

BEFORE THE ADDITIONAL FACILITY OF THE
INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTE (ICSID)

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

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

WITNESS STATEMENT OF DEAN KRAUSS

31 March 2015

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I, Dean Krauss, declare as follows:

1. I was born on [REDACTED]. I presently reside at [REDACTED].
2. I am currently the Director of Business Development and Contract Services NorthPoint Energy Solutions Inc. (“NorthPoint”).
3. I have been employed by SaskPower since February of 1984. I have been with NorthPoint since its inception in 2001. During the period ranging from 2006 to 2008 I was Director, Power Marketing and Contract Management.
4. I have attached my *curriculum vitae* as Appendix A.
5. In this witness statement, I provide background on NorthPoint and will then briefly describe NorthPoint’s interaction with Zellstoff Celgar Limited Partnership. (“Celgar”).
6. I have personal knowledge of the matters described in this witness statement, except where based on information and belief, in which case I indicate the source of the information and my belief that it is true.
7. I have reviewed the documents attached for purposes of preparing this witness statement. I am a fact witness in this NAFTA arbitration.

A. NorthPoint Energy Solutions

1. General

8. NorthPoint is an energy marketing and trading company which is a wholly-owned subsidiary of SaskPower.¹ SaskPower created NorthPoint after adopting an Open Access Transmission Tariff offering announced June 2001. NorthPoint provides several services relating to electrical energy marketing and trading and natural gas management, including:

¹ SaskPower is a provincial Crown corporation owned by the Government of Saskatchewan. SaskPower is responsible for energy generation and distribution throughout the province.

- the economic dispatch of electricity from SaskPower generation and external market resources;
 - the long term management of SaskPower Power Purchase Agreements with Independent Power Producers;
 - management of all functions related to natural gas for SaskPower; and
 - electrical energy and natural gas risk management, fuel and purchased power budget forecasting, hydrological flow management, market price forecasting, and market settlement functions.
9. NorthPoint is enabled in numerous energy markets including: Alberta, Ontario, the U.S. Midwest, the U.S. Pacific Northwest, and the PJM Interconnection.

2. NorthPoint's Organization

10. NorthPoint is a relatively small company. The current staff complement is about 50. Between 2006 and 2008 staff levels ranged from 35 to 46. The President and CEO of NorthPoint is also a senior executive of SaskPower. Nearly [REDACTED] of NorthPoint's staff are directly involved in [REDACTED].
11. From 2001 until 2010, our staff included Mr. Robert Friesen, my former colleague. During this period Mr. Friesen as Director of Electricity Trading was generally responsible for short term electricity transactions which would include spot, monthly and quarterly (sometimes referred to as "multi-month") sales. Mr. Friesen was the main point of contact with Celgar as their sales were short term in nature.
12. As the Director of Power Marketing and Contract Management, I was generally responsible for longer term transactions in excess of three months. Given the relatively small size of our organization staff responsible for the short-term and long-term transactions regularly consulted each other. Mr. Dean Jones, who I have consulted in preparing this witness statement, worked for me during this timeframe as a Senior Power

Marketer.² In addition to the long term power marketing role I was responsible for the management of the Power Purchase Agreements SaskPower has with various Independent Power Producers, fuel budgeting, hydrological flow management, market price forecasting, and transmission service strategy.

B. Energy Markets and Transmission Rights

1. NorthPoint's Sale of Electricity into Energy Markets from British Columbia

13. As I mentioned above, NorthPoint transacts electricity in a number of energy markets, (also referred to as trading hubs). These hubs are located in both Canada and the United States. NorthPoint selects the energy market in which to transact based on a number of considerations, including [REDACTED]

14. The Mid-C hub is a liquid electricity market where many transactions are completed each day. These transactions include the buying and selling of electricity in increments of an hour, a day, a month or even a year.³ The index price of electricity at Mid-C is set by market participant transaction activity and is influenced by market dynamics and the type of transaction.⁴ Mid-C is a bi-lateral market in that there is no independent market operator. All transactions are completed between authorized counterparties.

15. The Alberta Electric System Operator (“AESO”) runs a real time System Marginal Price (“SMP”) energy market. Market participants submit bids and offers for the real time market directly to the AESO. The AESO then dispatches resources to match supply and

² Mr. Jones would later work for Mr. Friesen as a Trading Desk Lead. He is currently a Manager of Regional Energy Trading at NorthPoint.

³ Transactions in the Mid-C market on the Intercontinental Exchange (ICE) can typically be made inside a 24 month window. Energy can be sold into Mid-C in the real time or day-ahead basis. Energy sold in periods greater than day ahead (ie weekly monthly, quarterly or annual) is considered the forward market.

