



**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11
OF THE NORTH AMERICA FREE TRADE AGREEMENT AND
THE UNCITRAL ARBITRATION RULES**

Between

Mesa Power Group, LLC
(the “Investor”)

And

Government of Canada
(“Canada”)

**EXPERT WITNESS REPORT OF
Richard Taylor and Robert Low
REPLY VALUATION REPORT**

Dated: April 29, 2014



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April 29, 2014

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Attention: Mr. Barry Appleton, Managing Partner

Dear Sirs:

Subject: Mesa Power Group, LLC v. Government of Canada

Deloitte LLP (“Deloitte”) has been retained, as professional advisors, by Appleton & Associates International Lawyers (“Counsel”) in connection with Counsel’s representation of Mesa Power Group, LLC (the “Company” or “Mesa Power”) in respect of the above-noted matter.

We have been asked by Counsel to prepare a reply valuation report which is in part in response to the expert report of Christopher Goncalves of Berkeley Research Group (“BRG”) dated February 28, 2014, including the technical annexes, the attachments and the exhibit list (the “BRG Report”) and Canada’s Counter-Memorial and Reply on Jurisdiction dated February 28, 2014 on issues related to damages (“Canada’s Counter-Memorial”). The BRG Report provided comments and analysis in respect of our initial expert report dated November 18, 2013.

Our report has been prepared in conformity with the Practice Standards of The Canadian Institute of Chartered Business Valuators (the “CICBV”) for an Expert Report¹. No part of Deloitte’s fee is contingent upon the conclusions reached in our report or any action or event contemplated in, or resulting from the use of, the report. The principal experts and other staff involved in the preparation of the report acted independently and objectively in completing this engagement.

Purpose

The purpose of this report is to provide a reply to the comments included in the BRG Report pursuant to the above-noted matter and Canada’s Counter Memorial on the issues of damages.

Currency of report

Unless otherwise noted, all monetary amounts shown in this report and attached schedules are expressed in Canadian dollars (“C\$”). Translation of monetary amounts expressed in other

¹ As defined in Standard 310 of the Practice Standards of the CICBV.

currencies, if any, has been made at the rate of exchange prevailing on the each of the Valuation Dates.

Restrictions

In accordance with our engagement agreement, this report is not intended for general circulation or publication, nor is it to be reproduced or used for any purpose other than that outlined above without the prior written consent of Deloitte in each specific instance. We do not assume any responsibility or liability for losses incurred by any party as a result of the circulation, publication, reproduction, or use of this report contrary to the provisions in this paragraph. Without limiting the generality of the foregoing, our report, or any references thereto or summaries thereof or any other oral or written opinions or advice of Deloitte including the contents of any oral or written presentations by us in connection with this engagement and references to us or any material provided by us, shall not be used, published or distributed in whole or in part in any way or to any other person without our prior written consent.

We reserve the right to review all calculations included or referred to in our analysis and, if we consider it necessary, to revise our conclusion in light of any information which becomes known to us after the date of this report.

We offer no guarantee or warranty that the conclusion as determined by us will be accepted by any third parties, such as tax authorities, tribunals, securities regulators or auditors. Accordingly, we can accept no responsibility for any adverse consequences that may arise in the event a different conclusion is ultimately agreed with any third parties.

We believe that our analyses must be considered as a whole and that selecting portions of the analyses or the factors considered by us, without considering all factors and analyses together could create a misleading view of the process underlying the analysis. The preparation of an expert report is a complex process and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on any particular factor or analysis.

Summary of findings

Based on the scope of our review (Appendix A), our research, analysis, experience, restrictions and assumptions (Appendix B and noted elsewhere in the attached report), in our opinion, the Economic Losses as a result of the alleged actions of Canada are set out in the table below as at the Valuation Dates², adjusted for certain items discussed in the BRG Report and discussed in further detail in the attached report. If requested to select a single point estimate of the Economic Losses, we would suggest the midpoint of the range of \$629.1 million to \$686.2 million (NAFTA Articles 1102/1103/1104/1105), or \$657.7 million, set out below. Consistent with the Initial Report, the Economic Losses related to Article 1106 while separately determined as \$106.2 million to \$115.3 million, with a midpoint of \$110.8 million, are included in the Economic Losses for Articles 1102, 1103, 1104 and 1105, and are not additive thereto. The Economic Losses presented are further adjusted to include compensation related to pre-judgment

² As noted above, the alleged breaches occurred on different dates, which have been revised and detailed in the attached report.

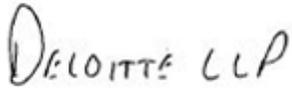
interest (see paragraph 7.19) The Economic Damages do not consider any legal or other fees incurred by the Plaintiffs in this matter.

CAD 000s	Low	High
NAFTA 1102/1103/1104/1105		
Base Case	301,000	343,000
Economic Development Adder	21,000	23,000
Capacity Expansion	34,000	38,000
Economic Development Adder applicable to Capacity Expansion	2,000	2,000
Total past costs incurred	156,833	156,833
- General Electric deposit forfeited		
- Other	8,100	8,100
NAFTA 1106 (below)	106,200	115,300
Total NAFTA 1102/1103/1104/1105	629,133	686,233
Pre-judgment interest	75,000	82,000
Total economic damages including pre-judgment interest	704,133	768,233
NAFTA 1106		
Base Case	96,000	104,000
Economic Development Adder	1,000	1,000
Capacity Expansion	9,000	10,000
Economic Development Adder applicable to Capacity Expansion	200	300
Total NAFTA 1106	106,200	115,300
Pre-judgment interest	13,000	14,000
Total economic damages including pre-judgment interest	119,200	129,300

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Should you have any questions concerning our analysis or report, please contact Richard Taylor at 416-775-7499 or Robert Low at 416-775-7425.

Yours truly,

A handwritten signature in black ink that reads "DELOITTE LLP". The letters are written in a cursive, slightly slanted style.

Richard Taylor
Partner
Financial Advisory

Robert Low
Executive Advisor
Financial Advisory

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1 Summary

Purpose of report

- 1.1 The purpose of this report is to provide a reply to the comments included in the expert report of Christopher Goncalves of Berkeley Research Group (“BRG”) dated February 28, 2014, including the technical annexes, the attachments and the exhibit list (the “BRG Report”) and Canada’s Counter-Memorial and Reply on Jurisdiction dated February 28, 2014 on issues related to damages (“Canada’s Counter-Memorial”). The BRG Report provided comments and analysis in respect of our initial expert report dated November 18, 2013 (the “Deloitte Initial Report”).
- 1.2 For the purposes of this report, we have used the defined terms consistent with the Deloitte Initial Report.

Summary of conclusions

- 1.3 Based on the scope of our review (Appendix A), our research, analysis, experience, restrictions and assumptions (Appendix B and noted elsewhere in the attached report), in our opinion the Economic Losses as a result of the alleged actions of Canada are set out in the table below as at the Valuation Dates³, adjusted for certain items discussed in the BRG Report and discussed in further detail herein. If requested to select a single point estimate of the Economic Losses, we would suggest the midpoint of the range of \$629.1 million to \$686.2 million (NAFTA Articles 1102/1103/1104/1105), or \$657.7 million, set out below. Consistent with the Deloitte Initial Report, the Economic Losses related to Article 1106, while separately determined as \$106.2 million to \$115.3 million, with a midpoint of \$110.8 million, are included in the Economic Losses for Articles 1102, 1103, 1104 and 1105, and are not additive thereto. In addition, we have estimated the amount of pre-judgment interest in the order of \$75.0 million to \$82.0 million (see paragraph 7.19). The Economic Losses presented herein exclude any legal or other fees incurred by the Plaintiffs in this matter.

³ The alleged breaches occurred on different dates, which have been revised and detailed herein.

