

VANCOUVER  
JUN 18 2018  
COURT OF APPEAL  
REGISTRY

Affidavit of Stéfanie Leduc #1  
Sworn: June 15, 2018

Court of Appeal File No. CA45324

COURT OF APPEAL

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

RESPONDENT  
(PLAINTIFF)

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP,  
WEDGEMOUNT POWER (GP) INC. and  
WEDGEMOUNT POWER INC.

RESPONDENTS  
(DEFENDANT)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

APPELLANT  
(APPLICANT)

**AFFIDAVIT**

I, STÉFANIE LEDUC, of 1080 Grande Allée West, Quebec City, Quebec G1K 7M3  
SWEAR THAT:

1. I am the Portfolio Manager – Private Placements working for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc. (“IA”), and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.
2. The Defendants, Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (the “**Wedgemount Entities**”) are the owners and developers of a partly constructed five megawatt run of river hydropower facility located on Wedgemount Creek near Whistler, BC (the “**Project**”).

3. IA advanced funds to the Wedgemount Entities for the purpose of developing and financing the construction of the Project. The advances were made pursuant to a Credit Agreement.

4. As at February 10, 2017, the Wedgemount Entities owed in excess of \$21 million dollars in respect of the Project.

5. The Project suffered from set-backs and delays, many of which were the fault of the British Columbia Hydro and Power Authority ("BCH"). As a result, Wedgemount went into default under the Credit Agreement and IA issued a demand for payment and then entered into a Forbearance Agreement in February of 2017 with the Wedgemount Entities.

6. In May of 2017, IA commenced proceedings to appoint a Receiver over the Wedgemount Entities to ensure the risks at the project site were properly managed and to protect the value of the assets.

7. On May 12, 2017, Mr. Justice Steves granted an Order appointing Deloitte Restructuring Inc. as Receiver of the Wedgemount Entities ("Deloitte" or the "Receiver"). A copy of that Order is attached hereto and marked as **Exhibit "A"**.

8. A key component of the Project was having an agreement with BCH to purchase the power generated from the Project.

9. The Wedgemount Entities entered into an Electricity Purchase Agreement with BCH dated March the 6<sup>th</sup>, 2015 (the "EPA"). A redacted copy of the agreement is attached hereto and marked as **Exhibit "B"**.

10. Under the terms of the EPA, BC Hydro agreed to purchase electricity generated by the Project upon its completion. The EPA provided for a "Commercial Operation Date" (the "COD"), the date on which the Wedgemount Entities would begin selling electricity to BCH. Under the terms of the EPA, the COD had to occur within two years after the "Target COD" date. The Target COD Date was set at September the 30, 2015.

11. At the outset of the Receivership, both representatives of IA and representatives of Deloitte, had separate discussions in separate meetings with BCH concerning the completion of the Project. Those discussions are detailed in the following affidavits that were sworn and filed in the proceedings below, namely, Affidavit of Stéfanie Leduc #1, attached hereto and marked

as **Exhibit "C"**, Affidavit of Luc Fournier #2, attached hereto and marked as **Exhibit "D"**, Affidavit of Melinda McKie #1 attached hereto and marked as **Exhibit "E"**, Affidavit of Paul Chambers #1 attached hereto and marked as **Exhibit "F"**, Affidavit of Michael Potyuk #1 attached hereto and marked as **Exhibit "G"**, Affidavit of Maxime Durivage #1 attached hereto and marked as **Exhibit "H"**, Affidavit of Bruce Chow #1 attached hereto and marked as **Exhibit "I"**, Affidavit of Frank Lin #1 attached hereto and marked as **Exhibit "J"**, Affidavit of Joanne McKenna #1 attached hereto and marked as **Exhibit "K"**, and Affidavit of Olha Lui #1 attached hereto and marked as **Exhibit "L"**.

12. Both IA and the Receiver separately sought and obtained assurances from BCH that the EPA would not be cancelled as a result of COD not being met on September 30, 2017. The attached Affidavits of myself, Luc Fournier, Maxime Durivage, Melinda McKie, Paul Chambers and Michael Potyuk detail those assurances.

13. The Receiver then proceeded to expend considerable time, effort and money in moving the Project towards completion in terms of construction and in finalizing negotiations with a number of parties to allow the Project to proceed. The Receiver also initiated a sales process and sought and obtained various indications of expressions of interest and offers in respect of the Project.

14. The Receiver's efforts in this regard are detailed in the Receiver's First Report to the Court, a copy of which is attached hereto and marked as **Exhibit "M"**.

15. On January 19, 2018, BCH advised the Receiver that it was its intention to terminate the EPA and BCH brought an Application to lift the stay of proceedings contained in the Receivership Order to permit BC Hydro to then terminate the EPA (the "**BCH Lift Application**"). IA and the Receiver opposed the BCH Lift Application.

16. On April 3, 2018, the Receiver brought an application (the "**Receiver's Application**") for a declaration that BC Hydro was not permitted, on any existing ground or fact, to terminate the EPA.

17. BCH brought a cross application on April 3, 2018, to have the Receiver's Application stayed pursuant to the *Arbitration Act* and then have the issue dealt with by way of arbitration (the "**Arbitration Act Application**").

18. On April 6, 2018, Justice Fitzpatrick dismissed the BCH Lift Application. Her Ladyship's Reasons are attached hereto and marked as **Exhibit "N"** but the key aspects are set out at paragraphs 31 to 36:

*[31] I agree that there is no question that significant prejudice, or financial loss, will be visited upon numerous stakeholders in the event that the EPA is terminated. These stakeholders, of course, includes Industrial Alliance. In addition, the Receiver refers to potential prejudice arising from the impact benefits agreements negotiated or to be negotiated with the First Nations that are involved.*

*[32] There are significant other consequences arising from any termination of the EPA. If the project fails and Industrial Alliance walks away, it has been suggested that millions of dollars of remediation costs will be incurred to clean up the site. Without Industrial Alliance there to pick up the tab, there is no doubt that the British Columbia taxpayers will be next up to pay the bill. Not surprising, in light of this risk, the Province of British Columbia has filed a response supporting the continuation of the stay.*

*[33] BC Hydro's counsel makes the point that there is a distinction between prejudice from the notice of termination and prejudice from the cancellation or termination of the EPA. In the circumstances of this case, I consider that this is a distinction without a difference. If nothing else, if the notice of termination is delivered, it will lead, as Industrial Alliance's counsel argues, to uncertainty in the marketplace and will put the entire sales process in potential jeopardy. Therefore, even though the prejudice may not directly arise from the notice of termination, in my view there is certainly interim prejudice, which may in fact lead to the ultimate prejudice that I have already referred to above.*

*[34] The other issue is urgency. Urgency here may be relevant as to where the termination issue is to be resolved. Counsel refer to the fact that the snowmelt is almost upon us, if not upon us. The Receiver indicates that various work has to be undertaken to address and avoid any environmental concerns arising from spring runoff. Again, with uncertainty as to whether the termination issue is going to be resolved quickly, the ability or willingness of Industrial Alliance to advance funds for this purpose is in jeopardy. In short, there is considerable risk that the uncertainty here could result in the whole house of cards falling down.*

*[35] In summary, I accept that there is no prejudice to BC Hydro and that there is substantial prejudice to the other stakeholders, both present and potential, if the stay is lifted in order to allow BC Hydro to deliver any notice of termination.*

*[36] I conclude that the stay should not be lifted. Of course, it is obvious to everyone that the issues need to be resolved, whether by arbitration or in this Court. Those looming options pose their own uncertainty and risk. There is the risk to the Industrial Alliance side, if I can call it that, that this Court will ultimately decide that the matter must be arbitrated, which will result in further cost and delay. Further, even if the matter is ultimately addressed in this Court, there is*

*also potential for delay and costs, depending on whether the issue can be decided on a summary basis.*

19. On May 4, 2018, Butler J. relied upon and exercised his jurisdiction under the *BIA* and the Receivership Order to dismiss the Arbitration Act Application. A copy of Justice Butler's Reasons are attached hereto and marked as **Exhibit "O"**.

20. On May 18, 2018, Butler J. found that BC Hydro was estopped from terminating the EPA for a failure to reach commercial operation by a certain date, but declined to make the declaration for broader relief that the Receiver was seeking in the Receivership Application. A copy of these Reasons are attached hereto and marked as **Exhibit "P"**.

21. On May 30, 2018, counsel for BC Hydro wrote to counsel for the Receiver and counsel for IA advising for the first time that they intended to appeal both the Orders of Mr. Justice Butler. On June 1, 2018, BCH filed and served the Notices of Appeal in both actions CA45324 and CA45325. A copy of that letter is attached hereto and marked as **Exhibit "Q"**.

22. The Receiver has indicated that it is confident that if the EPA is not terminated, there will be a sale of the Project to a credible purchaser that will result in a substantial realization for several of the stakeholders and other benefits will flow to the many other stakeholders, including other creditors and First Nations. The Receiver also notes that it requires certainty with respect the status of the EPA and that ongoing delay will impact the value of the process and erode the value and parties involved may lose interest in the sales process if there is further delay.

23. IA shares the Receiver's concerns. IA is owed in excess of \$21 million, and has advanced some \$1.5 million post receivership, to allow the Project to advance to a stage where the Receiver can sell it. The Receiver has received bids that would result in a substantial recovery to IA and benefits to other stakeholders.

24. This is a complex project that involves agreements with not just BC Hydro and Power Authority but with First Nations, other landowners and creditors and all of the various stakeholders whose consent or support is required to the point that the Project is viable. For example, the Lil'wat and Squamish First Nations, who are parties to the original Impact Benefit Agreement (the "**IBA**") with the Wedgemount Entities on the Project, were also parties to the Amended Impact Benefit Agreement (the "**Amended IBA**") which has been negotiated with the Receiver.

25. Prior to BCH raising issues on the EPA, the Amended IBA was only waiting for final approval of Council of the Squamish First Nation. The Amended IBA includes provisions which address the necessary approvals of the final route for interconnection of the Project to the BCH electricity grid (the "**Interconnection Route Approval**") and it is critical to the Project moving ahead.

26. Since the two decisions were pronounced by Butler J. and the positive status of the EPA in relation to the Project was confirmed:

- (a) the Receiver resumed the sales process, engaged in discussions and negotiations with the owner of lands on which portions of the Project are located, moved penstock piping sections, and generally began to move the Project towards completion and a final sale in the context of the Receivership; and
- (b) IA's counsel has been in discussions with Lil'wat and Squamish First Nation's legal counsel to complete the final steps in connection with the Amended IBA and the approvals of the Interconnection Route Approval.

27. All of this work has been at significant cost and expense borne by IA. Interested purchasers have also conducted significant due diligence efforts and the First Nations have become engaged to move the Amended IBA ahead once again following the granting of the decisions.

28. IA is concerned that any further delays due to these appeals being commenced by BCH, even after the date commencement was required under the Rules of the *Bankruptcy and Insolvency Act*, may result in stakeholders becoming frustrated, and that they may attempt to walk away from the existing arrangements in place, thereby causing the sales process to come to a halt for the second time. All of this will result in further losses to IA and will jeopardize the Project altogether.

29. Attach hereto and marked as **Exhibit "R"** is a copy of the Affidavit of Michèle Hay #2, sworn and filed March 27, 2018.

SWORN BEFORE ME at the City of )  
Quebec, in the Province of Quebec, )  
this 15 day of June, 2018. )

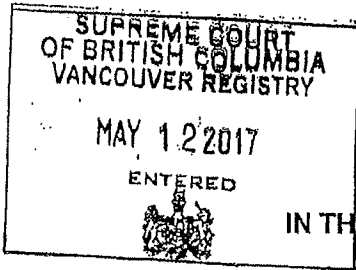
Michèle Hay Gilbert, notary )  
A Notary in and for the Province of (M1133) )  
Quebec )

  
STÉFANIE LEDUC

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Véronique Hains (Notary #11133)  
A Notary for taking Affidavits within the Province of Québec





NO. S-174308  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE )  
MR. JUSTICE STEEVES )  
FRIDAY, THE 12<sup>TH</sup> DAY  
OF MAY, 2017.

ON THE APPLICATION of the Plaintiff, for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing Deloitte Restructuring Inc. ("Deloitte") as Receiver and Manager (in such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP") and Wedgemount Power Inc. ("Wedgemount Power") (collectively, the "Wedgemount Entities") acquired for, or used in relation to a business

carried on by the Wedgemount Entities, coming on for hearing this day at the Courthouse, 800 Smite Street, Vancouver, British Columbia.

AND ON READING the Notice of Application dated May 9, 2017, the Affidavit #1 of Luc Fournier sworn May 9, 2017, the Affidavit #1 of Kristine Jang sworn May 10, 2017 and the consent of Deloitte to act as the Receiver; AND ON HEARING Daniel Shouldice, Counsel for the Plaintiff, and other counsel as listed on **Schedule "A"** hereto.

THIS COURT ORDERS AND DECLARES that:

#### **APPOINTMENT**

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Wedgemount Entities, including all proceeds thereof (the "Property").

#### **RECEIVER'S POWERS**

2. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Wedgemount Entities, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Wedgemount Entities;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, including Midgard Consulting Inc., from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Wedgemount Entities or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Wedgemount Entities and to exercise all remedies of the Wedgemount Entities in collecting such monies, including, without limitation, to enforce any security held by the Wedgemount Entities;
- (g) to settle, extend or compromise any indebtedness owing to the Wedgemount Entities;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Wedgemount Entities, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Wedgemount Entities;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Wedgemount Entities, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Wedgemount Entities;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Wedgemount Entities, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Wedgemount Entities;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Wedgemount Entities may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) in respect of the Impact and Benefits Agreement dated August 1, 2014 (the "**Squamish-Lil'wat IBA**") between inter alia, Squamish Nation, Lil'wat Nation, and Wedgemount Power (with the interest of Wedgemount Power having been assigned by Wedgemount Power to Wedgemount LP and then assigned as security by Wedgemount LP to the Plaintiff), the Receiver;
  - (i) is authorized and permitted, but not obligated, to make all payments and perform all obligations of Wedgemount LP under the IBA,
  - (ii) may only terminate the Squamish-Lil'wat IBA,
    - A. in accordance with the termination provisions in the IBA, and
    - B. with the consent of the Plaintiff, or
    - C. subject to a further court order on notice to the Plaintiff and to the Squamish and Lil'wat Nations,
  - (iii) may only sell or assign the interest of Wedgemount LP in the Squamish Lil'wat IBA subject to the terms of the Squamish Lil'wat IBA,

provided that in making any payments or performing any obligations under the Squamish-Lil'wat IBA as permitted herein, the Receiver does not become bound by nor incur any obligations under the Squamish-Lil'wat IBA,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Wedgemount Entities, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Wedgemount Entities, (ii) all of the Wedgemount Entities's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including Colmac Capital Corp. and Eco Flow Energy Corporation (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Wedgemount Entities, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
5. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE WEDGEMOUNT ENTITIES OR THE PROPERTY**

7. No Proceeding against or in respect of the Wedgemount Entities or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Wedgemount Entities or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Wedgemount Entities and the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

8. All rights and remedies (including, without limitation, set-off rights) against the Wedgemount Entities, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Wedgemount Entities to carry on any business which the Wedgemount Entities is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

9. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Wedgemount Entities, without written consent of the Receiver or leave of this Court.

### CONTINUATION OF SERVICES

10. All Persons having oral or written agreements with the Wedgemount Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Wedgemount Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Wedgemount Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Wedgemount Entities or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### RECEIVER TO HOLD FUNDS

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-Receivership Accounts**") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

### EMPLOYEES

12. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Wedgemount Entities shall remain the employees of the Wedgemount Entities until such time as the Receiver, on the Wedgemount Entities' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Wedgemount Entities, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Wedgemount Entities, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

14. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.

#### LIMITATION ON THE RECEIVER'S LIABILITY

15. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.



Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

### RECEIVER'S ACCOUNTS

16. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### FUNDING OF THE RECEIVERSHIP

19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.0 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### ALLOCATION

23. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### GENERAL

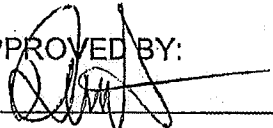
24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Wedgemount Entities.
26. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
28. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Wedgemount Entities' estate with such priority and at such time as this Court may determine.
29. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver and to any other

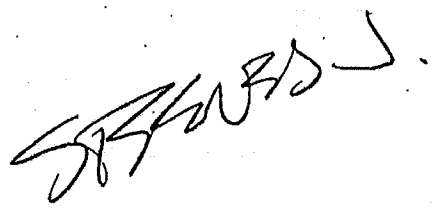
party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

- 30. Endorsement of this Order by counsel appearing on this application other than the Plaintiff is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

APPROVED BY:

  
\_\_\_\_\_  
Signature of Daniel Shouldice  
lawyer for the Plaintiff

  
BY THE COURT

  
\_\_\_\_\_  
DISTRICT REGISTRAR



SCHEDULE "A"

LIST OF COUNSEL

Industrial Alliance Insurance and Financial Services Inc. v.  
Wedgemount Power Limited Partnership et al  
SCBC No. \_\_\_\_\_

<p><b>Counsel for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc.</b></p> <p>Gowling WLG (Canada) LLP 2300 - 550 Burrard Street Vancouver, BC V6C 2B5</p> <p>Daniel Shouldice tel: 604-683-6498 fax: 604-683-3558 direct line: 604-891-2286 email: daniel.shouldice@gowlingwlg.com</p>	<p><i>Counsel for Defendant 28165 Yukon Inc. Amanda Barron</i></p>

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte, the Receiver (the "Receiver") of all of the assets, undertakings and properties of the Wedgemount Entities acquired for, or used in relation to a business carried on by the Wedgemount Entities, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the 12<sup>th</sup> day of May, 2017 (the "Order") made in SCBC Action No. S-174308 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~daily~~ ~~monthly~~ not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [REDACTED] day of [REDACTED], 201[REDACTED].

Deloitte Restructuring Ltd. solely in its  
capacity as Receiver of the Property, and  
not in its personal capacity

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Per:  
Name:  
Title:

THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC, SWORN BEFORE  
ME AT QUEBEC CITY, QUEBEC, THIS 13 DAY OF  
MARCH, 2018.

*Veronique Plouffe, notaire*  
A Notary in and for the Province of Quebec

14/06/17

BCH

- October start swimming
- will draw on L.C. but will read email from legal dept.
- Need to see things moving / & bills paid to go on in EPA.
- Need to be aware of change of control.

ISD + 90 days for COD.. target  
with connection service date.

-> drawing / clearances in subdivisions  
needed as well (in addition of CE  
drawings)



No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by  
its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

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**AFFIDAVIT**

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**GOWLING WLG (CANADA) LLP  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5**

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**Tel. No. 604.683.6498  
Fax No. 604.683.3558**

**File No. L67090009**

**DS**

THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Veronique Morin-Sibert, notary (41133)  
A Notary for taking Affidavits within the Province of Quebec

**BC HYDRO**  
**ELECTRICITY PURCHASE AGREEMENT**  
**STANDING OFFER PROGRAM**

THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of March 6, 2015  
(the "Effective Date")

BETWEEN:

Wedgemount Power Limited Partnership a limited partnership represented by its General Partner Wedgemount Power (GP) Inc., a corporation incorporated under the laws of the Province of British Columbia with its head office at 5403 Buckingham Avenue, Burnaby, BC V5B 1Z9

("Seller")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act* R.S.B.C. 1996, c. 212, with its head office at 333 Dunsmuir Street, Vancouver, BC V6B 5R3

("Buyer").

The Parties agree as follows:

1. **INTERPRETATION**
  - 1.1 The definitions and certain principles of interpretation that apply to this EPA are set out in Appendix 1.
2. **TERM**
  - 2.1 The term ("Term") of this EPA commences on the Effective Date and continues until the [REDACTED] anniversary of COD, unless it is terminated earlier as authorized under this EPA.
3. **CONSTRUCTION AND OPERATION**
  - 3.1 **Construction and Operation Costs and Liabilities** - Except as set out in Appendix 3, the Seller shall be responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.
  - 3.2 **Standard of Construction and Operation** - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated by qualified and experienced individuals. The Seller

represents, warrants and covenants that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant, are and, except as otherwise consented to by the Buyer, shall be carried out at all times during the Term in compliance with: (a) the information in the Application in all material respects; and (b) the Project Standards as defined in Appendix 1, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Delivered Energy to continue to qualify as Clean Energy under the new requirements.

**3.3 Project Changes** - Without limiting any other section of this EPA under which the Buyer's consent is required, the Seller shall not make any change to:

- (a) those aspects of the Seller's Plant described in sections 1 - 3 of Appendix 2; or
- (b) any other aspects of the Seller's Plant or the information in any interconnection study completed for the Seller's Plant prior to the Effective Date where such change would increase the Buyer's liability for Network Upgrade Costs or any other costs with respect to the Seller's Plant or any other project,

in either case without the Buyer's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. The Seller shall not make any change to the Plant Capacity without the Buyer's prior consent. The Seller acknowledges that the Buyer may require as a condition of its consent to any change described in this section, or any other change to the Seller's Plant for which the Buyer's consent is required under any other section of this EPA, that the Seller agree in writing to reimburse the Buyer for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project, and any other losses, costs and damages incurred by the Buyer as a result of any change described in this section. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation.

**3.4 Development Reports** - The Seller shall deliver a Development Report to the Buyer on each January 1, April 1, July 1 and October 1 after the Effective Date until COD.

**3.5 Network Upgrades** - The Parties' obligations with respect to Network Upgrade Costs and Network Upgrade Security are set out in Appendix 3.

**3.6 Revenue Metering Equipment** - The Seller shall ensure that a Revenue Meter is installed, operated and maintained at a location approved by the Buyer, acting reasonably. The Revenue Meter must be tested and sealed according to Measurement Canada standards by a facility that is accredited by Measurement Canada. The Revenue Meter must be capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities. If there is any dispute regarding the accuracy of the Revenue Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Buyer may, at its cost, install a duplicate revenue meter at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller shall allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter. The Seller shall make equipment and telephone access available to the Buyer as required for the duplicate revenue meter. If the Seller's Plant is rated 1.00 MVA or higher, the Seller shall ensure that the Seller's Plant is equipped with SCADA capability.

- 3.7 **Insurance** - The Seller shall obtain, maintain and pay for (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$3,000,000 applicable to the Project, and (ii) construction insurance and, in respect of the Seller's Plant, property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender requires. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller shall give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section 3.7 not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section 3.7.
- 3.8 **Early COD** - Except with the Buyer's prior consent, COD may not occur earlier than 90 days prior to Target COD. The Buyer shall not be required to incur any incremental expense or other liability of any kind to enable COD to occur prior to Target COD.
- 3.9 **Change in Target COD** - If the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.
- 3.10 **No Liability For Delay** - The Buyer shall have no liability under this EPA for delays in completion of (i) any Network Upgrades, or (ii) other work undertaken by the Distribution Authority or the Transmission Authority on the Seller's Plant side of the POI, in each case howsoever arising.
- 3.11 **Buyer Target COD Deferral** - The Buyer may at any time not later than 365 days after the Effective Date deliver written notice to the Seller that the Buyer may require the Seller to extend the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA. Within 30 days after receipt of a notice under this section, the Seller shall deliver to the Buyer an estimate of all costs that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, solely as a result of a deferral of Target COD under this section together with all information required to verify the cost estimate. The Seller shall provide any additional information reasonably requested by the Buyer to verify the cost estimate and shall permit the Buyer and any third party retained by the Buyer to verify the cost estimate complete access to the Seller's books, records, contracts and other documents as required to verify the cost estimate. Within 45 days after receiving a complete and accurate cost estimate, the Buyer shall provide written notice to the Seller to either: (i) defer the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA, or (ii) maintain the Target COD then in effect under this EPA without deferral under this section. If the Buyer does not deliver a notice as required under this section, the Buyer will be deemed to have elected to maintain the Target COD then in effect under this EPA without deferral. If the Buyer delivers a notice to defer the Target COD in accordance with this section, the Target COD shall be postponed to the date specified in the deferral notice. If the Target COD is postponed under this

*BC Hydro Standing Offer Program - EPA*

section, the Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller solely as a result of the postponement of the Target COD under this section, after taking all reasonable mitigation measures to limit or avoid those costs. Any payment by the Buyer to the Seller under this section shall be due within 30 days after delivery by the Seller to the Buyer of an invoice setting out the details of such costs in reasonable detail together with all supporting information and documents required to verify the amounts in the invoice.

**3.12 First Nations Consultation**

**3.12.1** For the purposes of this EPA, the following terms shall have the following meanings, respectively:

(a) "First Nations" means:

- (i) for the purposes of this EPA (other than subsection 3.12.3), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller's Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller's Plant, and
- (ii) for the purposes of subsection 3.12.3, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 3.12.1(a),

(b) "Order or Decision" means:

- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and
- (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;

(c) "Potential Impacts" means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer's side of the Point of Interconnection or on the Transmission System):

- (i) this EPA;

- (ii) the Project;
  - (iii) the interconnection of the Seller's Plant to the Transmission System; or
  - (iv) any activities carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law directly related to the Seller's Plant to enable the Seller to comply with its obligations under the EPA; and
- (d) "Verification" means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller shall each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 7.5 and each of the Buyer and the Seller shall, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties shall ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator's opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller shall each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

3.12.2 If, prior to the second anniversary of COD, the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, shall:

- (a) carry out that consultation to the extent the Seller is legally capable of doing so and in accordance with applicable Laws, or assist the Buyer if and to the extent requested by the Buyer in the consultation process;
- (b) take measures, to the extent (if any) required under the Order or Decision, or under applicable Laws, to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts; and
- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, or such other information and communications as may be reasonably requested by the Buyer.

3.12.3 Notwithstanding subsection 3.12.2, the Buyer hereby confirms that the responsibilities of the Seller in subsection 3.12.2 do not in any way whatsoever encompass or apply to the following matters, whether arising prior to or after the second anniversary of COD:

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- (a) any duty to consult or accommodate applicable to any Crown decision-maker or regulatory authority, which for greater certainty does not include the Buyer, that is considering or dealing with the Project in any way, including in connection with the consideration of the issuance of any of the Permits;
- (b) any measure of reconciliation or accommodation that the Buyer may offer or be required to provide to a First Nation related to land or resource use that is not associated with the Potential Impacts, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export; and
- (c) any measure of reconciliation or accommodation that the Crown may offer or be required to provide to a First Nation related to land or resource use, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export.

3.12.4 The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 3.12.2. Any failure by the Buyer to notify the Seller as required under subsection 3.12.2 or subsection 3.12.4 shall not limit or otherwise affect the Seller's obligations under subsection 3.12.2 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 10.9 applies to the obligations of the Seller in subsections 3.12.2 and 3.13, and the Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to perform its obligations under subsections 3.12.2 and 3.13. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 3.12.2 and 3.13; including agreeing to reasonable amendments of the EPA as contemplated by section 3.13; provided however, that any proposed amendment of the EPA must be in the public interest.

3.12.5 At any time prior to the second anniversary of COD, the Buyer will not have any discussions with any First Nation with respect to the consultation or accommodation regarding the Project without first notifying the Seller of its intention to have such discussions and seeking the consent of the relevant First Nation for the Seller to participate in such discussions. The foregoing obligation does not extend to any properties or infrastructure owned by the Buyer.

3.13 **Right to Terminate** - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 3.12 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of the EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the unreasonable cost or obligation on the Seller or the consent or agreement to an amendment of the EPA has been provided, as applicable. A termination by the Seller under this



section shall, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 8.3(d) of this EPA. If the Seller terminates the EPA pursuant to this section, the Seller shall not be, or be deemed to be or have been, in breach of section 3.12 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate the EPA under this section. For purposes of this section 3.13, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 3.12, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of the EPA to the Seller over the entire Term.

**3.14 Planned Outages - The Seller shall:**

- (a) give the Buyer not less than 90 days' prior notice of any Planned Outage, or such shorter period to which the Buyer may consent, such consent not to be unreasonably withheld, delayed or conditioned, and such notice shall state the start date and hour and the end date and hour for the Planned Outage. Notwithstanding the foregoing, at any time prior to 48 hours before the start of a Planned Outage that will be more than 7 days long, the Seller may change the proposed start time for the Planned Outage by not more than 24 hours and at any time prior to 48 hours before the end of the Planned Outage, the Seller may change the proposed end time of the Planned Outage on notice to, and without the consent of, the Buyer, provided that if as a result of such notice from the Seller the Planned Outage starts later or ends earlier than originally scheduled, there will be no deemed Delivered Energy under section 4.7 during the period between the originally scheduled start time and the revised start time and/or between the originally scheduled end time and the revised end time of the Planned Outage;
- (b) in accordance with the Buyer's written instructions, use the Buyer's web-based application or other system for communicating Planned Outages to the Buyer;
- (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as notified to the Seller; and
- (d) make commercially reasonable efforts to coordinate all Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller.

Not less than 30 days before a Planned Outage is scheduled to commence, the Buyer may request the Seller to reschedule that Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, including a reasonable contingency allowance, of the costs, if any, the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage, and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section 3.14.

**3.15 Notice of Outages** - Other than for a Planned Outage for which notice has been given pursuant to section 3.14, the Seller shall promptly notify the Buyer of any outage, or any anticipated outage of the Seller's Plant.

**4. PURCHASE AND SALE OBLIGATIONS**

**4.1 Pre-COD Energy** - The Buyer shall make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that the Buyer shall not be required to take any steps or to incur any incremental expense or other liability of any kind to enable delivery of Energy to the POI prior to 90 days before the Target COD.

**4.2 Post-COD Sale and Purchase of Energy** - From and after COD for the remainder of the Term, the Seller shall sell and deliver all Energy to the Buyer at the POI and the Buyer shall purchase and accept delivery of all Delivered Energy. The Buyer shall pay for all Delivered Energy after COD in accordance with section 5.2. Notwithstanding the foregoing, the Buyer shall have no obligation to take or pay for any Energy that is generated as a result of an increase in the Plant Capacity made without the consent of the Buyer in accordance with section 3.3. When the Seller is delivering Energy to the Buyer, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

**4.3 Transmission Outages** - The Buyer will not be in breach or default of its obligations under section 4.1, section 4.2 or section 5.2 if the Buyer is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint or Disconnection. The Buyer shall have no liability with respect to a Distribution/Transmission Constraint or Disconnection, except as set out in section 4.7, if applicable.

**4.4 Environmental Attributes** - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes.

**4.5 Exclusivity** - The Seller shall not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than the Buyer under this EPA. The Seller shall not use any Energy or use, apply, claim or retire Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. These prohibitions do not apply when the Buyer is in breach of its obligations under section 4.2. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

**4.6 Custody, Control, Risk of and Title To Energy** - Custody, control, risk of, and title to, all Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances. The Seller is responsible for all transmission losses and costs relating to the transmission of Energy from the Seller's Plant to the POI.

**4.7 Distribution/Transmission System Constraint or Disconnection** - If in any month after COD the Seller is unable to deliver Energy at the POI solely as a result of a Distribution/Transmission Constraint or Disconnection that exceeds 30 continuous minutes in duration and such Distribution/Transmission Constraint or Disconnection:

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- (a) is not caused by an event beyond the control of the Buyer or the Transmission Authority;
- (b) is not caused by the Seller or the Seller's Plant; and
- (c) occurs after Distribution/Transmission Constraints or Disconnections have been in effect for more than 24 hours in the aggregate, whether or not continuous, in that month;

then, notwithstanding that the Buyer is excused under section 4.3 from its obligations under section 4.2, the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by the amount of Energy, not exceeding ■ MWh, that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed but for the occurrence of the Distribution/Transmission Constraint or Disconnection less any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint or Disconnection. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to the Buyer and provide the Buyer with all information required to calculate such costs. The Buyer or its designated representative may audit such costs and in that event the provisions of section 7.2 apply. The Buyer will not be required to pay for any Energy under this section during any period specified as a maintenance period in an Energy schedule delivered pursuant to section 7.7 or during any other period where the Seller's Plant would otherwise not have been operating. For greater certainty, the provisions of this section will not apply during any period when the Buyer is or would be excused, in accordance with section 7.9, from its obligation to accept delivery of Energy as a result of Force Majeure.