⁴ “Peak” or high-load hours will generally yield higher prices, while “off-peak” or low-load hours generally yield lower prices.

demand and posts an hourly clearing price in the real time.⁵ In the real time market the AESO is the counterparty to these transactions. Energy offered into the Alberta market from outside the province is priced at \$0/MWh and is paid the hourly pool price for the energy delivered. The AESO's SMP can be volatile at times depending on generating unit outages, wind, tie line availability and combinations thereof. The AESO market is the most volatile of the markets NorthPoint has transacted in. The AESO does not facilitate a forward market. A forward market in Alberta exists similar to the Mid-C market, albeit not typically as liquid, and is available on electronic bulletin boards such as the Intercontinental Exchange or "ICE" or through brokers. I have been informed by our energy trading staff that energy is typically traded in small blocks (ie 5 MW) in the Alberta forward market, whereas 25 MW is the typical size of energy traded in the Mid-C forward market.

16. It has been my experience that the price of electricity in the Mid-C electricity market is strongly correlated to the price of natural gas, which is generally the marginal source of supply for this market. This means, as a practical matter, that the price of electricity will normally increase when the price of natural gas increases and, conversely will decrease when the price of natural gas falls. Generally speaking, electricity prices are also somewhat seasonal. Mid-C prices are typically lower during the spring (especially in the spring runoff period when there is an abundance of hydro-electric power).

2. Transmission Service

17. NorthPoint was responsible for acquiring transmission service for the electricity it was selling on behalf of customers, from the POR to the POD. There is a range of transmission service available on transmission systems that have an Open Access Transmission System (OATT). These transmission services differ with respect to their length and their level of priority (i.e., firm or non-firm).⁶

⁵ http://www.aeso.ca/downloads/Wholesale_Market_Price_Fact_Sheet_020311.pdf, **R-489**

⁶ The priority levels are used to determine curtailment priority when a transmission path becomes constrained or oversubscribed.

18. Firm transmission service provides the holder with the highest priority transmission on the requested transmission path. Non-firm transmission service, on the other hand, provides the holder with similar but lower priority service. During periods of high transmission service demand, such as when market prices are high, firm transmission service holders can utilize their high priority service over any non-firm service holder. In practice, this means that non-firm transmission service holders are sometimes forced off of the transmission network by firm transmission service holders during these periods.

C. NorthPoint’s Interactions with Celgar

1. NorthPoint’s Sale of Celgar’s Electricity.

19. On July 12, 2006, NorthPoint entered into a Marketing Services Agreement (“MSA”) with Celgar to act as Celgar’s energy marketer for periodic sales of surplus electricity.⁷ [REDACTED]

[REDACTED]

[REDACTED]⁹ I understand from discussions with our energy trading staff that in practice NorthPoint and Celgar regularly communicated to determine whether the pulp mill had electricity available and was willing to sell based on the market price and the available transmission.

20. [REDACTED]

[REDACTED]

⁷ Marketing Services Agreement between Zellstoff Celgar Limited Partnership and NorthPoint Energy Solutions Inc., 12 July 2006, R-349.

⁸ *Id.*, s. 3.1(a), R-349.

⁹ *Id.*, s. 2.1, R-349.



21. These transmission costs and line losses are discussed in greater detail in Section C.2 below.
22. NorthPoint subsequently identified spot market sales¹¹ for Celgar’s available electricity into the US Pacific Northwest and Alberta markets when transmission was available. NorthPoint normally made these spot market sales on behalf of Celgar on an hourly basis. Based on a review of our records roughly [REDACTED] % of Celgar energy was sold to the Alberta market and roughly [REDACTED] % to the US Pacific Northwest. All Celgar energy sold to the US Pacific Northwest was done at the BC/US border. A [REDACTED] [REDACTED] of Celgar’s energy was sold to FortisBC, Midcontinent Independent System Operator (MISO)¹², and the California Independent System Operator (CAISO). With respect to sales to MISO and CAISO, these accounted for [REDACTED] % of Celgar’s total sales. I understand from our trading staff that NorthPoint may have put in place these transactions as pilot projects, in order to test our capacity to access these markets, including billing and settlement processes.
23. A further review of company records indicated that NorthPoint used non-firm transmission for Celgar’s electricity in [REDACTED] % of the sales to Alberta, and [REDACTED] % of the sales to the U.S.¹³ I believe that the main reason for using hourly non-firm transmission was due to the efficiency in being able to match the cost of transmission service with market opportunity and the availability of Celgar energy. The use of longer term transmission to deliver spot sales from Celgar would make profitability more challenging due to the potential cost of unused transmission service.

¹⁰ *Id.*, s. 5.1, **R-349**.

¹¹ We use the term “spot sales” to refer to sales opportunities identified for performance in the same day and next.

¹² *See*: <https://www.misoenergy.org/WhatWeDo/Pages/WhatWeDo.aspx>, **R-403**.

¹³ *See* (below) Schedule 1– Celgar Transmission Analysis.

24. I agree with my former colleague Mr. Friesen that opportunities existed to sell electricity in Mid-C forward energy markets at prices in excess of C\$100 MWh during 2008. The [REDACTED] sales he mentioned would have been firm sales for a period of up to three months. However, Mid-C prices (and electricity prices in Alberta) declined rapidly thereafter.