CAD 000s	Low	High
NAFTA 1102/1103/1104/1105		
Base Case	301,000	343,000
Economic Development Adder	21,000	23,000
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Capacity Expansion	9,000	10,000
Economic Development Adder applicable to Capacity Expansion	200	300
Total NAFTA 1106	106,200	115,300
Pre-judgment interest	13,000	14,000
Total economic damages including pre-judgment interest	119,200	129,300

2 The Amended GEIA and causation

NAFTA Articles and the Amended GEIA

- 2.1 The BRG Report⁴ states that the analysis in the Deloitte Initial Report inaccurately addresses the causation of the Economic Losses, if any, related to the alleged actions of Canada. The BRG Report is not correct and the following seeks to clarify the causation of the Economic Losses.
- 2.2 As set out in Section 1 of the Deloitte Initial Report, we have determined the Economic Losses due to Canada's alleged breaches of Articles 1102, 1103, 1104, 1105 and 1106⁵. As a result of such breaches, Mesa Power incurred the Economic Losses (i.e. the harm that was caused) as determined in the Deloitte Initial Report and further discussed herein.
- 2.3 The following summarizes the alleged breaches of the NAFTA, also included in further detail in the Deloitte Initial Report at paragraphs 1.14 to 1.27⁶ and outlined in The Memorial of the Investor dated November 20, 2013 (the "Memorial"). The dates of breach related to each Article are discussed in Section 7.
- a) Article 1103 – Most-Favoured-Nation Treatment – Article 1103 states that each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. As detailed below in paragraph 2.4, the Amended GEIA has been determined to be similar to the FIT Contract, for the purpose of the NAFTA and therefore, our analysis. As a result, Mesa Power would be entitled to the same treatment as the Korean Consortium pursuant to the Amended GEIA, which provided priority access to supply renewable energy to the Province of Ontario's energy grid, in addition to the facilitation of the necessary approvals required to provide the renewable energy. We have determined the date of breach for Article 1103 to be on September 17, 2010, the day that Mesa Power became aware of the public reservation of transmission access for the Korean Consortium.⁷

⁴ Source: The BRG Report, paragraphs 26 to 28a.

⁵ The Deloitte Initial Report does not specifically identify Article 1104; however, the alleged breach of Article 1104 is captured in claiming the better treatment of Articles 1102 and 1103 (i.e. the terms of the Amended GEIA). The claim with respect to Article 1104 is included in this reply report for the purpose of clarification and was included in the Memorial.

⁶ Article 1106 is addressed separately in Section 4 of this report.

⁷ Source: As summarized: Investor Schedule of Exhibits **C-0640** <http://www.powerauthority.on.ca/about-us/directives-opa-minister-energy-and-infrastructure>

- b) Article 1102 – National Treatment - Article 1102 states that each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances (see paragraph 2.4), to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments. As a result, Mesa Power would be entitled to the same treatment as afforded to a Canadian company which in this case, we have taken to be the subsidiary Canadian operating entities of the Korean Consortium pursuant to the Amended GEIA in addition to Boulevard Associates Canada, Inc. (“Boulevard”), the Canadian subsidiary of NextEra Energy. As a result, under Article 1102, Mesa Power would be entitled to the same treatment as the Canadian subsidiaries of the Korean Consortium pursuant to the Amended GEIA, which provided priority access to supply renewable energy to the Province of Ontario’s energy grid, in addition to the facilitation of the necessary approvals required to provide the renewable energy (consistent with the description included under Article 1103 above). Therefore, the date of breach for Article 1102 is consistent with 1103. Boulevard was also able to bring four of its West of London region projects to the Bruce Region due to the rule changes on June 3, 2011. Further, based on our review of the area ranking summary as part of the ‘Dry Run’ or Pre-ECT process (spring of 2011) described further below⁸, it appears that Boulevard was provided preferential treatment which we understand represents a breach of Article 1102 of the NAFTA. However, as noted above, the earliest possible breach of Article 1102 is September 17, 2010. We understand that there is evidence of another agreement between the Government and the Korean Consortium that may impact the date of the breach of Article 1102. We understand that Counsel has requested but not received this document. We reserve the right to amend our analysis if the requested document is received.
- c) Article 1104 - Standard of Treatment – Article 1104 states that each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103. Given that the Amended GEIA provides for priority access and facilitation of the necessary approvals required to provide the renewable energy, the better treatment is provided by both Articles 1102 or 1103. This conclusion is based on our understanding that the treatment provided under the Amended GEIA qualifies under both Articles 1102 and 1103. The date of breach for Article 1104 is consistent with 1102 and 1103 which is September 17, 2010, the day that Mesa Power became aware of the public reservation of transmission access for the Korean Consortium.
- d) Article 1105 - Minimum Standard of Treatment - states that each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection

⁸ Source: Investor Schedule of Exh bits **C-0447** (039508) E-mail from Shawn Cronkwright (OPA) to Colin Andersen, (cc: Bob Chow, JoAnne Butler and Michael Lyle) (OPA), dated April 14, 2011, re: Bruce Scenario Analysis (including attachments).

and security. On December 21, 2010, the FIT Regional Area Rankings were publically available and Mesa Power became aware that it had been treated unfairly given that Mesa Power expected a higher ranking based on its FIT Applications. As detailed in paragraph 1.25 of the Deloitte Initial Report, we understand that Article 1105 encompasses the above noted claims, in addition to the claims pursuant to Article 1106 (discussed below).

2.4 As set out in the Expert Report of Seabron C. Adamson dated April 27, 2014 (the “Adamson Report”), the Amended GEIA is “substantially the same”⁹ as FIT Contracts for the purposes of the NAFTA (i.e. FIT Contract pricing and investment¹⁰). The BRG Report states that “Deloitte does not consider that to obtain the GEIA benefits, Mesa Power should have borne similar responsibilities for large-scale manufacturing investments and job creation borne by the KC.”¹¹ We disagree with BRG in this regard as the investments that BRG outlines relate solely to the Economic Development Adder (“EDA”). As stated in the Adamson Report, the “manufacturing commitments of the Korean Consortium, heralded by Canada as the basis of the superior treatment of Canada under the GEIA, amount to little or nothing more than the domestic content requirements imposed on FIT participants such as Mesa.”¹² We have addressed the EDA and the Capacity Expansion separately below.

2.5 Given the alleged breaches of Articles, 1102, 1103 and 1104, Mesa Power would be entitled to the profits that would have been realized had it also been granted the terms of the Amended GEIA. Therefore, the Amended GEIA correctly forms the primary basis of the determination of the Economic Losses, summarized as follows:

a) FIT Contracts for all four projects –

i. **Dry Run:** We understand that the OPA conducted a ‘Dry Run’ process whereby it performed several tests to assess the likelihood of which projects would have passed each test and received FIT contracts.



ii. **New Rules:** But for the New Rules and based on the Dry Run, TTD and Arran would have received FIT Contracts given their ranking status prior to the New Rules and the announcement of the FIT Contracts on July 4, 2011, acknowledged by the BRG Report at paragraph 52a.

⁹ Source: The Expert Report of Seabron C. Adamson, page 27, paragraph 69.

¹⁰ The total investment for the Projects was to be approximately \$1.3 billion, financed by both debt and equity as set out in our analysis.

¹¹ Source: The BRG Report, page 9, paragraph 33.

¹² Source: The Expert Report of Seabron C. Adamson, page 8, paragraph 19.

¹³ Source: Investor Schedule of Exhibits **C-0427** E-mail from Charlene de Boer (OPA) to Bob Chow, Shawn Cronkwright (cc: Tracy Garner, Kun Xiong, Jennifer Li, Jim Lee) (OPA), dated April 14, 2011, re: Bruce Area Discussion Materials (including attachments).

