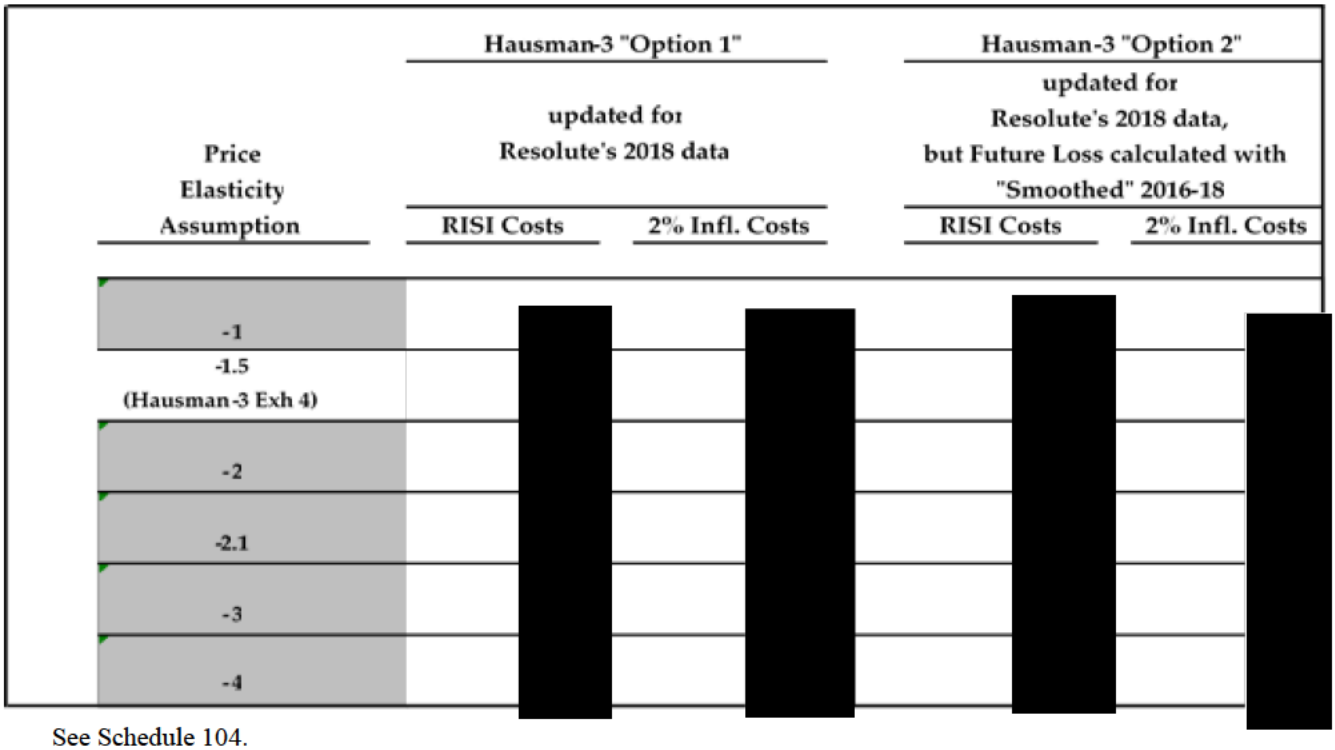
Table B Hausman-3 Price Elasticity Sensitivity - [redacted] (US$ millions)



Price Elasticity Assumption	Hausman-3 "Option 1" updated for Resolute's 2018 data		Hausman-3 "Option 2" updated for Resolute's 2018 data, but Future Loss calculated with "Smoothed" 2016-18	
	RISI Costs	2% Infl. Costs	RISI Costs	2% Infl. Costs
-1	[redacted]	[redacted]	[redacted]	[redacted]
-1.5 (Hausman-3 Exh 3)				
-2				
-2.1				
-3				
-4				

See Schedule 103.

Table C Hausman-3 Price Elasticity Sensitivity - 360,000 MT (US$ millions)



Price Elasticity Assumption	Hausman-3 "Option 1" updated for Resolute's 2018 data		Hausman-3 "Option 2" updated for Resolute's 2018 data, but Future Loss calculated with "Smoothed" 2016-18	
	RISI Costs	2% Infl. Costs	RISI Costs	2% Infl. Costs
-1	[redacted]	[redacted]	[redacted]	[redacted]
-1.5 (Hausman-3 Exh 4)				
-2				
-2.1				
-3				
-4				

See Schedule 104.