4.8 Buyer Dispatch/Turn-Down Right -

- (a) The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to turn down or shut off the Seller's Plant (a "Dispatch/Turn-Down") and the Seller shall forthwith comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.
- (b) Energy, not exceeding ■ MWh, that could have been generated and delivered to the POI in each hour as Delivered Energy but for a direction from the Buyer pursuant to subsection 4.8(a) shall be deemed to be Delivered Energy and the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by that amount of Energy less any costs the Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) There shall be no deemed Delivered Energy pursuant to this section in any hour specified as a maintenance period in any Energy schedule delivered pursuant to section 7.7 or during any other hour when the Seller's Plant would otherwise not have been operating if there had been no Dispatch/Turn-Down notice or in any period when the Buyer is excused under section 7.9 from its obligations under section 4.2 and 5.2.

5. PRICE AND PAYMENT TERMS

- 5.1 Pre-COD Energy - No price is payable by the Buyer for Energy delivered to the POI prior to COD.

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5.2 **Post-COD Energy Price** - Subject to section 4.2, the price payable by the Buyer for each MWh of Delivered Energy after COD and prior to expiry of the Term is [REDACTED] /MWh, adjusted as follows:

- (a) effective as of January 1 in each year after the Effective Date in accordance with the following formula:

$$\text{Payment Price}_n = (.5 * [REDACTED] / \text{MWh} * \text{CPI}_{\text{January 1, } n} / \text{CPI}_{\text{January 1, 2015}}) + (.5 * [REDACTED] / \text{MWh})$$

Where:

$n$  = the year for which the relevant calculation is being conducted

$\text{CPI}_{\text{January 1, } n}$  = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

- (b) for each hour, the price determined pursuant to subsection (a) for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of that price applicable for that hour as set out in the table in Appendix 4.

5.3 **No Further Payment** - The amount payable by the Buyer as specified in section 5.2 is the full and complete payment and consideration payable by the Buyer for Energy delivered by the Seller to the Buyer under this EPA and for the Environmental Attributes transferred by the Seller to the Buyer under this EPA.

5.4 **Statements and Payment** -

5.4.1 **Statements:**

- (a) The Seller shall, by the 15th day of each month after COD, deliver to the Buyer a statement for the preceding month. The statement must indicate, among other things, the amount of Delivered Energy for that month (including any deemed Delivered Energy and any associated avoided or avoidable costs pursuant to section 4.7), the price payable for the Delivered Energy, and any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.
- (b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.

5.4.2 Payment:

- (a) Within 30 days after receipt of a statement delivered under subsection 5.4.1, and subject to section 5.6, the Buyer shall pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller in compliance with subsection 5.4.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

5.5 Taxes - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy and Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

5.6 Set-off - If the Buyer and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party shall be aggregated and the Parties may discharge their obligations to pay through netting; in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Delivered Energy owing by the Buyer to the Seller, any Final Amount owing by either Party to the other Party, and any amount owing by the Seller to the Buyer under Appendix 3 of this EPA; and
- (b) no Final Amount or amount owing by the Seller to the Buyer under Appendix 3 of this EPA shall be added to or deducted from the price owing by the Buyer to the Seller for Delivered Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing.

Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

6. ENVIRONMENTAL ATTRIBUTES - CERTIFICATION AND ADMINISTRATION

6.1 EcoLogo<sup>M</sup> Certification - Without limiting the Seller's obligation to comply with subparagraph (e) of the definition of Project Standards in Appendix 1, if required by the Buyer, the Seller shall use commercially reasonable efforts to obtain EcoLogo<sup>M</sup> Certification for the Seller's Plant and all the Delivered Energy and shall use commercially reasonable efforts to maintain EcoLogo<sup>M</sup> Certification for such period during the remainder of the Term as the Buyer may specify. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo<sup>M</sup> Certification as required hereunder or if, at any time during the period of the Term specified by the Buyer, the Seller does not have EcoLogo<sup>M</sup> Certification. If the Buyer requires the Seller to obtain EcoLogo<sup>M</sup> Certification, the Buyer shall be responsible for all certification, audit and licensing fees required to obtain EcoLogo<sup>M</sup> Certification, unless the Seller requires EcoLogo<sup>M</sup>

Certification to comply with subparagraph (e) of the definition of the Project Standards in Appendix 1, or the Seller fails to obtain or maintain EcoLogo<sup>M</sup> Certification, in either of which cases the Seller shall be responsible for all such fees.

- 6.2 **Alternate Certification** - The Seller shall, at the Buyer's request and at the Buyer's cost, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes as an addition or an alternative to the EcoLogo<sup>M</sup> Certification. Any failure by the Seller to use commercially reasonable efforts pursuant to this section 6.2 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 8.1(i).

## 7. EPA ADMINISTRATION

- 7.1 **Records** - The Seller shall prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such records for the purposes of an inspection or audit under section 7.2.

- 7.2 **Inspection and Audit Rights** - For the sole purpose of verifying: (a) compliance with this EPA; (b) the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA; (c) the qualification of the Energy as Clean Energy; (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or (e) the liability of each of the Parties for Network Upgrade Costs, the Seller shall, on reasonable prior notice from the Buyer, provide the Buyer and its Affiliates, representatives, consultants, advisors and any third party with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors (the "Audit Parties") with prompt access during normal business hours to the Seller's Plant and all records relating to the Seller's Plant, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties shall exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer shall first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

- 7.3 **Seller Consents** - The Seller shall promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of the Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and Permits applicable to the Seller's Plant.

## 7.4 Assignment

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under the EPA arising both before and after the Assignment, providing any Network Upgrade Security as applicable at the time of Assignment, and providing the representations and warranties set out in the Application and in section 9.1 effective as at the time of Assignment, subject in the case of the representation and warranty in subsection 9.1(c) to such exceptions as the Buyer consents to acting reasonably.
- (b) **Time for Request:** Any request by the Seller for the Buyer's consent under subsection 7.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 7.4(a).

## 7.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 5.4.2(b) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 5.4.2(b), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.

- (c) **Confidentiality:** The Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties shall be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Government of British Columbia.

**7.6 Notices -** Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix 1 and:

- (a) notices under section 7.9, section 8.1, section 8.3 and section 4 of Appendix 3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 7.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

**7.7 Energy Schedules -** By September 15 of each year, the Seller shall deliver to the Buyer a schedule of the expected total deliveries of Energy to the POI in each month during the 12 month period commencing on October 1 of the year in which the schedule is delivered and a schedule of the maintenance outages expected for the Seller's Plant during that period. The Energy schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer promptly upon becoming aware of any expected material change in a delivered Energy schedule.

**7.8 Confidentiality**

**7.8.1 Confidentiality and Compliance Agreement -** The Standing Offer Confidentiality and Compliance Agreement continues in full force and effect in accordance with its terms.

**7.8.2 Additional Confidentiality Obligation -** Without limiting the effect of the Standing Offer Confidentiality Agreement, during the Term and for two years thereafter (i) the Buyer shall treat as confidential, and shall not disclose to any third Person, Seller Confidential Information, and (ii) the Seller shall treat as confidential, and shall not disclose to any third Person, Buyer Confidential Information, provided however that nothing in the foregoing obligations, and nothing in this EPA, prevents or restricts:

- (a) disclosures that are expressly authorized under any section of this EPA, or as otherwise set out in this EPA;



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- (b) disclosures that are necessary to enable either Party to fulfill its obligations under this EPA;
- (c) in the case of the Buyer, disclosure of Seller Confidential Information:
  - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia; and
  - (ii) to its directors, officers, employees and Affiliates, consultants and advisors;provided that each of the foregoing to whom Seller Confidential Information is disclosed is advised of the confidential nature thereof;
- (d) in the case of the Buyer, disclosure of Seller Confidential Information in any regulatory proceeding, whether in respect of this EPA or in respect of other matters, to the extent that the Buyer considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, the Buyer gives reasonable notice to the Seller before making the disclosure, and, to the extent requested by the Seller, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (e) in the case of the Buyer, disclosure to any Person or any Governmental Authority of any Seller Confidential Information with respect to:
  - (i) the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as Clean Energy or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as Clean Energy; or
  - (ii) the Energy and/or the Seller's Plant that the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Environmental Attributes, including sales of Environmental Attributes to third Persons;
- (f) in the case of the Buyer, disclosures to a third Person of any Seller Confidential Information that was known by that third Person before disclosure thereof by the Buyer, including information that originated from that third Person or that the Seller or any other Person has given the third Person, in either case as indicated on the face of any document or as acknowledged by the Seller in any discussions with the Buyer;
- (g) in the case of the Seller, disclosure of the Buyer Confidential Information to its directors, officers, employees, consultants and advisors, provided that each of the foregoing to whom Buyer Confidential Information is disclosed is advised of the confidential nature thereof and undertakes in writing to respect such confidentiality on the terms of the EPA, provided that the Seller shall give to the Buyer, at its request, a copy of each undertaking;
- (h) without limiting the Buyer's disclosure rights under subsection 7.8.2(d) above, disclosures required to be made by a Party by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that (i) to the extent reasonably practicable, the Party making such

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disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement;

- (i) disclosures in any legal proceedings for the enforcement of this EPA; or
- (j) disclosures of the Seller Confidential Information or the Buyer Confidential Information, as the case may be, by written agreement or consent of both Parties.

7.8.3 **Freedom of Information and Protection of Privacy Act** - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

7.8.4 **Exemption from Disclosure** - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 7.8.3, all Seller Confidential Information disclosed by the Seller to the Buyer shall be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

7.9 **Force Majeure** -

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given promptly to the other Party identifying the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and shall give prompt notice of the end of the Force Majeure.
- (b) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 7.9, any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nation, in relation to this EPA, the Project, the Seller's Plant or the interconnection of the Seller's Plant to the Distribution System or the Transmission System, as applicable (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nation, with respect to activities occurring after COD on the Buyer's side of the Point of Interconnection, or on the Transmission System), shall be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented shall use

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commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 3.12.2.

- (c) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a wilful act or omission of a Party, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nation may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under the EPA, including any further amendment of the EPA that the Buyer may provide in respect of the Seller's activity.
- (d) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a failure by the Seller to comply with its obligations under section 3.12 of this EPA.
- (e) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 7.9(b) if:
  - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
  - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in paragraph (a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;
  - (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
  - (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in subsection 7.9(e)(i).

8. TERMINATION

8.1 Termination by Buyer - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Buyer may have under this EPA or at law or in equity in respect of any of the following events, the Buyer may terminate this EPA by notice to the Seller if:

- (a) COD does not occur by the second anniversary of Target COD for any reason

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whatsoever (including Force Majeure), provided that the Buyer may terminate the EPA under this provision only if the Buyer delivers a termination notice prior to COD; or

- (b) at any time after COD, the Seller does not deliver any Energy to the Buyer for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a Distribution/Transmission Constraint or Disconnection), but excluding a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (c) at any time after COD, the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (d) the Seller breaches section 4.5; or
- (e) the Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Transmission System or the Distribution System in accordance with the requirements of, and within the time limits, including any cure periods, specified by the Transmission Authority or Distribution Authority, as applicable, and such failure results in a loss of the interconnection queue position for the Seller's Plant or otherwise could reasonably be expected to have an adverse impact on the Buyer; or
- (f) any one of the Seller or the General Partner is Bankrupt or Insolvent; or
- (g) the Seller or the General Partner, as a result of an act or omission of the Seller or the General Partner, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA; or
- (h) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
- (i) any one of the Seller or the General Partner is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 3.2 in respect of subsection (e) of the "Project Standards" definition in Appendix 1, section 4.5, section 6.1 or section 6.2.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Seller.

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- 8.2 **Notice of Termination Event** - The Seller shall notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller's Plant is terminated or expires.
- 8.3 **Termination by the Seller** - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:
- (a) the Seller has not been able to achieve COD for a period of 180 days after Target COD solely as a result of a delay in completion of Interconnection Network Upgrades where such delay is not attributable directly or indirectly in whole or in part to the Seller or the Seller's Plant; or
  - (b) after COD, the Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 4.3 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 4.7 in respect of that period; or
  - (c) the Seller's Plant has suffered Major Damage;
  - (d) the Seller has been unable to achieve COD for a period of 730 days after Target COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after COD in either case solely as a result of Force Majeure invoked by the Seller in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
  - (e) the Buyer is Bankrupt or Insolvent; or
  - (f) except where an amount has been disputed in the manner specified in subsection 5.4.1(a), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
  - (g) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Buyer.

- 8.4 **Effect of Termination** - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:
- (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity

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in respect of any prior breach or breaches of the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under Appendix 3), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and

- (b) both Parties will remain bound by Article 5 and Appendix 3 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination, and sections 7.5 and 7.8 and all provisions of the EPA with respect to Environmental Attributes but only with respect to Environmental Attributes associated with Delivered Energy prior to termination of this EPA; and
- (c) the Seller will remain bound by sections 7.1 and 7.2 for a period of 36 months following expiry or termination of this EPA

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

**8.5 Buyer Payment on Seller Termination** - If the Seller terminates this EPA under any of subsections 8.3(e), (f) or (g), the Buyer shall pay to the Seller an amount equal to the positive amount if any by which the Seller's Losses and Costs exceed its aggregate Gains. The Seller's Gains, Losses and Costs shall be determined by comparing the reasonably estimated quantities of Delivered Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated to the relevant market prices for equivalent quantities of electricity for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the eligibility requirements for the Buyer's Standing Offer Program in effect at the Effective Date, including with respect to quantity, place of delivery, length of term and each element of the eligibility requirements. The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section shall be zero. If the termination of this EPA by the Seller occurs prior to COD, the Buyer's liability for any payment under this section will be 115% of the Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination.

**8.6 Calculation and Payment** - The Seller shall calculate the amount of any payment owed by the Buyer under section 8.5 and shall notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 8.5. The Buyer shall pay any amount owing by the Buyer under section 8.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer. Any amounts owing by the Seller

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to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 8.5.

- 8.7 Exclusive Remedies** - Subject to section 8.4, payment by the Buyer of the amount determined under section 8.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 8.3(e), (f) or (g). Subject to section 8.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller as the case may be is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 8.1, subsection 8.3(a), (b), (c), or (d) or section 4 of Appendix 3 as applicable. For greater certainty, subject to section 8.4, the Seller shall not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.
- 9. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS**
- 9.1 Seller's Representations** - The Seller and the General Partner as to itself only represent and warrant to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller and the General Partner enforceable against the Seller and the General Partner in accordance with its terms;
  - (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller and the General Partner; and
  - (c) **Application** - all information in the Application is true and correct in all material respects and there is no material information omitted from the Application that makes the information in the Application misleading or inaccurate in any material respect. The representations and warranties by the Seller and the General Partner in the Application are true and correct.
- 9.2 Buyer's Representations** - The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Corporate Status** - The Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
  - (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
  - (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.
- 9.3 Limit of Liability** - The Buyer's liability for damages for any failure to take or pay for Delivered Energy under this EPA is limited to the price payable by the Buyer for that Delivered Energy under Article 5 and any interest thereon calculated under this EPA less the amount of

any revenue received by the Seller from any third Person for that Delivered Energy,

9.4 **Consequential Damages** - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

10. **GENERAL PROVISIONS**

10.1 **Electric Service to the Seller** - If at any time the Buyer makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with the Buyer's electric tariff applicable at the relevant time, and not under this EPA.