- iii. **Priority access:** Given the priority access and guaranteed capacity features of the Amended GEIA, North Bruce and Summerhill would have also been developed. We note that there were two projects that the Korean Consortium had originally bid through the FIT program that were not awarded FIT Contracts due to their ranking status but were ultimately developed under the Amended GEIA.¹⁴ Further, the Korean Consortium made several offers to purchase North Bruce leading up to the announcement of the FIT contracts on July 4, 2011.¹⁵ The Korean Consortium also made verbal offers for TTD and Arran prior to July 4, 2011 but term sheets were never exchanged given that Mesa Power indicated that they would not consider the offers due to their ranking status (i.e. Mesa Power expected that FIT Contracts would be received).¹⁶ Subsequent to July 4, 2011, the Korean Consortium expressed an interest to purchase “one or more” of Mesa Power’s projects.¹⁷ The offers made by the Korean Consortium provide an indication that the Korean Consortium believed that the Projects could have been used to fill the capacity pursuant to the Amended GEIA and that all four projects would have received FIT Contracts.
- b) **Capacity Expansion** – Consistent with the factors described above, Mesa Power would have also been entitled to the Capacity Expansion pursuant to the Amended GEIA for the Projects. We understand that the Capacity Expansion of 10% is available upon reasonable notice. We have assumed Mesa Power would elect to use the 10% Capacity Expansion on the Projects as the total capacity of the Projects is 556MW and therefore after adding the additional 10%, the aggregate capacity of the projects would still remain under the 2500MW allocated capacity.
- c) **The Economic Development Adder (“EDA”)** – Consistent with the factors described above, Mesa Power would have also been entitled to the EDA for all four projects. Based upon our review of the Amended GEIA and as set out in the Adamson Report, we understand that “to get special transmission access, a better price (through the EDA) and other special treatment, the Korean Consortium under the GEIA was merely required to provide documentary evidence that it has designated a Manufacturing Partner making each of the components.”¹⁸ Therefore, the Amended GEIA did not create an obligation or commitment for direct expenditure on economic development. As such, Mesa Power would also be in a position to receive the EDA for the Projects based on similar circumstances. We agree with BRG as it states that ‘In the real world of energy transactions and trade, such one-sided deals are rarely available’. However, in this regard, the Amended GEIA appears to be an example of such a one-sided deal.

¹⁴ Source: The Reply Witness Statement of Cole Robertson, page 15, paragraph 69.

¹⁵ Source: The Reply Witness Statement of Cole Robertson, page 16, paragraph 72.

¹⁶ Source: The Reply Witness Statement of Cole Robertson, page 15, paragraph 71.

¹⁷ Source: The Expert Report of Seabron C. Adamson, page 32, paragraph 87.

¹⁸ Source: The Expert Report of Seabron C. Adamson, page 15, paragraph 35.

- 2.6 As indicated in the BRG Report¹⁹, if the Amended GEIA is determined not to be in breach of Article 1103 of the NAFTA, then the Economic Losses under Article 1103 would exclude losses related to North Bruce and Summerhill, inclusive of the losses relating to the Capacity Expansion and the EDA.
- 2.7 However, as the KC subsidiaries involved in the Amended GEIA are Canadian entities, the Amended GEIA also represented a breach of Article 1102. As a result, North Bruce and Summerhill should be considered as part of the Economic Losses under Article 1102. Therefore even if the Amended GEIA is determined not to be a breach of Article 1103, the impact of the treatment afforded pursuant to the Amended GEIA would be reflected under Article 1102 and contrary to paragraph 2.5 above North Bruce and Summerhill would not be excluded.

¹⁹ Source: The BRG Report page 15, paragraph 52b.

3 The (Amended) GEIA and our analysis

- 3.1 We have determined our schedule for completion for the Projects based on the Amended GEIA. As stated in paragraphs 51 and 52 of the Attachments of the BRG Report, the GEIA was amended to account for some of the problems the Korean Consortium had in complying with the project development schedule. As of the date of this report, we are not aware of any further changes to the Amended GEIA and therefore have assumed the Korean Consortium will meet the terms outlined in the Amended GEIA. If additional documents become available then we reserve the right to update our analysis. Had TTD and Arran received FIT Contracts, we would expect that they would have been in production by the summer of 2014 with the majority of the other Ontario projects with a capacity of 1,100 MW.²⁰ Shortly after, North Bruce and Summerhill would be operational at the beginning of 2015.
- 3.2 We understand the Korean Consortium received power purchase agreements (“PPAs”) for four wind projects in Ontario. We have summarized the projects as well as their FIT regional area ranking as of June 3, 2010:

Project name	FIT regional area ranking (Bruce Transmission Area)
Armow Wind	24
Kingsbridge II	27
Grand Renewable	N/A ¹
South Kent Wind	N/A ¹
TTD	8
Arran	9
Summerhill	37 / 38
North Bruce	39 / 40

1. These projects were not submitted for FIT contracts as these were greenfield projects that the Korean Consortium was developing.

²⁰ Source: The Investor’s Schedule of Exhibits C-0486 Wind Energy in Canada: Realizing the Opportunity, KPMG, July 2013, page 12.

We have assumed the Projects would be on track with the timing of the Amended GEIA which appears reasonable given the FIT regional area rankings for the Armow Wind project and the Kingsbridge project which were well below that of TTD and Arran and were not as advanced in the development stage as TTD and Arran.

- 3.3 The Amended GEIA includes the requirement for a ‘working group’ which contains members from the Korean Consortium and the Government of Ontario. This working group would assist in negotiations with First Nations groups²¹ and facilitate the necessary approvals required to provide the renewable energy. As a result, we have assumed that the timing outlined in the Amended GEIA was appropriate for the purpose of our analysis.

²¹ Source: Investor’s Schedule of Exhibits **C-0282** (P00302) Green Energy Investment Agreement – Amending Agreement July 29, 2011, page 9, paragraph 5.2. While the GEIA was further amended on June 20, 2013 (**R-133**), that amendment would not have impacted the commencement of the Projects and the Government’s facilitation requirements remained the same.

4 Article 1106 – Domestic Content

Domestic Content Requirements

- 4.1 We disagree with the BRG Report²² as it concludes that if the Tribunal decides that no damages exist in Articles 1102, 1103 or 1105 then no damages can exist for Domestic Content Requirements (Article 1106)²³. The Domestic Content Requirements represent an alleged breach of Article 1106, which arises through the terms of the FIT Contract. Although the losses related to Article 1106 would be more significant if a FIT Contract was obtained, we note that prior to the time Mesa Power would have obtained FIT Contracts, it incurred higher costs due to the Domestic Content Requirements. As discussed in paragraph 4.15 of the Deloitte Initial Report, the Domestic Content Requirements forced Mesa Power to use less efficient and more expensive turbines and a more expensive contractor.
- 4.2 The BRG Report states that the Amended MTSA did not confirm the availability or pricing of the 2.5XL wind turbines and noted that the actual terms of sale were subject to availability.²⁴ In the period prior to the Projects not receiving FIT Contracts, Mesa and GE, had negotiated the availability and pricing for a 2.5XL turbine as specifically outlined in Cole Robertson’s Reply Witness Statement.²⁵
- 4.3 The BRG Report²⁶ identified two projects in North America that used GE’s 2.5XL turbines– namely the US Shepherds Flat and the Canadian Kent Breeze. As discussed in the Reply Witness Statement of Cole Robertson, each wind farm site is unique and development and construction costs would vary by project.²⁷ Based on publicly available information and information contained in the Reply Witness Statement of Cole Robertson, we understand that the US Shepherds Flat project faced significant construction and scheduling challenges that increased construction costs for that project. We believe the construction costs for the US Shepherds Flat project may not be fully comparable to the construction costs for the Projects. As such, we have used other more comparable project costs to assess the reasonability of Mesa Power’s costs but we do not consider the comparable project data to be conclusive. Therefore we find the costs that Management provided based on their best estimate and discussions with GE to be the best indication of the construction costs. In addition, the development costs for Summerhill and North Bruce are lower than those of TTD and Arran as

²² Source: The BRG Report, page 35, paragraph 10.1

²³ Also stated in the Canada’s Counter Memorial in paragraph 456.

²⁴ Source: The BRG Report, paragraph 88.

²⁵ Source: Reply Witness Statement of Cole Robertson, page 5, paragraph 25.

²⁶ Source: The BRG Report, paragraph 91.

²⁷ Source: Reply Witness Statement of Cole Robertson, page 9, paragraph 46 and 47.

they are greenfield projects and therefore do not have acquisition costs, they are adjacent to the other two projects and can leverage some of the studies prepared for TTD and Arran.