27. Based on the foregoing, in my view, the Hausman-3 "secondary" calculations (with price elasticities) lack coherent corroboration, are internally inconsistent and, thus, untenable.

4.4 Summary of Dr. Hausman's Critiques of Steger-1

4.4.1 The But-For World

28. Dr. Hausman considers that I did not provide *"damages estimates based on the but for world of PHP not re-opening,"* and that I did not *"attempt to answer the question of what SC prices would have been if PHP did not re-open."*[35]

    a) My comments: in my view, my analysis of the "price bucket" erosion that occurred in in the first half of 2013 after PHP re-opened, followed by the absorption thereafter of PHP's added volumes in the market with little impact (as observed by industry commentators at the time in 2013), is precisely an assessment of the but-for world and answers the "*question of what SC prices would have been if PHP did not re-open."*[36, 37]

4.4.2 SC Sales Volumes

29. Dr. Hausman states: *"A capacity increase of approximately 25 percent for the SCP market will typically lead to a significant price decrease depending on the price elasticity of demand, holding other economic factors constant."*[38] [underlining added]

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35 *See* Hausman-3 ¶2 and ¶19.

36 *See* Steger-1 Section 7.2.

37 As noted in Steger-1 Schedule 1, I calculated my "but-for" average selling price for SCA/SCB as the average of: Q4 2012 (before PHP's re-entry) and Q3 2013 (being six months later, after PHP's re-entry, after which the market had absorbed PHP's added volumes without further effect according to industry commentators at the time as well as AFRY/Poyry-1). I compared this "but-for" average selling price to the lower actual average selling price for Q2 and Q3 2012 (the "price bucket") to determine the estimated price erosion for the six months in question. However, I note that Resolute did not produce information such as reworked contracts indicating that it had suffered specific price erosion on its sales due to PHP's re-entry. As a result, incorporating this factor as well as other potential market effects (as noted in Steger-1, AFRY/Poyry-1 and AFRY/Poyry-2) might serve to reduce the "price bucket" loss quantum calculated in Steger-1.

38 *See* Hausman-3 ¶4 citing Hausman-2 ¶25.

a) My comments: whereas PHP's re-entry had the capacity to add 360,000MT into the SC paper market (primarily at higher grades of SCA+/++), according to my calculations, PHP only added actual production of closer to [redacted][39] Accordingly, the additional production represented an increase of [redacted] in 2013,[40] not [redacted]

b) Further, the "*typicality*" and "*significance*" of the price decrease is shown in the actual real world response "price bucket" observed in 2013, followed by little further impact according to industry observers.

30. In response to my estimate of PHP's production at [redacted], Dr. Hausman cites PHP's total sales figures of [redacted].[41]

a) My comments: These total sales included exports outside North America. Accordingly, the more appropriate figures are for (i) Exports to [redacted] plus (ii) Canadian sales derived by deduction (i.e. total sales minus total exports) of [redacted]; for (iii) total North American sales of [redacted].[42]

b) These figures were further tempered by my calculations of estimated production using available average selling price data from Kénogami that indicated PHP sales could be in the [redacted] range, thus leading to my overall estimate of [redacted].[43, 44]

31. Finally, notwithstanding Dr. Hausman's statement that he *"do[es] not accept"* my above-noted calculations of [redacted][45] he nonetheless uses the [redacted] figure in his price elasticities calculations, purportedly as corroboration for his newly adopted "*preferred*" Option 2 conclusion (see Section 4.3.2 above). In my view, this is contradictory and inconsistent.

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39 *See* Steger-1 Section 8.3.1.
40 *See* Hausman-3 Exhibit 3 second last page.
41 *See* Hausman-3 ¶13 footnote 30.
42 *See* Steger-1 ¶115 (b).
43 *See* Steger-1 ¶115 (c) and ¶116.
44 *See* also AFRY/Pöyry-2 Section 3.3.
45 *See* Hausman-3 ¶21.