10.2 **Independence** - The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

10.3 **Enurement** - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

10.4 **Entire Agreement** - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the documents related to the Standing Offer Program and all questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA.

10.5 **Amendment** - This EPA may not be amended except by an agreement in writing signed by both Parties.

10.6 **No Waiver** - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.

10.7 **Interconnection Agreement and Distribution and Transmission Authorities** - Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA. For the purposes of the interpretation and application of this EPA, the Distribution Authority and the Transmission Authority shall be treated in all instances as though they are entirely separate legal entities from the Buyer.

10.8 **Commodity Contract/Forward Contract** - The Parties agree and intend that this EPA



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constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

- 10.9 **Further Assurances** - Each Party shall, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.
- 10.10 **Severability** - Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.
- 10.11 **Counterparts** - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

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IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA effective as of the date set out on page one of this EPA.

For WEDGEMOUNT POWER LIMITED PARTNERSHIP A LIMITED PARTNERSHIP REPRESENTED BY ITS GENERAL PARTNER WEDGEMOUNT POWER (GP) INC.

[Redacted Signature]

Authorized Representative

David Ehrhardt, Director  
Print Name and Office

Jan 29/15  
Date

For BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:

[Redacted Signature]

Authorized Representative

Jessica McDonald, President + CEO  
Print Name and Office

March 6/15  
Date

## APPENDIX 1

## DEFINITIONS AND INTERPRETATION

## 1. DEFINITIONS

References in an Appendix to a section or subsection mean a section or subsection of the EPA, and not an Appendix, unless otherwise stated. The following words and expressions wherever used in this EPA have the following meaning:

- 1.1 "Affiliate" means, with respect to the Seller or the General Partner or any third party, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, the General Partner or the third party, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.2 "Application" means the application and all supporting documents and information with respect to the Seller's Plant filed by the Seller with the Buyer in the Standing Offer Program.
- 1.3 "Assign" or "Assignment" means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this EPA by the Seller:
- (a) any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
  - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant or the Seller's ownership interest therein; and
  - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.4 "Audit Parties" has the meaning given in section 7.2.
- 1.5 "Bankrupt or Insolvent" means, with respect to a Person (which in the case of the Seller includes either or both of the Seller or the General Partner):
- (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
  - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
  - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
  - (d) the Person has voluntarily suspended the transaction of its usual business; or
  - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.

- 1.6 "BCUC" means the British Columbia Utilities Commission or any successor thereto.
- 1.7 "Business Day" means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.8 "Buyer" means British Columbia Hydro and Power Authority and its successors and permitted assigns, but for the purposes of the interpretation and application of this EPA it excludes the Distribution Authority and the Transmission Authority.
- 1.9 "Buyer Confidential Information" means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, and any communications by the Buyer with any lawyer providing a Verification and all work product of the lawyer providing a Verification, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other person who is not under an obligation of confidentiality with respect thereto.
- 1.10 "Clean Energy" means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia's *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.11 "COD" or "Commercial Operation Date" means the date that is the later of:
- (a) 90 days prior to Target COD, unless the Buyer has consented to an earlier date pursuant to section 3.8; and
  - (b) the date on which all of the following conditions have been satisfied in respect of the Seller's Plant:
    - (i) the Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller's Plant and all such Permits are in full force and effect;
    - (ii) the Seller is not: (A) Bankrupt or Insolvent; (B) in default of any payment obligation or requirement to post security under this EPA; (C) in material default of any of its other covenants, representations, warranties or obligations under this EPA; or (D) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller's Plant or under any land tenure agreement for the site on which the Seller's Plant is located or under the Interconnection Agreement;
    - (iii) a Revenue Meter has been installed in accordance with section 3.6;
    - (iv) the Seller has delivered to the Buyer:
      - (A) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, in respect of the Plant Capacity issued by the Distribution Authority/Transmission Authority to the Seller under the Interconnection Agreement,

- (B) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant, and
- (C) a COD Certificate;

and for purposes of this EPA, COD will be deemed to have occurred at 24:00 PPT on the later of the dates set out above.

- 1.12 "COD Certificate" means a certificate in the form attached as Appendix 5.
- 1.13 "Control" of any Person means:
  - (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions;
  - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
  - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.14 "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller's rights under this EPA.
- 1.15 "CPI" means the British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix.
- 1.16 "Crown" means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.
- 1.17 "Delivered Energy" means in each month after COD the amount of Energy delivered by the Seller at the POI in that month as recorded by the Seller's metering equipment described in section 3.6, or where that equipment is not functioning correctly, the duplicate revenue meter installed by the Buyer under section 3.6, if any.
- 1.18 "Development Costs" means all costs reasonably incurred or committed by the Seller after the Effective Date for the development of the Seller's Plant and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the development of the Seller's Plant and to otherwise cease development of the Seller's Plant, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.
- 1.19 "Development Report" means a report in the form attached as Appendix 8, describing the progress of the financing, design, engineering, construction, Interconnection, and commissioning of the Seller's Plant.
- 1.20 "Dispatch/Turn-Down" has the meaning given in subsection 4.8(a).

- 1.21 "Distribution Authority" means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.
- 1.22 "Distribution System" means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.23 "Distribution/Transmission Constraint or Disconnection" means any disconnection of the Seller's Plant from the Distribution System or the Transmission System, as applicable, or any outage, suspension, constraint or curtailment in the operation of the Distribution System or the Transmission System preventing or limiting deliveries of Energy at the POI or any direction from the Distribution Authority or the Transmission Authority to reduce generation of the Seller's Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Transmission System or Distribution System.
- 1.24 "EcoLogo<sup>™</sup> Certification" means certification pursuant to Environment Canada's Environmental Choice<sup>™</sup> program confirming that the Seller's Plant and all or part of the Energy complies with the "Guideline on Renewable Low-Impact Electricity" as amended from time to time and is therefore entitled to the EcoLogo<sup>™</sup> designation.
- 1.25 "Effective Date" means the date set out on page one hereof.
- 1.26 "Energy" means all electric energy expressed in MWh generated by the Seller's Plant, excluding electricity required to service the Seller's Plant.
- 1.27 "Environmental Attributes" means the following as attributable to Energy delivered to the Buyer under this EPA:
- (a) all attributes directly associated with, or that may be derived from, the Energy delivered to the Buyer under this EPA having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, "green" tag, ticket, certificate or other "green" marketing attribute or proprietary or contractual right, whether or not tradeable;
  - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller's Plant as a result of the generation, purchase or sale of the Energy delivered to the Buyer under this EPA;
  - (c) On-Site Emission Reduction Rights; and
  - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
    - (i) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (a) to (c) above; and

- (ii) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in subsections (a) to (c) above.
- 1.28 "Environmental Certification" means either or both of the following:
- (a) EcoLogo<sup>M</sup> Certification; or
  - (b) any alternate certification the Buyer requires the Seller to obtain under section 6.2.
- 1.29 "Estimated Interconnection Facilities Completion Date" means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.
- 1.30 "Facility Lender" means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller's Plant and any successors or assigns thereto and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant.
- 1.31 "Final Amount" means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 7.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
- 1.32 "Final Interconnection Study Report" means the final report issued to the Seller by the Distribution Authority or the Transmission Authority, as applicable, in respect of the interconnection of the Seller's Plant, consisting of a system impact study report and a facilities study report.
- 1.33 "First Nations" has the meaning given in subsection 3.12.1.
- 1.34 "Force Majeure" means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:
- (a) any economic hardship or lack of money, credit or markets;
  - (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
  - (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
  - (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
  - (e) any Distribution/Transmission Constraint or Disconnection; or

- (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the person described above was a party to this EPA in place of a Party invoking Force Majeure.
- 1.35 "Gains" means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.
- 1.36 "General Partner" means the party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.37 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.38 "Governmental Authority" means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
- 1.39 "GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.40 "Interconnection" means the facilities and procedures that enable the flow of electric power from the Seller's Plant to the Transmission System or the Distribution System and vice versa.
- 1.41 "Interconnection Agreement" means the agreement between the Seller and the Distribution or Transmission Authority, the Standard Generator Interconnection Agreement, as applicable, which enables the flow of electric power from the Seller's Plant to the Distribution System or the Transmission System, as applicable, and vice versa, as amended or replaced from time to time.
- 1.42 "Interconnection Network Upgrades" has the meaning given in Appendix 3.
- 1.43 "Laws" means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- 1.44 "Lender Consent Agreement" means a lender consent agreement in the form attached as Appendix 7.
- 1.45 "Losses" means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.



- 1.46 "Major Damage" means damage to the Seller's Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller's Plant for the remainder of the Term.
- 1.47 "MW" means megawatt.
- 1.48 "MWh" means megawatt-hour.
- 1.49 "Network Upgrades" has the meaning given in Appendix 3.
- 1.50 "Network Upgrade Costs" has the meaning given in Appendix 3.
- 1.51 "Network Upgrade Security" has the meaning given in Appendix 3.
- 1.52 "On-Site Emission Reduction Rights" means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller's Plant.
- 1.53 "Order or Decision" has the meaning given in subsection 3.12.1.
- 1.54 "Party" means: (a) the Buyer and its successors and permitted assigns; or (b) the Seller and its successors and permitted assigns, and "Parties" means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority and the Transmission Authority shall be deemed not to be a "Party", whether or not owned or operated by the Buyer.
- 1.55 "Permits" means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.
- 1.56 "Person" means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.57 "Planned Outage" means an outage for purposes of scheduled inspections, repair and/or maintenance in the Seller's Plant.
- 1.58 "Plant Capacity" means the electrical capacity of the Seller's Plant as set out in Appendix 2.
- 1.59 "POI" or "Point of Interconnection" means the point at which the Seller's Plant interconnects with the Distribution System or the Transmission System, as applicable, as described in Appendix 2.
- 1.60 "PPT" means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.61 "Present Value Rate" means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of the EPA, plus 3%.

- 1.62 "Prime Rate" means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.63 "Project" means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller's Plant.
- 1.64 "Project Standards" means:
- (a) all applicable Laws;
  - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller's Plant;
  - (c) Good Utility Practice;
  - (d) the description of the Seller's Plant in Appendix 2;
  - (e) the requirement that Energy must qualify as Clean Energy;
  - (f) the terms and conditions of this EPA and the Interconnection Agreement; and
  - (g) the Code of Conduct Guidelines Applicable to the Buyer Contracts attached as Appendix 10.
- 1.65 "PST" means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- 1.66 "Records" means all records and logs required to properly administer this EPA, including:
- (a) Energy generation records and operating logs;
  - (b) a log of all outages of the Seller's Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output);
  - (c) meter readings,
  - (d) maintenance reports;
  - (e) invoice support records;
  - (f) documents concerning compliance with Permits and applicable Laws, but excluding any such documents that are protected by solicitor-client privilege;
  - (g) records related to Development Costs;
  - (h) all information the Buyer requires to verify qualification of the output from the Seller's Plant as Clean Energy; and

- (i) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

- 1.67 "Revenue Meter" means a revenue meter leased by the Buyer to the Seller that is: (a) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by the Seller to the POI after adjusting for any line losses associated with the transmission of Energy from the Seller's Plant to the POI.
- 1.68 "Seller" means the Party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.69 "Seller Confidential Information" means any of the Seller's confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information and any communications by the Seller with any lawyer providing a Verification and all work product of the lawyer providing the Verification, but excluding:
- (a) this EPA; and
- (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.70 "Seller's Plant" means the Seller's Plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the Distribution System or the Transmission System, as applicable, whether real or personal and whether tangible or intangible including all land tenure and all books, records and accounts with respect to the Seller's Plant described in Appendix 2.
- 1.71 "Standing Offer Confidentiality and Compliance Agreement" means the confidentiality and compliance agreement, a copy of which is attached as Appendix 9 to this EPA.
- 1.72 "Standing Offer Program" means the Buyer's power procurement program described as the Standing Offer Program.
- 1.73 "Target COD" means September 30, 2015, as revised pursuant to either or both of sections 3.9 and 3.11, if applicable.
- 1.74 "Term" has the meaning given in Article 2.
- 1.75 "Transmission Authority" means such Person or division of a Person, which for greater certainty may be a division of the Buyer, that carries out the interconnection and grid operation functions that British Columbia Transmission Corporation carried out prior to July 5, 2010.

- 1.76 "Transmission System" means the transmission, substation, protection, control and communication facilities: (a) owned by the Buyer or by the Transmission Authority; and (b) operated by the Transmission Authority in British Columbia, and includes all additions and modifications *thereto and repairs or replacements thereof*.
- 1.77 "UCA" means the *Utilities Commission Act* (British Columbia).
- 1.78 "Verification" has the meaning given in subsection 3.12.1.

## 2. INTERPRETATION

- 2.1 **Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- 2.2 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 2.3 **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 7.5, any suit, action or proceeding (a "Proceeding") arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- 2.4 **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.
- 2.5 **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- 2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 2.7 **Reference Indices** - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 7.5.
- 2.8 **Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.
- 2.9 **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:

- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
  - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
  - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
  - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
  - (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

**2.10 General Partner** - All references to "Seller" herein include the General Partner, unless the contrary is expressly indicated. Acts or omissions of the General Partner in relation to this EPA are deemed to be acts or omissions of the Seller.

**2.11 Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:

- (a) "this EPA" means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word "including" or "includes" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (d) the words "year" and "month" refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;

- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

### 3. ADDRESSES FOR NOTICES

- 3.1 **Notices to Buyer and Insurance** - Except as noted below, all notices addressed to the Buyer shall be delivered to the following address:

Business Development & Contract Management, Energy Planning & Economic  
Development  
333 Dunsmuir Street, 17<sup>th</sup> floor  
Vancouver, B.C.  
V6B 5R3  
Attention: Director, Business Development & Contract Management  
Email: [IPP.Contract@bchydro.com](mailto:IPP.Contract@bchydro.com)

#### Invoices and Statements

To: IPP Invoicing  
333 Dunsmuir Street, 14<sup>th</sup> floor  
Vancouver, B.C.  
V6B 5R3  
Attention: Manager, Business Support Services  
Email: [IPP.Invoicing@bchydro.com](mailto:IPP.Invoicing@bchydro.com)

#### Network Upgrade Security

To: BC Hydro Distribution Generator Interconnections  
6911 Southpoint Drive, Edmonds B03  
Burnaby, B.C.  
V3N 4X8  
Attention: Manager, Generator Interconnections  
Email: [distribution.generators@bchydro.com](mailto:distribution.generators@bchydro.com)

- 3.2 **Notices to Seller** - All notices addressed to the Seller shall be delivered to the following address:

To: **Wedgemount Power Limited Partnership**  
5403 Buckingham Avenue  
Burnaby, B.C. V5E 1Z9  
Attention: Mr. David Ehrhardt  
Email: [dehrhardt@telus.net](mailto:dehrhardt@telus.net)

REDACTED – APPENDIX 4

Delivery Time Adjustment Table



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REDACTED – APPENDIX 5

COD Certificate



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REDACTED – APPENDIX 6

Sample Form Letter of Credit

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REDACTED – APPENDIX 7

Sample Form Lender Consent Agreement

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REDACTED – APPENDIX 6

Sample Form Letter of Credit

REDACTED

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REDACTED – APPENDIX 7

Sample Form Lender Consent Agreement

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REDACTED – APPENDIX 8

Sample Form Development Progress Report

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REDACTED – APPENDIX 9

Standing Offer Confidentiality and Compliance Agreement

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REDACTED – APPENDIX 10

Code of Conduct Guidelines

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REDACTED – APPENDIX 11

Interconnection Study (November 2014)



THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Véronique Marin-Gibet, notary (411133)  
A Notary for taking Affidavits within the Province of Québec



This is the 1<sup>st</sup> affidavit  
of S. Leduc in this case and was  
made on March 13, 2018

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.,  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDINGS LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, STÉFANIE LEDUC, of 1080 Grande Allée West, Quebec City, Quebec G1K 7M3  
SWEAR THAT:

1. I am a Portfolio Manager – Private Placements working for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc. ("IA"), and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.