- 4.4 BRG is correct in that the engineering, procurement and construction (“EPC”) costs are based on a standard 100 MW wind farm and not specifically related to the Projects. However, we understand that the costs quoted therein are relevant and comparable on a per MW basis for the purpose of our analysis. Therefore, we have applied the costs on a per MW basis and consider the Mortenson costs appropriate to quantify the impact of the domestic content requirements.²⁸
- 4.5 The Stephens Bor-Lynn project is the latest project for which Mesa Power commenced development. We understand that the Stephens Bor-Lynn project has the characteristics of a lower air density with higher wind speeds.²⁹ Therefore, a smaller turbine, specifically the 1.7xle turbine, is more efficient at generating power than would be the 2.5XL turbine that absent domestic content rules would have been used for the Ontario projects that have the characteristics of higher air density and slightly lower wind speeds and thus better suited for the larger 2.5XL turbines. Therefore, the BRG Report’s comment that the use of smaller turbines for the Stephens Bor-Lynn project proves that the 2.5XL turbines would not have been used for the Ontario projects is not accurate.

²⁸ Source: The BRG Report, paragraph 90.

²⁹ Source: Reply Witness Statement of Cole Robertson, page 5, paragraph 24.

5 Completion and project risk

5.1 Section 3.5 of the BRG Report includes comments that Deloitte has not adequately considered the project and development risks of the Projects. The following provides further comments regarding the reduced completion and project risk factors.

Implication of the Amended GEIA and National Treatment

5.2 As summarized in Section 2 above, under NAFTA Articles 1102, 1103, 1104 and 1105, Mesa Power is entitled to the terms as stated in the Amended GEIA. As set out in the Amended GEIA, the Government of Ontario undertakes to assist the Korean Consortium in obtaining the necessary regulatory approvals and permits further to the guarantee of priority access and the availability of connection access.³⁰ As a result, the Amended GEIA would, in fact, decrease completion and project risk based on the following factors as further discussed in the Adamson Report:

- a) Government facilitation of obtaining necessary regulatory approvals and permits through the Renewable Energy Facilitation Office of the Ministry of Energy and Infrastructure;³¹
- b) Guaranteed priority access to, the Bulk Transmission System capacity allocated under the FIT Program, and availability of connection access;³² and
- c) Facilitation and assistance in obtaining information related to the availability of Bulk Transmission System access and capacity at potential sites.³³

5.3 In addition, it is evident that the Amended GEIA reduces project and completion risk as Pattern Energy elected to withdraw Merlin from the FIT Program in order to include it as part of the initial phase of the GEIA projects.³⁴

5.4 As noted above, the OPA conducted a 'Dry Run' process whereby it performed several tests to assess the likelihood of which projects would have passed each test and received FIT Contracts. [REDACTED]

³⁰ Source: Investor's Schedule of Exhibits C-0282 (P00302) Green Energy Investment Agreement – Amending Agreement July 29, 2011,

³¹ Source: The Expert Report of Seabron C. Adamson, page 41, paragraph 111.

³² Source: The Expert Report of Seabron C. Adamson, page 41, paragraph 110.

³³ Source: The Expert Report of Seabron C. Adamson, page 45, paragraph 123.

³⁴ Source: The Expert Report of Seabron C. Adamson, page 31, paragraph 82.



Expected project advancement

- 5.5 The Korean Consortium had submitted offers on September 22, 2010 and January 12, 2011 to Mesa Power to purchase North Bruce³⁶. The Korean Consortium refers to North Bruce as being in the “relatively advanced stage of development” and also indicated “there are multiple years of on-site meteorological data at the site and sufficient environmental studies or surveys have been conducted to the extent that it is reasonable to conclude that there are not any ‘fatal flaw’ permitting issues”. The Korean Consortium had also verbally expressed interest in purchasing the other Mesa Power Projects. The interest by the Korean Consortium in purchasing North Bruce and potentially other Mesa Power projects provides an indication that the Projects had lower project risk as a potential purchaser would not otherwise be interested in purchasing a project that did not have a likelihood of being developed. Further, with the priority access the Korean Consortium was given, had North Bruce been purchased it would have been provided a FIT Contract and developed. The other three projects were ranked higher than North Bruce (i.e. further advanced in development) therefore all four projects would have been provided FIT Contracts and been developed had Mesa Power been given the priority access that was given to the Korean Consortium. Furthermore, we understand that during this time Pattern Energy held discussions with potential FIT project sellers indicating the advantages of the GEIA over the FIT were ‘almost self-evident’.³⁷
- 5.6 We understand the Korean Consortium received power purchase agreements (“PPAs”) for four wind projects in Ontario as summarized in Section 3.2 above.
- 5.7 Given that the ranking of the TTD and Arran projects were much higher than the Korean Consortium’s projects, it would appear that the project and completion risk related to the Projects were lower than the Korean Consortium’s projects as the ranking process considered the viability of the project. In addition, it appears that Pattern Renewable Holdings Canada ULC and Samsung believed they could have developed projects in the GEIA ranked as low as 39 and 40 as evidenced by the January 12, 2011 offer for North Bruce.³⁸

³⁵ Source: Investor’s Schedule of Exhibits **C-0427** (CP07228). E-mail from Charlene de Boer (OPA) to Bob Chow, Shawn Cronkwright (cc: Tracy Garner, Kun Xiong, Jennifer Li, Jim Lee) (OPA), dated April 14, 2011, re: Bruce Area Discussion Materials (including attachments).

³⁶ Source: Investor’s Schedule of Exhibits **C-0424** (004132B) September 22, 2010 letter from Pattern Renewable Holdings Canada ULC to Mark Ward and **C-0425** (004183A) January 12, 2011 letter from Pattern Renewable Holdings Canada ULC to Mark Ward.

³⁷ Source: The Expert Report of Seabron C. Adamson, page 32-33, paragraph 87.

³⁸ Source: Investor’s Schedule of Exhibits **C-0425** (04183A) – Letter to Mark Ward dated January 12, 2011.

5.8 The BRG Report also comments in paragraph 151 that Deloitte provided a misleading chart with respect to the status of the Projects on July 4, 2011, in respect of the REA process. We understand that by July 2011, Mesa Power ensured that the REA was close to completion.³⁹ We have provided further detail of the REA status for each project in Appendix C.

Mesa Power's experience

5.9 BRG incorrectly claims in paragraph 203 of the BRG Report that Mesa Power is 'a small firm that had only attempted to develop one other sizeable wind project (the Pampa project in Texas) which had recently failed.' As stated below (paragraph 7.2), the ultimate parent of Mesa Power had significant financial resources and therefore it is inaccurate to characterize Mesa Power as a small firm. For the purpose of the Projects, Mesa Power together with GE Energy's Global Strategic Development Initiatives Group and Charles Edey of Leader Resources, created the American Wind Alliance and brought a depth of experience in the development of wind projects. Since GE entered the wind industry in 2002, it has been successful in designing over eight different turbine models and installing over 21,000 units.⁴⁰ At the time the FIT applications for TTD and Arran were submitted, GE Energy's Global Development and Strategic Initiatives group possessed significant experience having been "responsible for the successful development of more than 7,000MW of global power projects"⁴¹ and Leader Resources Services had "developed and sold multiple wind projects, including 200MW of wind generation to Enbridge, which was the largest sale to date at that time. Charles Edey, is considered a pioneer in the Canadian wind energy industry and has served as president of Canadian Wind Energy Association (CanWEA)"⁴²

5.10 In addition to the direct experience of its partners in the American Wind Alliance, Mesa itself has experience in developing other wind projects including the following:

- a) Pampa (Texas) - The first project Mesa Power undertook was the Pampa project which was expected to produce 1,000 MW of power in the first phase. As BRG stated, this project was cancelled. We understand that the project was cancelled because of the downturn in the financial markets and the natural gas market in 2008. This project was a merchant market project which relied on the spot price of energy and was subject to significantly different risks than the risks of a FIT contract⁴³.
- b) Goodhue project (Minnesota) - Mesa Power developed the Goodhue project which was expected to be a 78MW project in Minnesota. This project had a power purchase agreement and was still in development when Mesa Power

³⁹ Source: Reply Witness Statement of Cole Robertson, page 7, paragraph 38.