4.4.3 SC Prices

32. Dr. Hausman states: *"After PHP's re-opening, prices could have increased for SCP paper (although they did not actually increase), but Resolute would still be injured because, according to economic analysis, prices would have been even higher if PHP had not re-opened."*[46] [underlining added]

a) My comments: in my view, this notion can be boiled down to the purported premise that the but-for price equals whatever the actual price is "plus X". The question is: what is "X"?; and, how long does it last?

b) According to Dr. Hausman's main calculations (see Table A above), his "X" is derived from the RISI October 2011 Five-Year Forecast prices ever-increasingly exceeding actual market prices for 2012-2016 (which he attributes solely to PHP's re-entry in 2013), and the period that the "plus X" lasts spans 16 years from 2013 to 2028.[47]

c) As I had noted in Steger-1, Dr. Hausman's price differentials or erosion so calculated for 2013 - 2017 were [redacted] and amounted to [redacted] for Kénogami, [redacted] for Dolbeau, and [redacted] for Laurentide.[48] In contrast to Dr. Hausman's price differentials, [redacted][49, 50] decline over five years if PHP were to re-open, which, when I substituted that figure into Dr. Hausman's model, it generated the irrational result of changing Hausman-2's loss quantum from US$163.7 million to negative US$109.3 million – clearly an untenable result.[51] In Hausman-3, however, Dr. Hausman does not address my critique point or my recalculations of his model at all. Instead, Hausman-3 states that reflecting the Pöyry amount of [redacted] (rounded) generates *"49%-61% of the estimated damages in [Hausman-2] and approximately similar damages to the lower*

46 *See* Hausman-3 ¶9; and elsewhere i.e. ¶13.
47 While Dr. Hausman truncates his loss calculation at 2028, the underlying methodology would calculate into perpetuity by virtue of his loss quantum spread simply decreasing by [redacted].
48 *See* Steger-1 ¶32, ¶41.
49 As noted in Steger-1, the [redacted] (*see* Steger-1 ¶42 footnote 55).
50 *See* also AFRY/Pöyry-2 Section 4.
51 *See* Steger-1 ¶44 and Schedule 31.

bound of [Hausman-3]."[52] But, Dr. Hausman does not show his calculations in support of this statement, nor does he reconcile such to my critique point and recalculations in Steger-1.

33. Dr. Hausman criticizes my use of the "price bucket" erosion that occurred in 2013 after PHP re-opened, followed by the absorption of PHP's added volumes in the market with little impact (as observed by industry commentators at the time in 2013) as the measure of Resolute's damages. Specifically, Dr. Hausman states: *"Mr. Steger cuts the period off in June 2013 because of the Pöyry Report (Steger Report, p. 89). However, prices decreased significantly in 2014 and continued decreasing through September 2017…"*[53]

    a) My comments: Dr. Hausman fails to acknowledge in this point that prices subsequently increased significantly from [redacted][54, 55]

34. Dr. Hausman is also inconsistent in his description of market pricing drivers whereby on one hand he states: *"Absent the PHP restart, higher cost capacity than PHP would have been utilized which would have led to higher SC prices;"*[56] but he later acknowledges: *"Pöyry claims that prices are determined by industry supply and demand, rather than the changes in a firm's cost of raw materials. I agree."*[57, 58]

4.4.4 Discount Rate for Dr. Hausman's Future Loss Calculations

35. Dr. Hausman states that he disagrees with my view that the discount rate he uses to reflect the risk in the future cash flows he calculated for 2018-2028 in Hausman-2 (and continued in Hausman-3 as 2019-2028) is too low. Dr. Hausman references two conditions: the unlikely scenario of new entrants

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52 *See* Hausman-3 ¶11.

53 *See* Hausman-3 ¶13 footnote 32.

54 Hausman-3 ¶28 only displays SC market pricing to September 2018 (which showed significant price increases up to that point), but does not display that such increased pricing also continued in 2019 (which ought to have been known to Dr. Hausman at the time of Hausman-3 dated December 6, 2019). *See* also Steger-2 Schedule 100.

55 Hausman-3 ¶31 states *"even though actual prices increased in 2018, without the re-opening of PHP, prices would have been even higher."*

56 *See* Hausman-3 ¶13.

57 *See* Hausman-3 ¶17.

58 *See* also Steger-1 ¶55 footnote 62 regarding Resolute's own similar commentary in this regard.

into the SC paper market and the purported lack of planned new investment in Dolbeau and Kénogami[59] to conclude: *"the overall operation of the company [Resolute parent company] likely has greater risk than the operation of the Dolbeau and Kénogami mills."*[60]

a) My comments: In my view, one discounts future cash flows for the time value of money and the relative risk of such cash flows not occurring vis-à-vis alternative investments.

b) It is generally accepted practice in damages quantification and business valuation that a larger, more-diversified entity is generally less risky (not more risky as Dr. Hausman suggests) than a division or subset of the whole entity as represented by the Dolbeau and Kénogami mills.[61] As a case in point, Resolute has recently closed its other paper mills at Laurentide in 2014 and Catawba in 2019 and is no longer generating cash flows from these operations.[62]