2. I have read the Affidavit of Bruce Chow made January 19, 2018 (the "Chow Affidavit"), the Affidavit of Melinda McKie (the "McKie Affidavit"), the Affidavit of Paul Chambers (the

"Chambers Affidavit"), the Affidavit of Michael Potyok (the "Potyok Affidavit"), and the Affidavit #2 of Luc Fournier (the "Fournier Affidavit") sworn in this matter. I have adopted the capitalized terms used in the McKie Affidavit, unless otherwise defined herein.

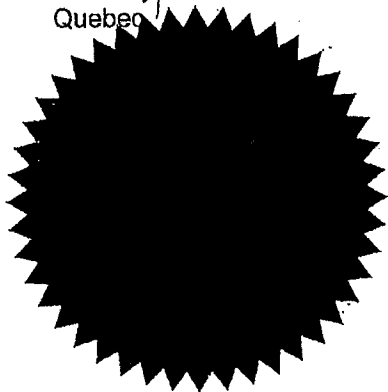
3. Paragraphs 3 through 12 of the Fournier Affidavit accurately set out the background facts of this matter.

4. On June 14, 2017, I attended a meeting between IA and BCH to discuss the Project following the appointment of the Receiver. Vic Rempel, Ryan Hefflick, Olha Lui and Joanne McKenna attended the meeting on behalf of BCH. I attended on behalf of IA along with Luc Fournier and Maxime Durivage. I understood that Olha Lui and Joanne McKenna represented the BCH department responsible for EPAs. During this meeting, Olha Lui informed us that IA should not worry about the EPA remaining valid even if the COD was not achieved by September 30, 2017. Attached hereto as Exhibit "A" is a true copy of notes that I took during the June 14, 2017 meeting. The notation "ISD + 90 days for COD target" was my way of recording Olha Lui's comment that the Target COD would be set in the final facilities study report 90 days from the In-Service Date set out therein.

SWORN BEFORE ME at the City of  
Quebec, in the Province of Quebec,  
this 13 day of March, 2018.

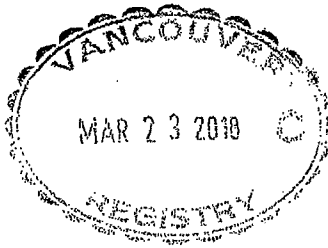
  
A Notary in and for the Province of  
Quebec

  
STÉFANIE LEDUC



THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Valérie Hamel, notary (41133)  
A Notary for taking Affidavits within the Province of Quebec



This is the 2<sup>nd</sup> affidavit  
of L. Fournier in this case and was  
made on March 13, 2018

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.,  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDINGS LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, LUC FOURNIER, of 1080 Grande Allée West, Quebec City, Quebec G1K 7M3  
SWEAR THAT:

1. Until August 31, 2017, I was a Senior Portfolio Manager – Private Placements working for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc. ("IA"), and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I have read the Affidavit of Bruce Chow made January 19, 2018 (the "**Chow Affidavit**"), the Affidavit of Melinda McKie (the "**McKie Affidavit**"), the Affidavit of Paul Chambers (the "**Chambers Affidavit**"), and the Affidavit of Michael Potyok (the "**Potyok Affidavit**") sworn in this matter. I have adopted the capitalized terms used in the McKie Affidavit, unless otherwise defined herein.

### **Background**

3. IA advanced funds to Wedgemount LP pursuant to the Credit Agreement and Note as described in paragraph 13 of my first Affidavit herein. The funds were advanced by IA to Wedgemount LP for the purpose of Wedgemount LP's development and construction of the Wedgemount Creek hydroelectric power project (the "**Project**") near Whistler, British Columbia.

4. Prior to IA advancing funds to Wedgemount LP, IA conducted standard due diligence into the Wedgemount Entities and the Project. In the course of such due diligence, IA obtained a copy of the Energy Purchase Agreement between Wedgemount LP, by its general partner Wedgemount GP, and the British Columbia Hydro and Power Authority ("**BCH**") dated March 6, 2015 (the "**EPA**"). A redacted copy of the EPA is attached as Exhibit "A" to the Chow Affidavit.

5. As a condition of entering into the Credit Agreement and the Note and advancing funds to Wedgemount LP, IA:

- (a) entered into a Lender Consent Agreement with BCH dated June 30, 2015 ("**LCA**") whereby BCH agreed that it would not terminate the EPA solely because of the insolvency of Wedgemount LP as long as IA is promptly and diligently prosecuting enforcement proceedings. Attached hereto as **Exhibit "A"** is a copy of the LCA;
- (b) obtained a comfort letter from BCH on interconnection by Aug 31, 2016 - Attached hereto as **Exhibit "B"**.

6. The LCA further provides that IA may elect to take possession of the Project, including by way of a Receiver, and give written notice to BCH that IA or the Receiver wishes to cause Wedgemount LP to assign the EPA to a third person or persons.

7. The Project suffered from setbacks and delays, many of which are detailed in the Potyok Affidavit. Moreover, Wedgemount LP failed to make payments as required under the Credit

Agreement and the Note. On December 6, 2016, IA issued demand to Wedgemount LP for payment of all amounts due under the Credit Agreement and the Note, along with Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

8. IA entered into a Forbearance Agreement with Wedgemount LP on February 10, 2017 whereby IA agreed to forbear from exercising its remedies under the Credit Agreement and the Note until April 30, 2017.

9. As at February 10, 2017, Wedgemount LP was indebted to the Plaintiff in the approximate amount of \$21,951,065.79, together with interest accruing thereafter pursuant to the Credit Agreement and Note, plus costs (legal or otherwise) of enforcing the Credit Agreement.

10. Wedgemount LP failed to pay the amounts due under the Credit Agreement and the Note to the Plaintiff despite the Plaintiff's demand that Wedgemount LP do so.

11. On May 9, 2017, IA commenced this action to appoint a Receiver over the Wedgemount Entities in order to ensure risks at the Project site are properly managed and to protect the value of the assets for all the creditors of the Wedgemount Entities.

12. On May 12, 2017, the Honourable Mr. Justice Steeves granted an order (the "Receivership Order") appointing Deloitte Restructuring Inc. (the "Receiver") as Receiver of the Wedgemount Entities. Attached hereto as Exhibit "C" is a copy of the Receivership Order.

#### **Events During the Receivership Proceedings**

13. On May 9, 2017, I attended a conference call between IA and BCH to discuss the Project and the Receivership Order being sought by IA. Frank Lin, Ryan Hefflick and Vic Rempel attended the conference call on behalf of BCH and myself, Stefanle Leduc and Maxime Durivage attended on behalf of IA. During this conference call on May 9, 2017, the BCH representatives informed us that extending the Target COD should not be a problem because the facility study report which forms part of the Final Interconnection Study Report was not completed. It was suggested that I reach out to Roland Saltsby with the BCH department responsible for EPAs and they will find a solution.

14. Attached hereto as Exhibit "D" is a copy of contemporaneous notes that I made during the May 9, 2017, meeting. There is a notation on the top of the second page of the notes that reads:

"Facility Study → → +  
L trigger ✓"

This notation was my way of recording that the final facility study was the trigger for the timing of the target COD.

15. I tried to reach Mr. Saltsby by phone but my call was not returned. I eventually attended a meeting with the BCH department responsible for EPAs in June.

16. On June 14, 2017, I attended a meeting at the BCH offices in Burnaby, BC, between IA and BCH to discuss the Project following the appointment of the Receiver. I had suggested two separate meetings, one with the BCH Interconnections Group and one with the BCH department responsible for EPAs. BCH advised that they would like one meeting with everyone in attendance.

17. The June 14, 2017 meeting was attended on behalf of BCH by:

- (a) Vic Rempel and Ryan Hefflick, who I understood were part of the interconnection team of BCH; and
- (b) Olha Lui and Joanne McKenna, who I understood represented the BCH department responsible for EPAs.

IA was represented by Stéfanie Leduc, Maxime Durivage and myself. During this meeting, when asked by IA about the risk of the September 30, 2017, date, Olha Lui informed us that IA should not worry about the EPA remaining valid even if the COD was not achieved by September 30, 2017, because the facility study was not final, and the time did not start to run until it was finalized.

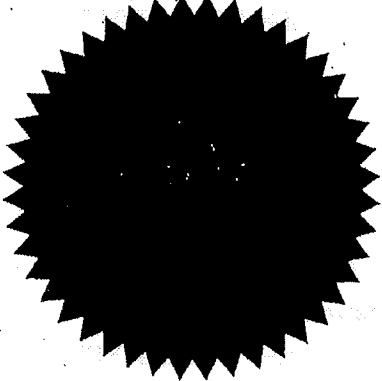
18. IA relied on the comments from BCH representatives that BCH would not terminate the EPA if COD was not achieved by September 30, 2017 when deciding to continue to advance funds for the Project, including those funds which were to be advanced by the Receiver to BCH.




SWORN BEFORE ME at the City of  
Quebec, in the Province of Quebec,  
this 13 day of March, 2018.

Veronique HainSibert, notaire  
A Notary in and for the Province of  
Quebec

Luc Fournier  
LUC FOURNIER



The attached is Exhibit "A"  
referred to in the affidavit #2  
of Luc Fournier sworn before  
me at Québec, Quebec.  
this 13 day of March, 2018

  
A Notary in and for the Province of Quebec

**LENDER CONSENT AGREEMENT  
WEDGEMOUNT HYDROELECTRIC PROJECT**

(See section 7.4 (c) of the Electricity Purchase Agreement)

THIS AGREEMENT is made as of JUNE 30, 2015,

AMONG:

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**, a corporation continued under the *Hydro and Power Authority Act*, R.S.BC 1996, c.212, having its head office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3

(the "Buyer")

AND:

**WEDGEMOUNT POWER LIMITED PARTNERSHIP**, a limited partnership formed under the laws of the Province of British Columbia and acting and represented by its general partner, **WEDGEMOUNT POWER (GP) INC.**, a corporation incorporated under the laws of the Province of [British Columbia] (the "General Partner") having an address at [5403 Buckingham Avenue, Burnaby, British Columbia V5E 1Z9]

(the "Seller")

AND:

**TRAVELERS CAPITAL CORPORATION**, having an address at 501 - 4180 Lougheed Highway, Burnaby, British Columbia, V5C 6A7

(the "Agent").

WHEREAS:

A. The Buyer and the Seller entered into an Electricity Purchase Agreement made as of March 6, 2015 (as further amended, modified, restated and/or supplemented from time to time, the "EPA");

B. Pursuant to a credit agreement to be entered into among the Seller, as borrower, the lenders from time to time party thereto (the "Lenders") and the Agent, as agent for the Lenders (as amended, modified, restated, renewed and/or supplemented from time to time, the "Credit Agreement"), the Seller will obtain certain credit facilities (the "Credit") from the Lenders for

the purposes of financing the design, construction, operation and maintenance of the Seller's Plant (as defined in the EPA);

C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations, present and future, of the Seller under the Credit Agreement and the other Finance Documents (as defined in the Credit Agreement), the Seller and the General Partner have granted or will grant certain security to and in favour of the Agent, as administrative agent for and on behalf of the Lenders, including, without limitation, assignments by way of security of, and grant of security interest in, all of the right, title and interest of the Seller and the General Partner under the EPA and security on the Seller's Plant (as defined in the EPA) (collectively, the "Agent Security"); and

D. The Agent, for and on behalf of the Lenders, has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Seller and the Agent to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:

- (a) "Assumption Notice" means a notice given by the Agent to the Buyer pursuant to subsection 6.1(a) of this Agreement;
- (b) "Default or Termination Notice" means a notice given to the Seller by the Buyer under the EPA that, with or without the lapse of time, entitles, or shall entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Seller to cure the default or other circumstance in respect of which the notice is given;
- (c) "Receiver" means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Agent; and
- (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.

2. **EPA Amendments:** The Buyer and the Seller acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has not been amended.

3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Agent that:

- (a) the EPA has been duly authorized, executed and delivered by the Buyer;
- (b) the Buyer has not received any notice of assignment by the Seller or the General Partner of all or any part of their right, title and interest in and to the EPA, except to the Agent;

- (c) the Buyer has not given any Default or Termination Notice;
- (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
- (e) the Buyer shall not enter into any agreement with the Seller to materially amend or replace the EPA, or enter into any agreement with the Seller to terminate the EPA, without giving the Agent not less than 30 days' prior written notice.

4. **Assignment of EPA to Agent:**

4.1 *Buyer Acknowledgement:* The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Seller and the General Partner to the Agent of all the right, title and interest of the Seller and the General Partner in and to the EPA made pursuant to and in accordance with the Agent Security.

4.2 *Agent Acknowledgement:* The Agent acknowledges that:

- (a) it has received a copy of the EPA; and
- (b) the assignment by the Seller and the General Partner to the Agent of the EPA pursuant to the Agent Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.2 *Confidentiality:* The Agent covenants and agrees with the Buyer to be bound by the provisions of section 7.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.3 *Seller Representation:* Each of the Seller and the General Partner represents and warrants to the Buyer that the Agent is the only person to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Agent that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Agent a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Seller;
- (b) ~~shall not exercise any right it may have to terminate the EPA until the later of:~~ (i) the date that is 45 days after the date on which the Buyer delivered to the Agent a copy of the Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the Buyer is entitled to terminate the EPA;
- (c) shall not, provided that there is no other Buyer termination event under the EPA, terminate the EPA based on either or both of the Seller and the General Partner becoming Bankrupt or Insolvent if the Agent is promptly and diligently prosecuting to completion enforcement proceedings under the Agent Security

until 30 days after the expiry of any court order period restricting the termination of the EPA; and

- (d) shall not exercise any right it may have under section 5.6 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Agent with a copy of the notice delivered by the Buyer to the Seller under section 5.6 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Agent, without any obligation to do so, to cure, or cause the cure of, any default of the Seller or the General Partner under the EPA that would be curable by the Seller or the General Partner, whether or not an Assumption Notice is given.

6. Realization by Agent:

6.1 *Assumption Notice and/or Sale:* If the Seller or the General Partner has defaulted under the Credit Agreement or the Agent Security and the Agent has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Agent shall either:

- (a) give the Buyer written notice (an "Assumption Notice") stating that the Agent is assuming the EPA, whereupon:
  - (i) the Agent shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Seller or the General Partner under the EPA, and the Agent shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Seller;
  - (ii) notwithstanding subparagraph (i), the Agent shall not be liable to the Buyer for defaults of the Seller or the General Partner occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Agent wishes to cause the Seller or the General Partner to assign all of the Seller's or the General Partner's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Seller and the assignee complying with all provisions of the EPA relative to such assignment.

The Buyer agrees that if the Agent enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Agent Liability and Release:* The Agent assumes no liability to the Buyer under the EPA unless and until the Agent gives an Assumption Notice. Thereafter, if the Agent completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Agent shall be released from all liability and obligations of the Seller or the General Partner to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Seller and the General Partner not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to sub-section 6.1(b) of this Agreement releases the Seller or the General Partner from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Agent include a Receiver.

7. Notices: Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

(a) Buyer at:

British Columbia Hydro and Power Authority  
333 Dunsmuir Street, 17<sup>th</sup> Floor  
Vancouver, British Columbia, V6B 5R3

Attention: Director, Business Development & Contract Management  
Facsimile No.: 604-623-4335  
Email: IPP.Contract@bchydro.com

(b) Seller at:

Wedgemount Power Limited Partnership  
5403 Buckingham Avenue  
Burnaby, British Columbia V5E 1Z9

Attention: Mr. David Ehrhardt  
Email: [dehrhardt@telus.net](mailto:dehrhardt@telus.net)  
Facsimile No.: 604-649-1200

(c) Agent at:

Travelers Capital Corporation  
501 - 4180 Lougheed Highway  
Burnaby, British Columbia V5C 6A7

Attention: Mark Bohn  
Facsimile No.: (844) 211-8877

Notices given by facsimile shall be deemed to be received on the Business Day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Agent acknowledges that upon an Assumption Notice being given, the Agent shall become party to, and bound by, the agreements to arbitrate contained in section 7.5 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Agent Security. The Agent shall give the Buyer prompt notice of the full and final discharge of all of the Agent Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.