⁴⁰ Source: Investor's Schedule of Exhibits **C-0422** GE website: http://www.ge-energy.com/content/multimedia/_files/downloads/GEA18760C_Wind_Pocket_Broch_9x12_r3.pdf

⁴¹ Source: Investor's Schedule of Exhibits **C-0365** Arran FIT Application.

⁴² Source: Investor's Schedule of Exhibits **C-0365** Arran FIT Application.

⁴³ Source: Reply Witness Statement of Cole Robertson, page 3, paragraph 18.

sold the project in December 2012. Since the sale, the Goodhue project has been cancelled as it has been discovered that there were issues with the wildlife impact studies and protection plans.⁴⁴ Despite this, the Goodhue project is an indicator that Mesa Power has prior experience and was successful in its development and in obtaining a purchase price agreement.

- c) Stephens Bor-Lynn (Texas) project – The Stephens Bor-Lynn project is the latest project for which Mesa Power commenced development. The project started in March 2012 and was expected to generate 218MW of power in phase 1 and 159MW of power in phase 2 for a total of 377MW. Mesa Power successfully developed this project to the construction phase which included obtaining all of the regulatory requirements and participating in the financing discussions prior to selling the project.⁴⁵

⁴⁴ Source: Investor's Schedule of Exhibits **C-0485** (004493) <http://www.midwestenergynews.com/2013/09/20/in-minnesota-looking-for-lessons-from-goodhue-wind-fight/>

⁴⁵ Source: The Reply Witness Statement of Cole Robertson, page 2, paragraph 13.

6 GE Contract

Causation for the GE turbine deposit

- 6.1 We agree with the BRG Report⁴⁶ in that the GE turbines deposit was initially related to Mesa Power's Pampa wind farm in Texas. The BRG Report states that the alleged breaches of the NAFTA by Canada are not related to the forfeiture of the GE deposit of \$153.8 million. We disagree. Had the Projects received FIT contracts or contracts under the GEIA, more than [REDACTED] would have been purchased for the Projects and the turbine deposit would not have been lost.
- 6.2 After the Pampa project was cancelled, Mesa Power worked with GE to identify new projects where the turbines could be used. But for the fact that the Projects did not receive FIT contracts, which would have been rectified pursuant to the GEIA terms being applicable to Mesa Power, the deposit would not have been forfeited. The Projects would have utilized [REDACTED] which would have met the entire obligation of [REDACTED] in the Amended MTSA and therefore a portion of the deposit lost should not be allocated to any other Mesa Power wind project.⁴⁷
- 6.3 Once the Projects did not receive FIT Contracts, Mesa Power attempted to mitigate its losses by using the turbines committed in the Amended MTSA for its Stephens Bor-Lynn project but was not successful. Based on discussions with Management, we understand that ultimately the entire deposit was forfeited as [REDACTED]

⁴⁸

⁴⁶ Source: The BRG Report, page 41, Paragraph 129. The BRG Attachments Section VI, paragraph 53 and 54.

⁴⁷ Source: Investor's Schedule of Exhibits **C-0379** (002023-2.1.2) Amended and Restated Master Turbine Sale Agreement for the sale of Power Generation Equipment and related services, [REDACTED].

⁴⁸ Source: The BRG Attachments page 40, paragraph 67.

7 Other assumptions, errors and pre-judgment interest

Weighted average cost of capital (“WACC”)

- 7.1 **Selection of comparable companies:** BRG stated that “it is unusual to weight a list of comparable companies so heavily towards firms that operate in a different geography (in this case, another continent) than the firm being valued...”⁴⁹ The comparable companies were selected on the basis to assess industry risk. While we agree that multiple comparable companies in the same geographic region would be preferred, it is still possible to gain insight using companies operating in different regions given the similarity in risks faced by all wind power companies.

Availability of capital

- 7.2 BRG indicated that “no basis was provided beyond a letter from Mesa Power dated November 15, 2013”⁵⁰ to indicate that Mesa Power could have raised the capital required to achieve commercial operation. As outlined in Cole Robertson’s Reply Witness Statement⁵¹, there was no risk in Mesa Power’s ability to raise the equity required.

Cost of equity

- 7.3 **Size premium:** As stated in the BRG Report paragraph 144a, Deloitte has adjusted the WACC using a size premium which “reflects the fact that small companies yield ‘returns in excess of that which is appropriate for their systemic risk’”. The size premium we have selected is appropriate for companies with market capitalization in the range of US\$432.2 million to US\$1,600.2 million. This is an appropriate range as:
- a) It is general practice to base the size premium on the value of the Projects (which we have determined to approximate \$500 million), which falls within the range of market capitalization as stated above. BRG has incorrectly based its estimate of a size premium on the size of Mesa Power rather than the fair market value of the projects which are the subject of the analysis;
 - b) A size premium increases the return on equity to compensate for the perceived additional risk typically associated with factors related to entity size

⁴⁹ Source: The BRG Report, paragraph 143.

⁵⁰ Source: The BRG Report, paragraph 150c.

⁵¹ Source: Reply Witness Statement of Cole Robertson, page 8, paragraph 39.

such as liquidity (i.e. higher default risk), reduced access to capital markets and lack of pricing power. The cash flows for the Projects are based on having a FIT Contract and therefore the impact of the size of the Projects is less significant (i.e. guaranteed revenue and collectability). BRG suggested a size premium 'as high as 12.06 percent'. This size premium (Ibbotson decile 10z) is based on companies with a market capitalization of \$1.0 million to \$214.1 million. The use of decile 10z data to estimate the size premium is not correct as the fair market value of the projects exceeds the size of decile 10z⁵². As a result, the size premium in this category is not representative of the risks associated with the Projects and is not relevant for the purpose of our analysis.

7.4 Company specific risk premium: In paragraphs 202 to 203 of the BRG Report, BRG removes the company specific risk adjustment, thereby increasing the required rate of return. We disagree with BRG's adjustment for the following reasons:

- a) As discussed in Section 5 above, Mesa Power was entitled to receive the same treatment as provided to the Korean Consortium pursuant to the Amended GEIA. The development risk and risk of the cash flows would be significantly reduced⁵³ in comparison to the comparable companies as discussed above.
- b) As previously discussed in Section 5, [REDACTED]
- c) The cash flows included in our model are based on a P50 wind factor which is generally accepted by the industry as the most likely outcome and therefore the production forecast (i.e. net capacity factor) is considered to be reasonable, as agreed to by the BRG Report at paragraph 157c;
- d) The publicly traded companies would have projects with and without FIT Contracts from the pre-development phase to operation whereas Mesa Power's Projects have significantly less risk based on the terms of the Amended GEIA as they would have FIT Contracts and government assistance as it related to development and environmental risks;
- e) With the 3% risk reduction adjustment we believe the cost of equity we have calculated still remains conservative in comparison to the industry expectations of 10.9% provided by a report cited by BRG⁵⁴ and the OPA's expected after-tax return on equity of 11%⁵⁵; and

⁵² Source: Ibbotson SBBI, 2013 Valuation.

⁵³ Source: The Expert Report of Seabron C. Adamson, page 41, paragraph 109.

⁵⁴ Source: BRG-006, Scotia Capital, "Alternative & Renewable Energy Crunching the Numbers on Ontario's Proposed Feed-In Tariff Program," Scotia Equity Research Industry Report, April 2009.

⁵⁵ Source: Deloitte Initial Report, Page 41, paragraph 4.55.

- f) Although BRG does not accept the 3% risk reduction adjustment, BRG has not provided any support for a nil company specific risk premium;

7.5 **Country risk premium:** The BRG Report states “making a country risk adjustment for Canada is extremely speculative”⁵⁶ and raises a number of concerns regarding our use of the Country Risk Rating Model to estimate the country risk adjustment. Both BRG and Deloitte have relied on Ibbotson, as an authoritative source. As stated in the Ibbotson Associates 2013 Yearbook, “While no cost of equity model produces reliable numbers in every situation, the Country Risk Rating Model offers a number of advantages that the other international models are unable to overcome.”⁵⁷ BRG fails to state that Ibbotson appears to prefer the Country Risk Rating Model that we have used in our WACC. As such, we believe the consideration of a risk reduction is common practice and the negative country adjustment of approximately 0.8% is appropriate.