2. Transmission Availability, Costs and Line Losses

25. NorthPoint was responsible under the MSA for arranging for the transmission of Celgar's electricity from the POR at the Kootenay Interconnection (i.e., the interconnection point between the FortisBC and BC Hydro transmission systems) to the purchaser of the electricity.¹⁴ Transmission costs from the Kootenay Interconnection to either the BC/U.S. border or the BC/AB border were normally approximately equivalent to C\$ [REDACTED] MWh. This cost estimate is made up of the transmission tariff service cost and transmission losses. Celgar was responsible for arranging for the transmission of its electricity through the FortisBC transmission network to the Kootenay Interconnection.¹⁵

26. NorthPoint accessed British Columbia Transmission Corporations ("BCTC") Open-Access Same-time Information System ("OASIS"), to secure transmission capacity for its electricity sales on behalf of Celgar. Based on a review of our records NorthPoint was able to obtain a limited amount of firm transmission service from the Kootenay Interconnection POR to the BC/US border and to a much lesser extent from the Kootenay Interconnection to the BC/AB border.¹⁶ NorthPoint did not own long term firm transmission service from the Kootenay Interconnection to either Alberta or the BC/US border. Firm service provides the highest priority transmission service for deliveries of electricity to market.

¹⁴ Marketing Services Agreement between Zellstoff Celgar Limited Partnership and NorthPoint Energy Solutions Inc., s. 1.1(j). [REDACTED]

[REDACTED], R-349.

¹⁵ *Id.*, s. 1.1(f), R-349.

¹⁶ See (below) Schedule 1– Celgar Transmission Analysis.

27. NorthPoint also had to arrange for the transmission of the electricity on the U.S. side of the border if we wanted to sell into the Mid-C energy market. NorthPoint did not own any long term firm transmission service anywhere in the United States. In practice we transacted on Celgar's behalf with U.S. counterparties at the BC/U.S. border. I have been informed by NorthPoint trading staff that transactions with a POD of the BC/US border typically traded at a discount to the Mid C price to reflect the avoided transmission costs and losses.

28. All sales that NorthPoint executed for delivery into the U.S. on behalf of Celgar were spot sales. I have been advised by our energy trading staff that NorthPoint has never entered into a forward sale with a U.S. buyer on it's own or on behalf of Celgar with a delivery point of the BC/U.S. border.

29. NorthPoint also held at the time long term firm point to point transmission service for 50 MW of capacity on a transmission path from the BC/US border to the BC/AB border.

[REDACTED]
[REDACTED]
[REDACTED]

This firm transmission service, however, was not directly available to deliver Celgar's electricity as the point of receipt was located at the BC/US border, not the Kootenay Interconnection. Transmission service is from a specific POR to a specific POD. NorthPoint therefore, had to secure alternate transmission service to the AESO for Celgar's electricity. This alternate transmission service was generally available only on a non-firm basis.

30. My colleague Mr. Dean Jones has recollection of a discussion where the potential for damages was explained to Celgar during a conversation in which we raised the possibility of making forward sales to the Mid-C market on their behalf on a monthly basis in 2008. Celgar did not provide instruction to NorthPoint to execute monthly or longer term forward sales.

3. The Sale of Celgar's Power as Renewable Energy in the United States

31. NorthPoint has never sold renewable or "green" electricity in either Canada or the United States. Nor did Celgar ever request NorthPoint to sell its electricity as renewable energy.

32. NorthPoint was aware that monthly forward energy sales into California entailed an increased delivery risk over hourly spot sales as we did not hold any firm U.S. transmission service and the electricity would have to be wheeled over multiple paths.

The [REDACTED]
[REDACTED]

[REDACTED] could leave a seller subject to damages that could arise from having to acquire replacement energy from the market to fulfil the delivery obligation. The seller also would have incurred cost in transmission tariffs and line losses in delivering this electricity to California. This uncertainty, in my view, meant that the forward sale of electricity into California without firm transmission on the entire path, could entail financial risk that should be considered particularly when market prices were high and transmission service was in high demand.

AFFIRMED BEFORE ME)
at Regina, in the Province of)
Saskatchewan, this 24th day of)
March, 2015.)

[Signature])
A Commissioner for taking Affidavits for)
Saskatchewan.)
Being a solicitor

[Signature])
Dean Krauss)

Appendix A

Curriculum Vitae – K. Dean Krauss

K. Dean Krauss, B. Admin
Director, Business Development & Contract Services
NorthPoint Energy Solutions Inc.
Regina, Saskatchewan
Canada

Mr. Krauss has been employed with the Saskatchewan Power Corporation (SaskPower) for 30 years and had held various positions in System Operations, System Supply Planning, Bulk Power Management and most recently as Director, Business Development & Contract Services in NorthPoint Energy Solutions Inc. NorthPoint was created in 2001 and is a wholly owned energy marketing and management subsidiary of SaskPower.

Schedule 1

Celgar Transmission Analysis

[REDACTED]		
Total	100%	

Scheduled KI to AB Transmission		
[REDACTED]		
Total	100%	

**KI - Kootenay
Interconnection**