4.4.5 Conclusion

36. Based on the foregoing, nothing in Hausman-3 causes me to revise my calculations in Steger-1.

4.5 Additional Critiques in Steger-1 that are not Addressed nor Rebutted in Hausman-3

37. I note that Hausman-3 does not address, and therefore provides no rebuttal to, numerous other critique points made in Steger-1 regarding Dr. Hausman's inputs, assumptions, and conclusions. These are summarized in the table below:

[59] On January 15, 2020 (approximately one month after Hausman-3), Resolute announced a C$11 million investment to modernize the Kénogami mill to produce high-grade SCA+ paper, allowing the mill to access more favourable markets. *See* **R-427**, Resolute News Release, "Resolute invests $38 million in its Kénogami mill in Québec" (Jan. 15, 2020).

[60] *See* Hausman-3 ¶27.

[61] *See* **R-428**, Cost of Capital in Litigation: Applications and Examples (particularly Exhibit 11.2 pg. 214) by Shannon Pratt and Roger Grawbowski (Wiley, 2011), particularly Exhibit 11.2 pg. 214.

[62] *See* Steger-1 ¶48.

Steger-1 Reference	Critique Point that I made of Hausman-2 that is not addressed in Hausman-3
Sec. 6.5.1, ¶34 Sec. 6.5.2, ¶¶35-37 Sec. 6.5.3, ¶¶38-40	The October 2011 RISI Five-Year Forecast was not borne out; [redacted] [redacted]
Sec. 6.5.4, ¶¶41-46	Hausman-2 calculation model is flawed, particularly in respect of its treatment of Resolute's variable costs and the negative lost profits results with alternative selling price estimates.
Sec. 6.5.5, ¶¶47-49	No new sales or price forecasts are considered in Dr. Hausman's future loss period of 2018-2028 (now 2019-2018)
Sec. 6.6.1, ¶¶54-55	Dr. Hausman assumes that Resolute's variable costs would be higher in his but-for world despite using identical volumes in his but-for and real worlds.
Sec. 6.8.1, ¶¶70-72	Dr. Hausman references no Witness Statement, production, Resolute representative or meeting notes in respect of "Resolute's expectation" of a [redacted]
Sec. 6.9, ¶80	Dr. Hausman's use of an erroneous "end-of-year" convention to discount his future cash flows to a current date.

5.0 DETAILED COMMENTS IN RESPECT OF RESOLUTE'S COUNTER-MEMORIAL

38. Claimant's Reply Memorial (Section III.D.) includes several comments addressing my analysis in Steger-1 regarding:

    a) PWCC's Electricity Initiatives (Steger-1 Section 8.1); and

    b) PWCC's EBITDA Initiatives (Steger-1 Section 8.2), [63] each of which I address below.

5.1 PWCC's Electricity Initiatives

39. Claimant's Reply Memorial states that *"Mr. Steger and Canada fail to account for the* [redacted] *"* [64]

[63] Claimant's Reply Memorial does not directly comment on, and therefore provides no rebuttal to, Steger-1 Section 8.3 - PHP's Financial Results.

[64] *See* Claimant's Reply Memorial ¶162 [quotations in original].

a) My comments: My analysis in Steger-1 juxtaposes the evolution of the electricity savings contemplated in the Stern Model (which was the focus of my analysis) vis-à-vis [redacted] as between (i) before, and (ii) after the proposed partnership arrangement with NSPI (the "PWCC/NSPI Proposal") failed because of the Canada Revenue Agency's rejection of their advanced tax ruling ("ATR"). The projected savings with the PWCC/NSPI Proposal was [redacted],[65] whereas without was [redacted].[66]

b) The Claimant's Reply Memorial above-noted reference to savings of C$25 million over three years 2013-15 (or [redacted]) relates to a different comparison of: (i) a 2011 NSUARB decision as to rates for Bowater Mersey and Port Hawkesbury for 2013-15 (the latter of which was deferred in implementation if and until the PH mill emerged from *CCAA*); versus (ii) an estimate of Stern/PWCC's actual rates paid in 2013-15.

c) The two calculations in (a) and (b) above are different. I note that Claimant's Reply Memorial calculation summarized in (b) above is incongruent in that it compares fixed hourly electricity rates contained in the 2011 NSUARB decision[67] versus the variable or "time-of-day" rates ultimately employed by Stern/PWCC,[68] for which savings generated by Stern/PWCC's more efficient use of lower off-peak rates would be attributable to Stern/PWCC initiatives rather than an "electricity deal" from GNS.