7.6 Overall, the cost of equity we have assumed is in the range of 11.5% to 12.5%. This is more conservative than the 10.9% return on equity assumed in the Scotia Capital report referenced by the BRG Report⁵⁸ as well as the OPA’s expected after-tax return on equity of 11%⁵⁹. The cost of equity suggested by BRG of 20% to 21% is outside the range of the industry evidence.

Cost of debt

7.7 The BRG Report states that “the cost of debt assumed by Deloitte is too low.” Based on the information below, we consider the cost of debt applied in our analysis to be appropriate:

- a) The Export-Import Bank (“Ex-Im Bank”) letter⁶⁰ is the best indication of a lending rate that Mesa Power could have obtained on its Projects at the time. The letter was addressed to Steven W. Howlett, Managing Director of GE Capital Markets Corporate, as we understand GE has expertise in working with Ex-Im Bank and their domestic requirements as well as the specific domestic content requirements in Ontario.⁶¹
- b) Based on discussions with Management and our independent research, the Ontario renewable market was attractive to investors. “Wind energy projects underpinned by long-term power purchase agreements with provincial utilities or agencies continue to attract attention both from domestic and international investors that view Canada as a safe investment jurisdiction”⁶²;

⁵⁶ Source: The BRG Report, page 68, paragraph 210.

⁵⁷ Source: Ibbotson SBBI 2013 Valuation Yearbook, page 136.

⁵⁸ Source: BRG-006, Scotia Capital, “Alternative & Renewable Energy Crunching the Numbers on Ontario’s Proposed Feed-In Tariff Program,” Scotia Equity Research Industry Report, April 2009.

⁵⁹ Source: Deloitte Initial Report, Page 41, paragraph 4.55

⁶⁰ Source: Investor’s Schedule of Exhibits **C-0377** (001924) EX-IM Bank Letter of Interest dated September 23, 2010.

⁶¹ Source: The Reply Witness Statement of Cole Robertson, page 12, paragraph 53 to 56.

⁶² Source: Wind Energy in Canada: Realizing the Opportunity, KPMG, July 2013, page 3.

- c) BRG relied on the Scotia Capital report⁶³ to suggest that the cost of debt that we have used is inappropriate.⁶⁴ The Scotia Report is dated April 2009; however, we note that based on the timelines we have suggested, Mesa Power would draw on the debt for TTD and Arran in June 2013 and for North Bruce and Summerhill in March 2014. Adjusting the risk free rates at April 2009 to reflect changes in the risk free rates to the dates when Mesa Power would enter into the debt agreements generally support the interest rates adopted in our report.
- d) As stated in the KPMG Energy Report,⁶⁵ “Project debt financing conditions for Canadian wind energy assets have improved since the global economic recession of 2008 – 2010 both in terms of lender interest and rates”. The Vice-President and Chief Financial Officer at Boralex (a comparable company suggested in the Scotia Report) was quoted as follows: “For 15 – 20 year money we are now seeing spreads in the 250-300bps range. The benchmark rate has also come down to very low levels, meaning that we are at all-in rates of around 5% which is very attractive”. Given the change in the market since 2009, we believe the rate suggested by BRG is not supportable;
- e) In February 2013, Brookfield Renewable Energy Partners financed \$450 million through a rated bond issuance priced at 5.13% for a 166 MW wind farm.
- f) In addition, BRG refers to a green paper prepared by Mintz Levin in January 2012 for estimates on the Shepherd’s Flat wind project.⁶⁶ BRG does not discuss the cost of debt also presented in the green paper. For the Shepherd’s Flat project, the Mintz Levin paper estimated the cost of debt is in the range of LIBOR plus 70bp to LIBOR plus 262.5bp. At the time TTD and Arran would have begun to draw its debt, the 20 year LIBOR rate was 3.04% which implies the cost of debt would be in the range of 3.74% to 5.67%. As such, the cost of debt used for our analysis of [REDACTED] is in the range of the Shepherd’s Flat project cost of debt.

Adjustment for unlevered cost of capital

7.8 The BRG Report (paragraph 215) suggested that as the Projects pay down debt balances, the cost of equity should move to an unlevered cost of equity and not the WACC as we have calculated.

7.9 We disagree with BRG’s critique as rates of return on the residual cash flow must change as a company’s leverage changes. With that, as Mesa Power pays down its debt, the risk related to the enterprise and cash flows decrease. Effectively,

⁶³ Source: BRG-006 - Scotia Capital, “Alternative & Renewable Energy Crunching the Numbers on Ontario’s Proposed Feed-In Tariff Program,” Scotia Equity Research Industry Report, April 2009.

⁶⁴ Source: The BRG Report, pages 12 to 13, paragraph 44b.

⁶⁵ Source: Investor’s Schedule of Exhibits **C-0486** Wind Energy in Canada: Realizing the Opportunity, KPMG, July 2013, page 3.

⁶⁶ Source: The BRG Attachments, page 43, paragraph 72a.

the pre-interest cash flows are always at the same risk – the WACC. So as leverage decreases the offset to maintain the overall WACC must be to decrease the residual, required after-tax return on equity.

Ex-Im Bank letter

7.10 As discussed above, we have relied on the Ex-Im bank letter as an input into the cost of debt for the Projects. The BRG Report argues that the Ex-Im Bank letter is not consistent with our project cost assumptions as the letter has higher construction costs than our forecast and contains minimum US content requirements.⁶⁷ We understand that Mesa Power provided a conservative capital cost quote to ensure the financing is approved for the highest amount potentially needed⁶⁸. Therefore, it is not unreasonable the capital costs quotes were higher than the revised expectations when Mesa Power was further in the planning stage. As discussed above, the Managing Director of GE Capital Markets Corporate was responsible in negotiating a financing that meets both the US and Canadian content requirements.

Dates of breach

7.11 As it relates to the dates of Breach, the BRG Report states that the “Each of the dates chosen is inaccurate, and they are incorrectly applied in combination.”⁶⁹ Based on a further review of the documents and discussions with Counsel and Management we have revised the Dates of Breach as follows:

NAFTA article	Date of Breach	Causation
1102	September 17, 2010	On this day, Mesa Power became aware of the better treatment that other investors were given due to the public reservation of transmission capacity (500MW) in the Bruce region.
1103 ⁷⁰	September 17, 2010	Consistent with 1102.
1105	December 21, 2010 ⁷¹	The FIT rankings were publicly available on this day and the Projects were ranked lower than Mesa Power should have been ranked under the FIT rules. ⁷²
1106	August 5, 2010	The date that Mesa Power confirmed they would use 1.6xle turbines as GE was unable to provide certainty that the 2.5XL turbines would meet the domestic content rules. ⁷³

⁶⁷ Source: The BRG Report, page 43, paragraph 138. The BRG Attachments page 57, paragraph 129.

⁶⁸ Source: The Reply Witness Statement of Cole Robertson, page 12, paragraph 53.

⁶⁹ Source: The BRG Report page 54, paragraph 165.

⁷⁰ While we have determined damages as of September 17, 2010, we understand that there is evidence that another agreement exists and that agreement has been requested from Canada but not yet received. As a result, we reserve the right to amend our calculations to reflect that earlier date should the requested document be received.

⁷¹ For the purposes of our valuation, we have discounted the cash flows to September 17, 2010 as the different is not material.

⁷² Source: The Reply Witness Statement of Cole Robertson, page 8, paragraph 43.

⁷³ Source: The Reply Witness Statement of Cole Robertson, page 4, paragraph 23.

Development Costs

7.12 As stated in the BRG Report paragraph 47, BRG identified a decrease in losses relating to the financing treatment of development costs incurred. BRG identifies a total reduction in losses of \$23.5 million of which \$13.8 million relates to TTD and \$10.8 million relates to Arran. We agree with this observation by BRG and have recalculated the total impact on all four Projects to be a reduction in losses of \$28.7 million, summarized below:

- TTD: \$14.8 million;
- Arran: \$11.3 million;
- Summerhill: \$0.9 million; and,
- North Bruce: \$1.7 million.