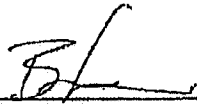
13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.



IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the day and year first above written.


**BRITISH COLUMBIA HYDRO AND  
POWER AUTHORITY**

By:   
(Signature)

Name: Bruce Chow

Title: Mgr - Contract Mgt

**TRAVELERS CAPITAL CORPORATION**

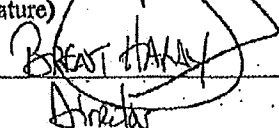
By:   
(Signature)

Name: Mark Bohn

Title: Managing Partner

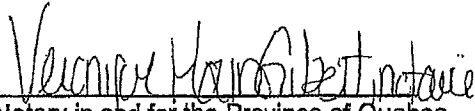
**WEDGEMOUNT POWER LIMITED  
PARTNERSHIP** acting and represented by its  
general partner **WEDGEMOUNT POWER  
(GP) INC.**

By: \_\_\_\_\_  
(Signature)

Name: 

Title: Director

The attached is Exhibit "B"  
referred to in the affidavit #2  
of Luc Fournier sworn before  
me at Quebec, Quebec.  
this 13 day of March, 2018

  
A Notary in and for the Province of Quebec



**BC HYDRO**  
Generator Interconnections  
Edmonds BO3 – 6911 Southpoint Drive  
Burnaby, BC V3N 4X8

Industrial Alliance Insurance and Financial Services Inc., as lender  
1080 Grande Allée Ouest  
C.P. 1907, Succursale Terminus  
Québec (Québec) G1K 7M3

Travelers Capital Corporation, as agent  
Suite 501 – 4180 Lougheed Hwy.  
Burnaby, British Columbia V5C 6A7

June 22, 2015

Dear Sirs/Mesdames:

**Re: Wedgemount Creek 5.4 MW Capacity Run-Of-River hydroelectric facility located near Whistler, British Columbia - Latitude 50° 06'36" North and 122° 57'00" West (the "Project"); Confirmation of status of Distribution Generator Interconnection Agreement ("DGIA") to be entered into between British Columbia Hydro And Power Authority ("BCH") and Wedgemount Power Limited Partnership ("WPLP")**

BCH has been approached by WPLP with respect to the development of the Project and BCH and WPLP have entered into an electricity purchase agreement (standing offer program) ("EPA") made as of March 6, 2015.

We are advised by WPLP that you are considering providing the construction and term financing for the Project.

As part of the interconnection of the Project to enable the flow of electric power from WPLP's Plant (as defined in the EPA) to the Distribution System or Transmission System (as defined in the EPA), BCH prepared a Distribution System Impact Study for the Project on November 28, 2014 (the "Project DIS"). BCH confirms that it is currently conducting a facilities study of the Project (the "Facilities Study").

Subject to implementation of the recommendations put forth in the Project DIS, BCH does not anticipate any concerns or risks to arise in connection with the Facilities Study. The Facilities Study is expected to be available for WPLP to review by the end of February 2016.

Upon completion of the Facilities Study, BCH and WPLP will enter into a DGIA. BCH anticipates the DGIA to be fully executed by BCH and WPLP by the end of March 2016.

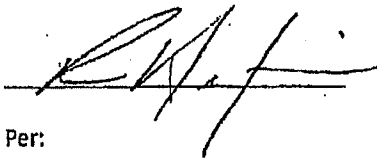
BCH understands that it may be beneficial to WPLP for some of the load interconnection steps to be conducted in parallel to the Facilities Study. BCH will commit to discuss this possibility and the Early



Engineering and Procurement Agreement with WPLP as soon as the opportunity arises. In any event, BCH expects that the Implementation phase should be finalized for an August 31, 2016 in-service date.

Yours truly,

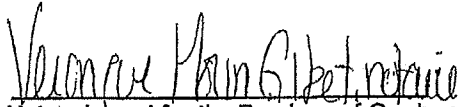
**BRITISH COLUMBIA HYDRO  
AND POWER AUTHORITY**

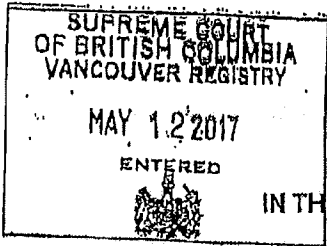
A handwritten signature in black ink, appearing to read "R. Hefflick", written over a horizontal line.

Per:

**Ryan Hefflick  
Manager, Generator Interconnections**

The attached is Exhibit "C"  
referred to in the affidavit #2  
of Luc Fournier sworn before  
me at Québec, Quebec.  
this 13 day of March, 2018

  
A Notary in and for the Province of Quebec



NO. S-174308  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE ) FRIDAY, THE 12<sup>TH</sup> DAY  
MR. JUSTICE STEEVES ) OF MAY, 2017.

ON THE APPLICATION of the Plaintiff, for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing Deloitte Restructuring Inc. ("Deloitte") as Receiver and Manager (In such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP") and Wedgemount Power Inc. ("Wedgemount Power") (collectively, the "Wedgemount Entities") acquired for, or used in relation to a business

carried on by the Wedgemount Entities, coming on for hearing this day at the Courthouse, 800 Smite Street, Vancouver, British Columbia.

AND ON READING the Notice of Application dated May 9, 2017, the Affidavit #1 of Luc Fournier sworn May 9, 2017, the Affidavit #1 of Kristine Jang sworn May 10, 2017 and the consent of Deloitte to act as the Receiver; AND ON HEARING Daniel Shouldice, Counsel for the Plaintiff, and other counsel as listed on Schedule "A" hereto.

THIS COURT ORDERS AND DECLARES that:

**APPOINTMENT**

- 1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Wedgemount Entities, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

- 2. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Wedgemount Entities, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Wedgemount Entities;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, including Midgard Consulting Inc., from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Wedgemount Entities or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Wedgemount Entities and to exercise all remedies of the Wedgemount Entities in collecting such monies, including, without limitation, to enforce any security held by the Wedgemount Entities;
- (g) to settle, extend or compromise any indebtedness owing to the Wedgemount Entities;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Wedgemount Entities, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Wedgemount Entities;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Wedgemount Entities, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,
 and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;



- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Wedgemount Entities;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Wedgemount Entities, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Wedgemount Entities;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Wedgemount Entities may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) in respect of the Impact and Benefits Agreement dated August 1, 2014 (the "Squamish-Lil'wat IBA") between inter alia, Squamish Nation, Lil'wat Nation, and Wedgemount Power (with the interest of Wedgemount Power having been assigned by Wedgemount Power to Wedgemount LP and then assigned as security by Wedgemount LP to the Plaintiff), the Receiver;
  - (i) is authorized and permitted, but not obligated, to make all payments and perform all obligations of Wedgemount LP under the IBA,
  - (ii) may only terminate the Squamish-Lil'wat IBA,
    - A. in accordance with the termination provisions in the IBA, and
    - B. with the consent of the Plaintiff, or
    - C. subject to a further court order on notice to the Plaintiff and to the Squamish and Lil'wat Nations,
  - (iii) may only sell or assign the interest of Wedgemount LP in the Squamish Lil'wat IBA subject to the terms of the Squamish Lil'wat IBA,

provided that in making any payments or performing any obligations under the Squamish-Lil'wat IBA as permitted herein, the Receiver does not become bound by nor incur any obligations under the Squamish-Lil'wat IBA,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Wedgemount Entities, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Wedgemount Entities, (ii) all of the Wedgemount Entities's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including Colmac Capital Corp. and Eco Flow Energy Corporation (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Wedgemount Entities, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
5. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

**NO PROCEEDINGS AGAINST THE RECEIVER**

- 6. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE WEDGEMOUNT ENTITIES OR THE PROPERTY**

- 7. No Proceeding against or in respect of the Wedgemount Entities or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Wedgemount Entities or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Wedgemount Entities and the Receiver.

**NO EXERCISE OF RIGHTS OR REMEDIES**

- 8. All rights and remedies (including, without limitation, set-off rights) against the Wedgemount Entities, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Wedgemount Entities to carry on any business which the Wedgemount Entities is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

**NO INTERFERENCE WITH THE RECEIVER**

- 9. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Wedgemount Entities, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

- 10. All Persons having oral or written agreements with the Wedgemount Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Wedgemount Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Wedgemount Entities' current telephone numbers, facsimile numbers, Internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Wedgemount Entities or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

- 11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post-Receiver'ship Accounts") and the monies standing to the credit of such Post-Receiver'ship Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

**EMPLOYEES**

- 12. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Wedgemount Entities shall remain the employees of the Wedgemount Entities until such time as the Receiver, on the Wedgemount Entities' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Wedgemount Entities, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

- 13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Wedgemount Entities, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**LIMITATION ON ENVIRONMENTAL LIABILITIES**

- 14. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985; c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.

**LIMITATION ON THE RECEIVER'S LIABILITY**

- 15. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
  - (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

**RECEIVER'S ACCOUNTS**

- 16. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Supreme Court of British Columbia and may be heard on a summary basis.
- 18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**FUNDING OF THE RECEIVERSHIP**

- 19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.0 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### ALLOCATION

23. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### GENERAL

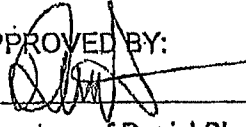
24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Wedgemount Entities.
26. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
28. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Wedgemount Entities' estate with such priority and at such time as this Court may determine.
29. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver and to any other

party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

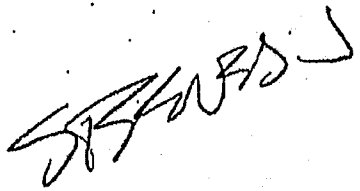
- 30. Endorsement of this Order by counsel appearing on this application other than the Plaintiff is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

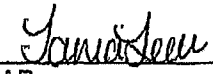
APPROVED BY:



Signature of Daniel Shouldice  
lawyer for the Plaintiff



BY THE COURT



DISTRICT REGISTRAR





24

SCHEDULE "A"

LIST OF COUNSEL

Industrial Alliance Insurance and Financial Services Inc. v.  
Wedgemount Power Limited Partnership et al  
SCBC No. \_\_\_\_\_

<p><b>Counsel for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc.</b></p> <p>Gowling WLG (Canada) LLP 2300 - 550 Burrard Street Vancouver, BC V6C 2B5</p> <p>Daniel Shouldice tel: 604-683-6498 fax: 604-683-3558 direct line: 604-891-2286 email: daniel.shouldice@gowlingwlg.com</p>	<p><i>Counsel for Defendant 28165 Yukon Inc. Amanda Barron</i></p>

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**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte, the Receiver (the "Receiver") of all of the assets, undertakings and properties of the Wedgemount Entities acquired for, or used in relation to a business carried on by the Wedgemount Entities, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (in Bankruptcy and Insolvency) (the "Court") dated the 12<sup>th</sup> day of May, 2017 (the "Order") made in SCBC Action No. S-174308 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~quarterly~~ not in advance on the \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at \_\_\_\_\_, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [redacted] day of [redacted], 201[redacted].

Deloitte Restructuring Ltd. solely in its capacity as Receiver of the Property, and not in its personal capacity

\_\_\_\_\_  
Per:  
Name:  
Title:

The attached is Exhibit "D"  
referred to in the affidavit #2  
of Luc Fournier sworn before  
me at Quebec, Quebec.  
this 13 day of March, 2018

Yvanne Marin-Gibet-Indaie  
A Notary in and for the Province of Quebec

→ Monday 12/15/19

(N.I.)

① BC 10/10/19

② 10/10/19

10/10/19

10/10/19

③

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Arguments

(2)

EPA → all → all

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all

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all

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by  
its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

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**AFFIDAVIT**

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**GOWLING WLG (CANADA) LLP  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5**

**Tel. No. 604.683.6498  
Fax No. 604.683.3558**

**File No. L67090009**

**DS**

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Volante Mansibet, notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec





This is the 1<sup>st</sup> affidavit of M. McKie in this case and was made on March 12<sup>th</sup>, 2018

NO. S-174308  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**PLAINTIFF**

**AND:**

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WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

*VANCOUVER, BC  
WT*

I, Melinda McKie, of 2800 - 1055 Dunsmuir Street, British Columbia, V7X 1P4 SWEAR THAT:

1. I am a Senior Vice President of Deloitte Restructuring Inc. ("Deloitte" or the "Receiver"), the court appointed Receiver and Manager of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP"), and Wedgemount Power Inc. (collectively, the "Wedgemount Entities") and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same

are stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I am authorized to swear this Affidavit on behalf of the Receiver.

### **Background**

3. The Wedgemount Entities are the owner and developer of a partly-constructed run-of-river hydro power facility located on Wedgemount Creek, near Whistler, British Columbia (the "**Project**").

4. The Project was developed with the intention that it would generate electricity which would then be sold to the British Columbia Hydro and Power Authority ("**BCH**").

### **Electricity Purchase Agreement**

5. Wedgemount LP, by its general partner Wedgemount GP, and BCH entered into an Electricity Purchase Agreement dated March 6, 2015 (the "**EPA**"). A redacted copy of the EPA is attached as Exhibit "A" to the Affidavit of Bruce Chow made January 19, 2018 (the "**Chow Affidavit**").

6. Pursuant to the terms and conditions of the EPA, BCH agreed to purchase electricity generated by the Project upon its completion and once it was connected to the BCH electrical grid, a process known as "interconnection". The EPA defines the "Commercial Operation Date" or "**COD**" as the date on which Wedgemount LP would have satisfied certain conditions necessary to begin selling electricity to BCH. Under the terms of the EPA, COD could occur anytime up to two years after the "Target COD" was set.

7. Section 1.73 of Appendix 1 to the EPA stipulates that the "**Target COD**" was September 30, 2015. However, under section 3.9 of the EPA the Target COD could be amended or postponed. Section 3.9 of the EPA states:

**3.9 Change in Target COD - If the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the**

Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.

8. The following terms used in the EPA are defined in Appendix 1 to the EPA as follows:

**1.29 "Estimated Interconnection Facilities Completion Date"** means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.

...

**1.32 "Final Interconnection Study Report"** means the final report issued to [Wedgemount LP] by the Distribution Authority or the Transmission Authority, as applicable, in respect of the interconnection of the [Project], consisting of a system impact study report and a facilities study report.

#### **Receivership**

9. Attached hereto as Exhibit "A" is a copy of the Order of the Honourable Mr. Justice Steeves made May 12, 2017 (the "Receivership Order") appointing Deloitte as Receiver of the Wedgemount Entities.

10. On May 18, 2017, Paul Chambers, Vice President of Deloitte, and I represented the Receiver on a conference call with the following representatives of BCH: Joanne McKenna, Frank Lin, and Ryan Hefflick. This conference call is referred to in paragraph 9 of the Chow Affidavit, although Mr. Chow was not in attendance on this call as far as I know.

11. The purpose of the conference call on May 18, 2017 was an introduction and discussion of the receivership process generally and for the Receiver to begin to understand some of the next steps required for both BCH and the Receiver to complete the Project. During this conference call Mr. Chambers and I informed the BCH representatives that the Receiver had been appointed on May 12, 2017 and was in the process of completing an assessment of the current status of the Project in order to determine next steps to move the Project forward.

12. Attached hereto as Exhibit "B" is a copy of a letter dated May 19, 2017 from the Receiver to Joanne McKenna, Project Manager, Distributed Generation, of BCH to advise BCH

that Deloitte had been appointed Receiver of the Wedgemount Entities pursuant to the Receivership Order.