40. Claimant's Reply Memorial states that *"Canada's analysis and Mr. Steger's report also ignore the added benefit PHP received…[related to] the onsite Biomass Plant…valued at* [redacted]*."*[69]

a) My comments: Steger-1 did not make reference to this purported benefit from the Biomass Plant because it was not identified in the Stern Model (which again was the

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65 *See* Steger-1 ¶96.
66 *See* Steger-1 ¶100.
67 *See* Claimant's Reply Memorial ¶164, citing **C-138**, *In re an Application by NewPage-Port Hawkesbury and Bowater Mersey Paper Company*, Decision 2011 NSUARB 184 (Nov. 29, 2011), ¶¶ 281-288. *See* also Rejoinder Witness Statement of Murray Coolican (March 4, 2020), ¶¶ 4, 6.
68 *See* **C-222** which displays the variable rates enjoyed by PWCC in 2013.
69 *See* Claimant's Reply Memorial ¶166.

focus of my analysis). I further note that Kaplan-1 and Kaplan-2 did not address the purported quantum of such a benefit either.[70]

5.2 PWCC's EBITDA Initiatives

41. Claimant's Reply Memorial states that my analysis in Steger-1 "*demonstrates that PHP would not have survived but for the Nova Scotia Measures… [and]*

[a] "*But for the* [redacted] *in benefits Mr. Steger attributed to GNS, PHP's* [redacted] *between 2013-15 …; [and]*

[b] total net income [/] loss … [would have been] nearly [negative] [redacted] *during 2013-15.*"[71]
[underlining added to differentiate the accounting measures]

a) My comments: Claimant's Reply Memorial overstates the impact of the GNS-attributed savings on PHP's [redacted],[72] and not immediately nor each year as presented in the Claimant's Reply Memorial.

b) Accordingly, by correcting for Claimant's misinterpretation, PHP's cumulative 2013-15 [redacted], not negative [redacted] and [redacted] (see Schedule 105).

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70 *See* also Canada's Rejoinder Memorial ¶147 footnote 289.

71 *See* Claimant's Reply Memorial ¶155 citing Steger-1 ¶¶106, 109. Note, the Claimant's Reply Memorial figure for PHP's but-for [redacted] appears to be a typo and/or rounding error, and should read [redacted] (*see* Schedule 105).

72 *See* Steger-1 ¶108 and Schedules 28B and 28C. Note, later in Steger-1 at ¶109 and ¶110, I inadvertently worded the projected savings as "annual", without the requisite qualifier that such are annually after three years. Thus, my wording at Steger-1 ¶109 and ¶110 should be corrected for this.

c) Further, the Claimant's aforementioned use of "net income/loss" as a point of reference is inappropriate in that this accounting measure is depressed by significant levels of non-cash amortization of approximately [redacted] per year for three years, and thus results in the Claimant's "more negative" results.[73] Instead, I reiterate that the use of the [redacted] is more appropriate.

42. Claimant's Reply Memorial also argues that my aforementioned estimate of [redacted] of GNS-attributed savings should be increased by an additional [redacted] on account of: (i) [redacted][75]

a) <u>My comments</u>: The proper classification of these three items is a matter of the respective factual matrix for each.

i. In respect of (i) property taxes, Canada's position is that the reduced property tax rates were pursuant to relevant governing tax rules and/or is outside of the Tribunal's jurisdiction.[76]

ii. In respect of (ii) new power rate, Canada's position is that the lower electricity rates were on account of PWCC's negotiations with third-party NSPI and PWCC's own improved time-of-day electricity rates and efficient usage.[77]

iii. In respect of (iii) [redacted][78] I also note

[73] *See* Steger-1 Schedule 25.
[74] The [redacted] (save for rounding) discussed in Section 5.1 above.
[75] *See* Claimant's Reply Memorial ¶¶ 158-159.
[76] *See* Canada's Rejoinder Memorial ¶ 183.
[77] *See* Canada's Rejoinder Memorial ¶ 147, and also Rejoinder Witness Statement of Murray Coolican (March 4, 2020), ¶¶ 4, 6.
[78] *See* Canada's Rejoinder Memorial ¶ 68, and also Rejoinder Witness Statement of Julie Towers (March 4, 2020), ¶¶ 2-5.

that the Stern Model[79] does not appear to account for the Claimant's above-noted unreferenced figure of [redacted]

Yours truly,

COHEN HAMILTON STEGER & CO. INC.

Per: Peter Steger CPA, CA, CBV, CFE, CFF
Principal

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Encl

[79] *See* **R-266**, Stern Model, (CAN000082).