Interest during Construction

7.13 As stated in the BRG Report paragraph 48, BRG identified an increase in losses of \$2.3 million relating to the tax deduction available on financing costs incurred during the construction period of the Projects, related solely to TTD and Arran. We concur. We have recalculated the total impact to be an increase in losses of \$5.8 million. The increase in losses by Project is as follows:

- TTD: \$1.6 million;
- Arran: \$1.2 million;
- Summerhill: \$1.1 million; and,
- North Bruce: \$1.9 million.

Other Minor Spreadsheet Errors

7.14 As stated in the BRG Report paragraph 49 and 230, BRG identified a decrease in losses relating to minor spreadsheet errors. BRG identifies a total reduction in losses of \$0.152 million. We have recalculated the total impact to be a reduction in losses of \$0.091 million, summarized below:

- TTD: \$43,000; and,
- Arran: \$48,000.

Warranty on Wind Turbines

7.15 The BRG Report states “However, upon careful review it is clear that the warranty does not cover the first two years of operations, but only covers the turbines for three years after delivery”.⁷⁴ BRG identified a decrease in damages of \$11.3 million by reducing the term of the warranty. On page 50 of the Amended MTSA, the warranty period is defined as [REDACTED]

⁷⁴ Source: The BRG Report, paragraph 225.

[REDACTED]⁷⁵ Based on discussions with Management, it is normal industry practice to assume that the warranty period would be 24 months after turbine completion, which is within a month prior to the commercial operation date. This supported by our understanding that delivery would typically take place within 9 months of COD and therefore the [REDACTED] from delivery would not expire before the 24 month period from COD.

Payment timing for wind turbines

7.16 The BRG Report states “Deloitte’s assumptions regarding the timing of Mesa Power’s payments for the GE turbines appear to be fabricated without any apparent factual basis.” In our analysis, we have assumed that the payments related to the capital costs are made throughout the ten months prior to COD. Based on discussions with Management, we understand that Mesa Power anticipated that delivery of the turbines approximately nine months prior to COD and Mesa Power would be required to submit payments for the turbines approximately [REDACTED] before shipping.⁷⁶ Therefore, for TTD and Arran which have a [REDACTED], the shipment would be approximately [REDACTED] and the payments would be approximately [REDACTED]. This payment timeline is supported by the terms of the Amended and Restated MTSA dated November 17, 2009 which required payment [REDACTED] prior to delivery for the [REDACTED], respectively. Change Order #3 to the Amended and Restated MTSA required [REDACTED] earlier for the [REDACTED] turbines.

Project assumptions

7.17 The BRG Report questions the energy production estimates assumed for North Bruce. In order to determine the energy output amount, we took the same change in load factor⁷⁷ from the 1.6xle scenario to the 2.5XL scenario for Arran and applied the same ratio to North Bruce given that North Bruce is expected to have similar wind attributes to Arran given the relative proximity. We disagree with BRG’s calculations and have calculated an annual energy production increase of approximately 8.0% for both Arran and North Bruce.

7.18 The BRG Report states “The residual value should be subtracted from any sunk cost damages because Mesa Power retained the assets and could have sold them or used them to generate value.” Based on the nature of the assets, absent an offer to purchase the assets and develop as a wind farm, the residual value of the assets is considered to be nominal.

⁷⁵ Source: Investor’s Schedule of Exhibits C-0379 (002023-2.1.2) Amended and Restated Master Turbine Sale Agreement for the sale of Power Generation Equipment and related services, [REDACTED], page 50.

⁷⁶ Source: The Reply Witness Statement of Cole Robertson, page 11, paragraph 50.

⁷⁷ Load factor can be defined as the capacity factor is the ratio of the actual energy produced in a given period, to the hypothetical maximum possible, i.e. running full time at rated power.

Pre-judgment and post-judgment interest

7.19 We understand that sections 2 and 3 of Article 1110 of the NAFTA provide that compensation shall be paid without delay and be fully realizable, and compensation shall include interest at a commercially reasonable rate from the expropriation date until the date of actual payment. In this regard, we have calculated interest at a rate of 2.8%, being the bank prime interest rate (from the Bank of Canada).at the approximate date of breach for the claims⁷⁸. Accordingly, the interest on the Economic Losses to November 1, 2014 would approximate \$75.0 million to \$82.0 million and the total Economic Losses for Articles 1102, 1103, 1104, 1105 and 1106, including pre-judgment interest would be in the range of \$705.1 million to \$769.2 million.

Summary

7.20 Based on the scope of our review (Appendix A), our research, analysis, experience, restrictions and assumptions (Appendix B and noted elsewhere in the attached report), in our opinion, the Economic Losses as a result of the alleged actions of Canada are set out in the table below as at the Valuation Dates, adjusted for certain items discussed in the BRG Report. If requested to select a single point estimate of the Economic Losses, we would suggest the midpoint of the range of \$629.1 million to \$686.2 million (NAFTA Articles 1102/1103/1104/1105), or \$657.7 million, set out below. Consistent with the Initial Report, the Economic Losses related to Article 1106 while separately determined as \$106.2 million to \$115.3 million, with a midpoint of \$110.8 million, are included in the Economic Losses for Articles 1102, 1103, 1104 and 1105, and are not additive thereto. In addition, we have estimated the amount of pre-judgment interest in the order of \$75.0 million to \$82.0 million. The Economic Losses presented herein exclude any legal or other fees incurred by the Plaintiffs in this matter. The Economic Losses presented herein exclude any consideration for any legal fees incurred by the Plaintiffs in this matter.

⁷⁸ For the purpose of this calculation we have assumed that the date of breach for 1102, 1103, 1104 and 1105 are the same.

	Notes	Economic Losses		
		Low	Midpoint	High
NAFTA 1102, 1103 & 1105				
Base Case				
Twenty-two degrees	[F1]	88,300	94,425	100,550
Arran	[F2]	51,960	56,035	60,110
Summerhill	[F3]	59,300	63,260	67,220
North Bruce	[F4]	101,250	108,375	115,500
<i>Total (rounded)</i>		<u>301,000</u>	<u>322,000</u>	<u>343,000</u>
Economic Development Adder ("EDA")				
Twenty-two degrees	[F1]	6,100	6,345	6,590
Arran	[F2]	4,480	4,655	4,830
Summerhill	[F3]	3,680	3,840	4,000
North Bruce	[F4]	7,160	7,470	7,780
<i>Total (rounded)</i>		<u>21,000</u>	<u>22,000</u>	<u>23,000</u>
Capacity Expansion				
Twenty-two degrees	[F1]	10,210	10,835	11,460
Arran	[F2]	6,390	6,825	7,260
Summerhill	[F3]	6,790	7,210	7,630
North Bruce	[F4]	10,330	11,055	11,780
<i>Total (rounded)</i>		<u>34,000</u>	<u>36,000</u>	<u>38,000</u>
EDA applicable to capacity expansion				
Twenty-two degrees	[F1]	610	635	660
Arran	[F2]	410	430	450
Summerhill	[F3]	340	360	380
North Bruce	[F4]	620	650	680
<i>Total (rounded)</i>		<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
Past costs incurred	[F5]	8,100	8,100	8,100
GE contract penalty	[F6]	156,833	156,833	156,833
NAFTA 1106		106,200	110,750	115,300
Total Economic Losses under NAFTA Article 1102, 1103 & 1105	[F7]	<u>629,133</u>	<u>657,683</u>	<u>686,233</u>
Pre-judgment interest		75,000	78,500	82,000
Total Economic Losses (including prejudgment interest)	[F7]	<u>704,133</u>	<u>736,183</u>	<u>768,233</u>