13. On May 24, 2017, BCH provided the Receiver with a copy of the Draft Interconnection Facilities Study and Project Plan for the Project dated August 16, 2016 (the "Draft Interconnection Study Report"). Attached hereto as Exhibit "C" is a copy of the executive summary of the Draft Interconnection Study Report. Due to its size, the entire Draft Interconnection Study Report has not been attached to my affidavit but is available upon request.

14. To the best of my knowledge, the Final Interconnection Study Report has never been issued for the Project.

15. On June 6, 2017, after the Receiver had a better understanding of the status of the Project, Mr. Chambers and I, along with the Receiver's engineering consultant Michael Potyok of Midgard Consulting Inc., attended at the BCH office in Burnaby to meet with BCH representatives Mr. Hefflick and Vic Rempel (the "June 6 Meeting").

16. During the June 6 Meeting we discussed the status of the interconnection of the Project to BCH's grid system, and the anticipated timeline to move forward various aspects of the Project, including the interconnection route, engineering design and permitting. The Receiver indicated to Mr. Hefflick and Mr. Rempel that it was aware of certain permitting difficulties and cost issues that had come to light prior to the Receiver's appointment associated with the previously identified potential routes of interconnection for the Project's distribution line and point of interconnection with the BCH grid. Accordingly, the Receiver discussed with BCH that it was in the process of considering and developing the design of a new route of interconnection along the Wedge Forest Service Road (the "FSR Route") in order to move the Project forward as quickly as possible.

17. At the June 6 Meeting the Receiver notified Mr. Hefflick and Mr. Rempel that it would be engaging Clean Energy Consulting Inc. to develop the engineering design drawings for the FSR Route and that the Receiver was hoping to work towards completion of the Project in late summer of 2017. Mr. Hefflick and Mr. Rempel advised that this timeline may be challenging from BCH's perspective. They also advised that in order for BCH to re-engage their

interconnection and properties project teams they would require immediate funding from the Receiver for costs incurred and to be incurred by BCH.

18. During the June 6 Meeting, Mr. Hefflick and Mr. Rempel confirmed that the Draft Interconnection Study Report was still only in draft form and that the scope and route of interconnection had changed since the draft had been issued. They further confirmed that the Final Interconnection Study Report would not be issued until the route of interconnection was finalized and the interconnection engineering design work was further developed.

19. During the June 6 Meeting, Mr. Hefflick and Mr. Rempel also advised that because the Draft Interconnection Study Report was only in draft form there was no Target COD set and consequently there was no COD deadline of September 30, 2017. As a result of the representations made by BCH, the Receiver understood that until the point at which a Final Interconnection Study Report was issued, there was no hard deadline by which the Project had to reach COD in order for the EPA to remain in effect. The statements made by Mr. Hefflick and Mr. Rempel at the June 6 Meeting regarding the Draft Interconnection Study Report and there being no determined Target COD were consistent with the Receiver's understanding of the terms of the EPA.

20. On June 15, 2017, a meeting (the "June 15 Meeting") was held to discuss the Project at the BCH offices in Burnaby. This meeting was attended by the following individuals:

- (a) Mr. Chambers and me on behalf of the Receiver;
- (b) Mr. Potyok as the Receiver's project engineering consultant;
- (c) Rhonda Roland on behalf of CMJ Project Solutions Inc., retained by the Receiver to assist with permitting matters related to the Project;
- (d) Matthew Obee on behalf of Clean Energy Consulting Inc., retained by the Receiver to assist with engineering design related to the Project's distribution line and point of interconnection, and
- (e) Mr. Hefflick and Mr. Rempel on behalf of BCH.

21. During the June 15 Meeting, Mr. Obee presented a preliminary plan and profile drawings for the FSR Route which had been provided to BCH in advance of the meeting. Mr. Hefflick and Mr. Rempel indicated that they would arrange for BCH's regional distribution engineer, Om Acharya, to review the drawings and provide feedback on the feasibility of the FSR Route from BCH's perspective. During the June 15 Meeting, various matters relating to the permitting requirements for the potential routes of interconnection, including the FSR Route, were discussed and reviewed.

22. Prior to the June 15 Meeting, I was aware that representatives of Industrial Alliance Insurance and Financial Services Inc. ("IA"), the Project lender and secured creditor of the Wedgemount Entities, had met with representatives of BCH on June 14, 2017. Subsequent to the June 15 Meeting, either Stefanie Leduc or Luc Fournier (or both) of IA informed the Receiver that BCH had made similar representations in their meeting with BCH regarding the EPA and there being no hard deadline by which the Project had to reach COD in order for the EPA to remain in effect.

23. Subsequent to the June 15 Meeting, the Receiver disbursed \$105,000 to BCH to cover its costs for work going forward from the date of the Receivership Order. These funds were provided to BCH in response to its requirement (raised at the June 6 Meeting) to allow its staff to continue to advance the Project. The Receiver provided these funds in reliance on the representations made by BCH to the Receiver that the EPA would not expire on or be terminated after September 30, 2017, and the understanding that BCH would work cooperatively with the Receiver to advance the interconnection engineering design and permitting.

24. In the first few weeks of the Receiver's appointment, the Receiver was contacted by several parties that were potentially interested in acquiring the Project. Given the Receiver's desire to assess the level of interest and potential value of the Project in its current state, on or about June 20, 2017, the Receiver set up a data room for interested parties to review information relating to the Project, subject to receipt by the Receiver of an executed confidentiality agreement. Site visits were arranged and conducted with interested parties and a deadline of July 14, 2017 was set for receipt of letters of intent from interested parties.

25. During this period, a number of additional information requests were made to the Receiver by parties who had expressed interest in acquiring the Project. One of these requests concerned the EPA. In providing the responses to the additional information requests, the Receiver relied on the representations made by BCH in the June 6 Meeting. Specifically, the Receiver relied on such representations when it informed the interested parties on July 11, 2017 that:

[BCH] has verbally confirmed to the Receiver that the EPA will not be terminated as a result of the COD deadline of September 2017. The EPA includes various provisions for changing the Target COD (paragraphs 3.9 and 3.11). Based on discussions with BCH, the Receiver understands that since the Interconnection Study Report remains in draft form and has not yet been finalized, the Estimated Interconnection Facilities Completion Date remains subject to change, and accordingly, the Target COD may be changed subject to the provisions of paragraph 3.9 of the EPA.

26. Attached hereto as **Exhibit "D"** is a redacted copy of the document titled "Additional Information Requests – Responses" dated July 11, 2017 which was provided to the interested parties in the data room set up by the Receiver.

27. In early August 2017, following receipt of initial letters of intent from nine different interested parties, the Receiver, in discussion with IA, determined to move ahead with a sales process for the Project (the "**Sales Process**").

28. Relying on the representations made by BCH in the June 6 Meeting, the representations made to IA, and the Receiver's own understanding of the EPA terms, the Receiver took further steps and incurred substantial costs to continue the development and construction of the Project. As an officer of the Court with duties to the Court and all stakeholders of the Wedgemount Entities and the Project, the Receiver would not have taken such steps, and the costs would not have been incurred, but for the representations made by BCH.

29. Since its appointment, the Receiver has:
- (a) worked with BCH's interconnections group to significantly advance the engineering design for the Project's distribution line and point of interconnection to BCH's grid for the FSR Route;
  - (b) continued to apply for and obtain the necessary permits and approvals with respect to the Project from various government agencies;
  - (c) negotiated a revised Impact Benefit Agreement (the "IBA") with the First Nations who stand to benefit from royalties (among other things) under this IBA when the Project is complete;
  - (d) pursued the Sales Process;
  - (e) hired and retained engineering, forestry and environmental consultants and professionals to advance the engineering design, permitting and environmental monitoring of the Project;
  - (f) engaged suitable parties to advance the construction of the Project; and
  - (g) expended funds in excess of \$1,400,000.00 in furtherance of the Project.

30. Prior to September 2017, the Receiver did not have any reason to request written confirmation from BCH that the termination provision of the EPA was not applicable because the Draft Interconnection Study Report remained in draft form and the Estimated Interconnection Facilities Completion Date remained subject to change pursuant to paragraph 3.9 of the EPA. However, by September 2017 the second anniversary of the Target COD as initially stipulated in the EPA was approaching and it was a condition precedent to a number of the offers received by the Receiver in the course of the Sales Process that the Receiver provide some written evidence that the termination provision set out in paragraph 8.1(a) of the EPA was not applicable because the Draft Interconnection Study Report remained in draft form and the Estimated Interconnection Facilities Completion Date remained subject to change pursuant to paragraph 3.9 of the EPA.



31. Therefore, out of an abundance of caution, the Receiver emailed Ms. McKenna (with a copy to Mr. Hefflick, Mr. Rempel and BCH's counsel) on September 11, 2017 to confirm that, based on BCH's previous representations to the Receiver, the termination provision set out in paragraph 8.1(a) of the EPA is not applicable because the Draft Interconnection Study Report remained in draft form and the Estimated Interconnection Facilities Completion Date remained subject to change pursuant to paragraph 3.9 of the EPA. The Receiver also advised Ms. McKenna in the email that the Receiver was continuing to advance planning and design for the interconnection. Attached hereto as Exhibit "E" is a copy of the Receiver's email to Ms. McKenna dated September 11, 2017.

32. Ms. McKenna advised Mr. Chambers by email on September 19, 2017 that she was waiting for information and was not able to provide the Receiver with the assurances that the Receiver was seeking with respect to the EPA at that time but that the receipt of the information was imminent.

33. On receipt of the September 19, 2017 email from Ms. McKenna the Receiver became concerned for the first time that BCH may attempt to renege from the representations that BCH had made to the Receiver with regard to there being no Target COD set yet. Following the June 6 Meeting and until the email was received from Ms. McKenna on September 19, 2017, the Receiver had received no indication whatsoever that BCH would seek to terminate the EPA. In fact, during this period, BCH continued to correspond and meet with the Receiver and the Receiver's consultants in order to advance the Project's distribution line and point of interconnection. Based on the work performed and cost incurred by BCH during this period, in addition to the representations made by BCH in the June 6 Meeting, the Receiver had no reason to believe that BCH would not continue to work with the Receiver to advance the Project to COD.

34. On September 25, 2017, Mr. Chambers and I attended a meeting with representatives of BCH, including Ms. McKenna, Mr. Chow, Mr. Hefflick and Mr. Rempel. Mr. Peter Helland was also in attendance as the Receiver's engineering consultant. At the meeting, the BCH representatives indicated that BCH was in the process of reviewing its rights under the EPA and required more time to complete that analysis. At this meeting, the Receiver also provided various updates to BCH in relation to the current status of the Project, the interconnection design and permitting, and the Sales Process.

35. On September 27, 2017, the Receiver wrote to Ms. McKenna to follow up on the discussions that took place at the September 25, 2017 meeting. In that letter the Receiver referred to the representations made at the June 6 Meeting, the work that the Receiver had undertaken in reliance on those representations, and BCH's need for more time to consider its position with respect to the EPA. Attached hereto as Exhibit "F" is a copy of the Receiver's letter of September 27, 2017 to Ms. McKenna.

36. By letter dated September 29, 2017 (attached as Exhibit "B" to the Chow Affidavit), Ms. McKenna replied to the Receiver's letter of September 27, 2017 and stated that:

- (a) BCH was only "aware of the receivership generally";
- (b) BCH denied making any assurances to the Receiver;
- (c) BCH had concerns about the Sales Process; and
- (d) BCH had an impending termination right.

37. On October 6, 2017, Mr. Chambers and I attended a meeting with representatives of BCH, including Ms. McKenna, Mr. Chow, and Mr. Rempel. At this meeting BCH asked various questions in relation to the Sales Process and the content of the data room. There also was a further discussion regarding the status of the interconnection design and the negotiations between the Receiver and the First Nations that are parties to the IBA. In relation to BCH's deliberations regarding the EPA, Ms. McKenna indicated for the first time that BCH did not need the energy that would be produced by the Project once it had reached COD, but that BCH was prepared to consider its position in relation to the EPA. BCH made various requests for further information related to the Sales Process and the data room and agreed to reconvene with the Receiver on October 13, 2017 to further discuss BCH's position on the EPA.

38. On October 11, 2017, the Receiver wrote to Ms. McKenna to follow up on the discussions that took place at the meeting on October 6, 2017. In that letter the Receiver provided a complete overview of the Sales Process to date, including a list of all activities undertaken by the Receiver to find a suitable purchaser. Attached hereto as Exhibit "G" is a copy of the Receiver's letter dated October 11, 2017, including a detailed summary of the Sale

Process at Appendix "A". Due to their size, the other appendices to the October 11, 2017 letter have not been attached to my affidavit but are available on request.

39. Ms. McKenna wrote to the Receiver by email on October 13, 2017 requesting that the meeting planned for that day between the Receiver and BCH be deferred to allow BCH more time to consider the Receiver's letter of October 11, 2017.

40. On October 13, 2017, the Receiver provided BCH with updated (95%) design drawings for the interconnection distribution line and point of interconnection following the FSR Route.

41. In a letter to the Receiver dated October 17, 2017, Ms. McKenna asserted that BCH had preserved its termination right under the EPA and took issue with the answers to the question regarding the termination right found in Appendix "D" of the Receiver's letter of October 11, 2017 (which is the same document as is attached hereto as Exhibit "D"). Attached hereto as Exhibit "H" is a copy of the letter from Ms. McKenna dated October 17, 2017.

42. On October 31, 2017, the Receiver wrote a responsive letter to Ms. McKenna's letter dated October 17, 2017. The Receiver provided further information on the Sales Process and the materials provided to the potential purchasers. Attached hereto as Exhibit "I" is a copy of the letter to Ms. McKenna dated October 31, 2017.

43. On November 20, 2017, Mr. Chambers and I met with BCH representatives including Ms. McKenna, Mr. Chow, Mr. Hefflick and Mr. Rempel at the BCH office in Vancouver (the "November 20 Meeting").

44. At the November 20 Meeting, the Receiver provided an update in relation to the progress made in respect of the interconnection planning, design and permitting. The Receiver indicated that its consultants were in the process of reviewing BCH's comments on the updated (95%) design drawings for the interconnection distribution line and point of interconnection following the FSR Route, and also were advancing permitting matters with the Ministry of Transportation and Infrastructure and Canadian National Rail.

45. During the November 20 Meeting, Mr. Chow indicated that BCH was in the process of considering the EPA, and that BCH would require any future discussion in relation to the EPA to be held confidential, subject to the terms of a BCH proposed non-disclosure agreement (the "**Proposed NDA**"), which was provided to the Receiver by an email from Ms. McKenna approximately one (1) hour prior to the start of the November 20 Meeting. The Receiver advised that it was not in a position to sign the Proposed NDA at the meeting and would require the opportunity to review the Proposed NDA and consult with its counsel. Mr. Chow agreed to proceed on that basis. Mr. Chow further indicated that BCH would likely require some amendments to the terms of the EPA that would resolve BCH's termination rights under the EPA. He stated that a number of changes may be required to the EPA, but was not willing to provide any details prior to the execution of an acceptable non-disclosure agreement. He acknowledged the desire of the Receiver to resolve the EPA as swiftly as possible in order that the Project and the Sales Process could continue to advance and indicated that, subject to the execution of a satisfactory non-disclosure agreement, BCH expected to be able to provide a proposal in relation to an amended EPA in approximately two (2) weeks' time. Mr. Chow also indicated that he expected that a mark-up of the EPA would be provided to the Receiver as part of BCH's proposal.

46. Following the November 20 Meeting, the Receiver, BCH and IA negotiated a mutually acceptable non-disclosure agreement (the "**Negotiated NDA**"). On December 8, 2017, IA's counsel sent to BCH's counsel a copy of the Negotiated NDA which had been executed by the Receiver and IA, for execution by BCH.

47. On December 12, 2017 the Receiver sent an email to Ms. McKenna requesting an update on BCH's expected timing for providing the proposal regarding the EPA. On December 12, 2017, Ms. McKenna responded by email indicating that BCH needed more time internally to consider the EPA and her team's mandate.