	Notes	Economic Losses		
		Low	Midpoint	High
NAFTA 1106				
Base Case				
Twenty-two degrees	[F1]	16,650	17,460	18,270
Arran	[F2]	23,500	24,500	25,500
Summerhill	[F3]	10,880	11,360	11,840
North Bruce	[F4]	44,550	46,535	48,520
<i>Total (rounded)</i>		<u>96,000</u>	<u>100,000</u>	<u>104,000</u>
EDA				
Twenty-two degrees	[F1]	260	270	280
Arran	[F2]	250	265	280
Summerhill	[F3]	-	5	10
North Bruce	[F4]	290	310	330
<i>Total (rounded)</i>		<u>1,000</u>	<u>1,000</u>	<u>1,000</u>
Capacity Expansion				
Twenty-two degrees	[F1]	1,830	1,935	2,040
Arran	[F2]	1,020	1,075	1,130
Summerhill	[F3]	990	1,040	1,090
North Bruce	[F4]	4,970	5,185	5,400
<i>Total (rounded)</i>		<u>9,000</u>	<u>9,500</u>	<u>10,000</u>
EDA applicable to capacity expansion				
Twenty-two degrees	[F1]	30	30	30
Arran	[F2]	70	70	70
Summerhill	[F3]	20	25	30
North Bruce	[F4]	120	130	140
<i>Total (rounded)</i>		<u>200</u>	<u>250</u>	<u>300</u>
Total Economic Losses under NAFTA Article 1106	[F7]	<u>106,200</u>	<u>110,750</u>	<u>115,300</u>
Pre-judgment interest		13,000	13,500	14,000
Total Economic Losses (including prejudgment interest)	[F7]	<u>119,200</u>	<u>124,250</u>	<u>129,300</u>

Appendix A – Scope of review

We have reviewed and relied upon the following documents for the preparation of this report, in addition to the documents set out in Appendix A of the Initial Report.

Ref.	Title of document
n/a	Expert Report of Christopher Goncalves, Mesa Power Group, LLC v. Government of Canada, dated February 28, 2014
n/a	Canada's Counter-Memorial, dated February 28, 2014.
n/a	The Reply Witness Statement of Cole Robertson, dated April 28, 2014.
n/a	The Expert Report of Seabron C. Adamson, dated April 27, 2014.
C-0427	E-mail from Charlene de Boer (OPA) to Bob Chow, Shawn Cronkwright (cc: Tracy Garner, Kun Xiong, Jennifer Li, Jim Lee) (OPA), dated April 14, 2011, re: Bruce Area Discussion Materials (including attachments).
C-0073	Bruce Transmission Area FIT Contract ranking.
BRG-006	Scotia Capital, "Alternative & Renewable Energy Crunching the Numbers on Ontario's Proposed Feed-In Tariff Program," Scotia Equity Research Industry Report, April 2009.
C-0446	E-mail from Shawn Cronkwright (OPA) to Colin Andersen (OPA), dated April 13, 2011, re: Bruce Area Discussion (including attachments).
C-0447	E-mail from Shawn Cronkwright (OPA) to Colin Andersen, (cc: Bob Chow, JoAnne Butler and Michael Lyle) (OPA), dated April 14, 2011, re: Bruce Scenario Analysis (including attachments).
C-0426	Email from George Hardie to Cole Robertson and Mark Ward re: FIT results dated July 6, 2011.
C-0423	September 22, 2010 letter from Pattern Renewable Holdings Canada ULC to Mark Ward (tracked changes).

C-0424	September 22, 2010 letter from Pattern Renewable Holdings Canada ULC to Mark Ward
C-0425	January 12, 2011 letter from Pattern Renewable Holdings Canada ULC to Mark Ward.
C-0641	Mesa document entitled "Project REA Status July.docx"
C-0640	http://www.powerauthority.on.ca/about-us/directives-opa-minister-energy-and-infrastructure
C-0486	Wind Energy in Canada: Realizing the Opportunity, KPMG, July 2013.
C-0485	http://www.midwestenergynews.com/2013/09/20/in-minnesota-looking-for-lessons-from-goodhue-wind-fight/
C-0422	http://www.ge-energy.com/content/multimedia/_files/downloads/GEA18760C_Wind_Pocket Broch 9x12 r3.pdf
R-133	Amended and Restated Green Energy Investment Agreement dated June 20, 2013.
n/a	Ibbotson SBBI, 2013 Valuation.

Appendix B - Restrictions, major assumptions, qualifications, and limitations

This Report is not intended for circulation or publication, nor is it to be reproduced for any purpose other than as described herein, without our prior express written permission in each specific instance. We do not assume any responsibility for losses incurred by any party as a result of circulation, publication, or reproduction of this Report contrary to the provisions of this paragraph.

This Report must be considered as a whole and selecting portions of the Report or the factors noted by us, without considering all factors and analyses together could create a misleading view of the process underlying this Report. The preparation of this Report was a complex process and considers various scenarios and is not necessarily susceptible to partial analysis or summary description. Any attempt to do so could lead to undue emphasis on any particular factor, calculation, or analysis.

This Report has been based on information, documents and explanations that have been provided to us and therefore the validity of our conclusions rely on the integrity of such information. Our scope of review is listed in Appendix A. We were not under any obligation or agreement to investigate the accuracy of any third-party information, nor have we performed any investigative procedures to independently verify the accuracy of any third-party information.

Should any of the information provided to us not be factual or correct, or should we be asked to consider different information or assumptions, our conclusions as set out in this Report could be significantly different.

We reserve the right, but will be under no obligation, to review this Report, and if we consider it necessary, to revise this Report in light of any information which becomes known to us after the date of this Report.

In preparing this Report, we have made certain assumptions as described in this section and throughout this Report. Should any of these assumptions prove inappropriate, our calculations and analyses, as expressed in this Report could change, perhaps materially. We caution the reader in this regard.

Appendix C – REA status chart

The following provides further detail in respect of the status of each approval and/or study required⁷⁹.

	TTD	Arran	North Bruce	Summerhill
General consultation	Yes	Yes	Yes	Yes
Landowner Consultation	Yes	Yes	Yes	Yes
Public Consultation	Yes	Yes	Yes	Yes
Political/Government Consultation	Yes	Yes	Yes	Yes
Aboriginal Consultation	Yes	Yes	Yes	Yes
Project description report	Yes – submitted to LRSC in May 2011	Yes – submitted to MOE in April 2010	In progress – commenced but remains in preliminary stages	In progress – commenced but remains in preliminary stages
Initial public consultation/engagement	Yes – public meeting on June 28, 2010; questions from meeting still outstanding with LRSC.	Yes – public meetings taken place; questions from meeting still outstanding with LRSC.	Yes – public meetings taken place; questions from meeting still outstanding with LRSC.	Yes – public meetings taken place; questions from meeting still outstanding with LRSC.
Municipal forms and reports (construction plan, design and operations report, decommissioning plan)	Yes – submitted. LRSC met with County and Municipal staff to discuss	Yes – submitted. LRSC has met with County and Municipal staff to discuss.	No	No
Noise impact assessment report	Yes – all approvals received and under final editing	In progress – drafting of report is with Golder Associates	No	No

⁷⁹ Investor Schedule of Exhibits C-0641 Mesa document entitled "Project REA Status July.docx"

Natural heritage assessment and environmental impact studies	In progress – draft report provided to Ministry of Natural Resources (MNR) however, MNR has not started review	In progress – drafting of report is with Golder Associates	No – preliminary bird studies only	No – preliminary bird studies only
Water body assessment report	Yes – all approvals received, under internal review	In progress – drafting of report is with Golder Associates	No	No
Archaeology reports	In progress – Stage 1 complete; awaiting field work and report revisions to address remaining conditions for approval	In progress – Stage 1 complete; awaiting remaining field work	No	No
Wind turbine specifications report	Yes – all approvals received; under internal review	In progress – drafting of report is with Golder Associates	No	No
Built heritage assessment report	In progress – general approval received; report revisions required to address additional points	In progress – drafting of report is with Golder Associates	No	No
Final public consultation/engagement	No	No	No	No
Consultation report	In progress – working draft was provided to LSRC	In progress – working draft provided to LSRC	No	No
FIT application	November 2009	November 2009	May 2010	May 2010

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