48. On January 10, 2018, the Receiver again wrote to Ms. McKenna by email requesting a timeline for when the Receiver would receive the BCH proposal for amendments to the EPA. Attached hereto as **Exhibit "J"** is a copy of emails between the Receiver and Ms. McKenna from December 12, 2017 to January 10, 2018.

49. On January 19, 2018, the Receiver's counsel was served with BCH's Notice of Application dated January 19, 2018 and the Chow Affidavit.

50. On January 19, 2018, Mr. Chambers and I had a telephone conversation with Ms. McKenna during which she informed the Receiver that she did not have welcome news, and that BCH had decided not to proceed with the EPA. The Receiver enquired as to what had led to the change of BCH's position given the representations made to the Receiver in the November 20 Meeting that BCH would be providing a proposal in relation to resolving BCH's termination rights under the EPA and other amendments to the EPA. Ms. McKenna was not able to provide a response other than to advise that this was the direction now being taken by BCH and that further correspondence should be directed through BCH's counsel.

51. Until January 19, 2018 the Receiver understood that BCH would not seek to terminate the EPA if the Project was not completed by September 30, 2017. From November 20, 2017 until January 19, 2018, the Receiver also understood that BCH would allow the EPA to continue with some amendments. Furthermore, during the period between September 30, 2017 and on or about December 11, 2017, BCH continued to correspond and work with the Receiver and its consultants to advance the interconnection design and to provide input on information being uploaded to the data room for the benefit of interested parties.

52. There are many stakeholders in the Project including all the creditors, the First Nations who stand to benefit under the IBA, the Wedgemount Entities, the guarantors on the Project, the many professionals and contractors working on the Project, and 28165 Yukon Inc., the owner and developer of the WedgeWoods subdivision on whose land the Project's powerhouse is situated.


53. The Sales Process in this matter has been robust and has engaged several interested parties. While the Receiver must preserve the integrity of the process and keep certain information confidential, I can say that all indications are that absent termination of the EPA, it is likely that a sale of the Project to a credible purchaser can be completed with a substantial realization for several of the stakeholders. If BCH is permitted to terminate the EPA, it is uncertain whether any bidders will be interested in purchasing the Project (and/or what the impact on the value of the Project would be). Further, the Receiver has been advised by Mr.

Potyk that, if the Project is not sold and completed by a purchaser, there will be significant environmental remediation issues that will need to be attended to.

SWORN BEFORE ME at the City of  
Vancouver, British Columbia, this 12<sup>th</sup> day  
of March, 2018.



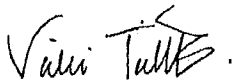
A Commissioner for Affidavits in and for  
the Province of British Columbia



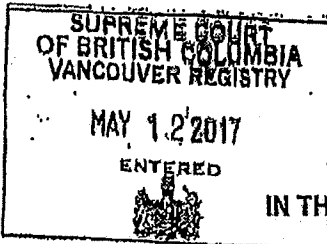
MELINDA MCKIE

**Vicki Tickle**  
Barrister and Solicitor  
McMillan LLP  
1000 - 1055 West Georgia Street  
PO Box 11117  
Vancouver, BC V6E 4N7  
t 604.688.9111  
f 604.688.7084

The attached is Exhibit "A"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia



NO. S-174308  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP  
 WEDGEMOUNT POWER (GP) INC.  
 WEDGEMOUNT POWER INC.  
 THE EHRHARDT 2011 FAMILY TRUST  
 POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
 by its general partner POINTS WEST HYDRO (GP) INC.  
 CALAVIA HOLDINGS LTD.  
 SWAHEALY HOLDING LIMITED  
 BRENT ALLAN HARDY  
 DAVID JOHN EHRHARDT  
 28165 YUKON INC.  
 PARADISE INVESTMENT TRUST  
 SUNNY PARADISE INC.

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE ) FRIDAY, THE 12<sup>TH</sup> DAY  
 MR. JUSTICE STEEVES ) OF MAY, 2017.

ON THE APPLICATION of the Plaintiff, for an Order pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and Section 39 of the *Law and Equity Act*, R.S.B.C. 1996 c. 253, as amended (the "LEA") appointing Deloitte Restructuring Inc. ("Deloitte") as Receiver and Manager (In such capacity, the "Receiver") without security, of all of the assets, undertakings and properties of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP") and Wedgemount Power Inc. ("Wedgemount Power") (collectively, the "Wedgemount Entities") acquired for, or used in relation to a business



carried on by the Wedgemount Entities, coming on for hearing this day at the Courthouse, 800 Smite Street, Vancouver, British Columbia.

AND ON READING the Notice of Application dated May 9, 2017, the Affidavit #1 of Luc Fournier sworn May 9, 2017, the Affidavit #1 of Kristine Jang sworn May 10, 2017 and the consent of Deloitte to act as the Receiver; AND ON HEARING Daniel Shouldice, Counsel for the Plaintiff, and other counsel as listed on Schedule "A" hereto.

THIS COURT ORDERS AND DECLARES that:

#### APPOINTMENT

1. Pursuant to Section 243(1) of the BIA and Section 39 of the LEA Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Wedgemount Entities, including all proceeds thereof (the "Property").

#### RECEIVER'S POWERS

2. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
  - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
  - (c) to manage, operate and carry on the business of the Wedgemount Entities, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Wedgemount Entities;
  - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons, including Midgard Consulting Inc., from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
  - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Wedgemount Entities or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Wedgemount Entities and to exercise all remedies of the Wedgemount Entities in collecting such monies, including, without limitation, to enforce any security held by the Wedgemount Entities;
- (g) to settle, extend or compromise any indebtedness owing to, the Wedgemount Entities;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Wedgemount Entities, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Wedgemount Entities;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Wedgemount Entities, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000.00, provided that the aggregate consideration for all such transactions does not exceed \$250,000.00; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,
- and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 shall not be required;
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Receiver, in the name of the Wedgemount Entities;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Wedgemount Entities, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Wedgemount Entities;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Wedgemount Entities may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) in respect of the Impact and Benefits Agreement dated August 1, 2014 (the "Squamish-Lil'wat IBA") between Inter alia, Squamish Nation, Lil'wat Nation, and Wedgemount Power (with the Interest of Wedgemount Power having been assigned by Wedgemount Power to Wedgemount LP and then assigned as security by Wedgemount LP to the Plaintiff), the Receiver;
- (i) is authorized and permitted, but not obligated, to make all payments and perform all obligations of Wedgemount LP under the IBA,
  - (ii) may only terminate the Squamish-Lil'wat IBA,
    - A. in accordance with the termination provisions in the IBA, and
    - B. with the consent of the Plaintiff, or
    - C. subject to a further court order on notice to the Plaintiff and to the Squamish and Lil'wat Nations,
  - (iii) may only sell or assign the interest of Wedgemount LP in the Squamish Lil'wat IBA subject to the terms of the Squamish Lil'wat IBA,

provided that in making any payments or performing any obligations under the Squamish-Lil'wat IBA as permitted herein, the Receiver does not become bound by nor incur any obligations under the Squamish-Lil'wat IBA,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Wedgemount Entities, and without interference from any other Person.

### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. Each of (i) the Wedgemount Entities, (ii) all of the Wedgemount Entities's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order, including Colmac Capital Corp. and Eco Flow Energy Corporation (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
4. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Wedgemount Entities, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.
5. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this

paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including, without limitation, providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE WEDGEMOUNT ENTITIES OR THE PROPERTY**

7. No Proceeding against or in respect of the Wedgemount Entities or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Wedgemount Entities or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Wedgemount Entities and the Receiver.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

8. All rights and remedies (including, without limitation, set-off rights) against the Wedgemount Entities, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this Order shall (i) empower the Receiver or the Wedgemount Entities to carry on any business which the Wedgemount Entities is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the BIA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

#### **NO INTERFERENCE WITH THE RECEIVER**

9. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Wedgemount Entities, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

10. All Persons having oral or written agreements with the Wedgemount Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Wedgemount Entities are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Wedgemount Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Wedgemount Entities or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

11. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post- Receivership Accounts") and the monies standing to the credit of such Post-Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

**EMPLOYEES**

12. Subject to the right of employees to terminate their employment notwithstanding paragraph 10, all employees of the Wedgemount Entities shall remain the employees of the Wedgemount Entities until such time as the Receiver, on the Wedgemount Entities' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities of the Wedgemount Entities, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Receiver may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Receiver shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Receiver may hire in accordance with the terms and conditions of such employment by the Receiver.

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Wedgemount Entities, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### LIMITATION ON ENVIRONMENTAL LIABILITIES

14. Nothing in this Order shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Receiver is actually in possession.

#### LIMITATION ON THE RECEIVER'S LIABILITY

15. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except:
- (a) any gross negligence or wilful misconduct on its part; or
  - (b) amounts in respect of obligations imposed specifically on receivers by applicable legislation.

Nothing in this Order shall derogate from the protections afforded the Receiver by Section 14.06 of the BIA or by any other applicable legislation.

**RECEIVER'S ACCOUNTS**

- 16. The reasonable fees and disbursements of the Receiver and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 17. The Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.
- 18. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**FUNDING OF THE RECEIVERSHIP**

- 19. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2.0 million (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Receiver deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in Sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
- 20. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.



21. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
22. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### ALLOCATION

23. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

#### GENERAL

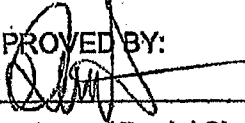
24. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
25. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Wedgemount Entities.
26. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
27. The Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
28. The Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, as provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Wedgemount Entities' estate with such priority and at such time as this Court may determine.
29. Any Interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Receiver and to any other

party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

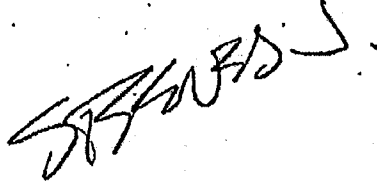
30. Endorsement of this Order by counsel appearing on this application other than the Plaintiff is hereby dispensed.

THE FOLLOWING PARTIES APPROVE OF THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

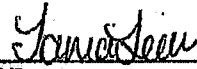
APPROVED BY:



Signature of Daniel Shouldice  
lawyer for the Plaintiff



BY THE COURT



DISTRICT REGISTRAR



**SCHEDULE "A"**

**LIST OF COUNSEL**

**Industrial Alliance Insurance and Financial Services Inc. v.  
Wedgemount Power Limited Partnership et al  
SCBC No. \_\_\_\_\_**

<p><b>Counsel for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc.</b></p> <p>Gowling WLG (Canada) LLP 2300 - 550 Burrard Street Vancouver, BC V6C 2B5</p> <p>Daniel Shouldice tel: 604-683-6498 fax: 604-683-3558 direct line: 604-891-2286 email: daniel.shouldice@gowlingwg.com</p>	<p><i>Counsel for Defendant 28165 Polken Inc. Amanda Barron</i></p>

14

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT

\$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte, the Receiver (the "Receiver") of all of the assets, undertakings and properties of the Wedgemount Entities acquired for, or used in relation to a business carried on by the Wedgemount Entities, including all proceeds thereof (collectively, the "Property") appointed by Order of the Supreme Court of British Columbia and/or the Supreme Court of British Columbia (In Bankruptcy and Insolvency) (the "Court") dated the 12<sup>th</sup> day of May, 2017 (the "Order") made in SCBC Action No. S-174308 has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~REDACTED~~ not in advance on the ~~REDACTED~~ day of each month after the date hereof at a notional rate per annum equal to the rate of ~~REDACTED~~ per cent above the prime commercial lending rate of Bank ~~REDACTED~~ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of the Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ~~REDACTED~~, British Columbia.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the [redacted] day of [redacted], 201[redacted].

Deloitte Restructuring Ltd. solely in its capacity as Receiver of the Property, and not in its personal capacity

---

Per:  
Name:  
Title:

16

The attached is Exhibit "B"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018

*Vulvi Tallie*

A Commissioner for taking Affidavits in  
the Province of British Columbia

# Deloitte.

Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street,  
Vancouver  
BC V7X 1P4  
Canada

Tel: 604-640-3368  
Fax: 604-602-1583  
www.deloitte.ca

May 19, 2017

British Columbia Hydro And Power Authority  
333 Dunsmuir Street  
Vancouver, BC V6B 5R3

**Attention: Joanne McKenna, Project Manager, Distributed Generation**

Dear Sirs/Mesdames:

**Re: Wedgemount Power Limited Partnership et al., In Receivership**

Pursuant to an Order of the Supreme Court of British Columbia (the "Receivership Order"), Deloitte Restructuring Inc. was appointed as Receiver and Manager (the "Receiver") of Wedgemount Power Limited Partnership, Wedgemount Power Inc. and Wedgemount Power (GP) Inc. (collectively, the "Group") on May 12, 2017. A copy of the Receivership Order is enclosed for your reference.

Pursuant to the Receivership Order, the Receiver is expressly empowered and authorized to take possession of and exercise control over the Property, as defined in the Receivership Order, and including, but not limited to, all undertakings and properties of the Group of every nature and kind whatsoever.

We understand that the Group has been working with British Columbia Hydro And Power Authority ("BC Hydro") in relation to the construction and operation of the Group's partly-constructed run-of-river hydro power facility located on Wedgemount Creek, near to Whistler, British Columbia (the "Project").

The Receiver has engaged Mike Potyok of Midgard Consulting Inc. in order to assist the Receiver with its assessment of the current status of the Project and potential steps and costs involved in completing the construction and commissioning the Project.

As you are aware, Industrial Alliance Insurance and Financial Services Inc. ("IA") is the primary secured creditor of the Group. The Receiver is working to complete its assessment of the Project and is in discussions regarding continued financial support of the Project by IA.

Further to our discussions on May 18, 2017, we look forward to receiving BC Hydro's statement of account, and key documentation that will assist the Receiver with its assessment of the Project, including the current cost estimate for the interconnection.

The Receiver confirms that it has no objection to BC Hydro entering into discussions with its consultant, Midgard Consulting, and with IA in relation to the Project.

Wedgemount Power Limited Partnership et al., in Receivership  
May 19, 2017  
Page 2

We look forward to working with BC Hydro, and thank you for your cooperation in this matter.

Should you have any questions regarding the above, please contact Paul Chambers at pachambers@deloitte.ca or (604) 640 3368.

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court Appointed Receiver and Manager of  
Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc.,  
and Wedgemount Power Inc. and not in its personal capacity



Melinda McKie, CPA, CMA, CIRP, LIT

*Enclosures: Receivership Order*

cc: Magnus Verbrugge, Borden Ladner Gervais LLP, Legal Counsel to BC Hydro



The attached is Exhibit "C"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia

**BC hydro**   
FOR GENERATIONS

WGM

Wedgemount Creek Hydro Project

Interconnection Facilities Study  
and  
Project Plan

Report No. DGI-2016-WGM-FS-R0

August 16, 2016

**DISCLAIMER OF WARRANTY, LIMITATION OF LIABILITY**

This report was prepared by the British Columbia Hydro And Power Authority ("BCH") or, as the case may be, on behalf of BCH by persons or entities including, without limitation, persons or entities who are or were employees, agents, consultants, contractors, subcontractors, professional advisers or representatives of, or to, BCH (individually and collectively, "BCH Personnel").

This report is to be read in the context of the methodology, procedures and techniques used, BCH's or BCH's Personnel's assumptions, and the circumstances and constraints under which BCH's mandate to prepare this report was performed. This report is written solely for the purpose expressly stated in this report, and for the sole and exclusive benefit of the person or entity who directly engaged BCH to prepare this report. Accordingly, this report is suitable only for such purpose, and is subject to any changes arising after the date of this report. This report is meant to be read as a whole, and accordingly no section or part of it should be read or relied upon out of context.

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**PROJECT INFORMATION**

<b>Interconnection Customer (IC)</b>	Wedgemount Power Limited Partnership, a Limited Partnership by its General Partner Wedgemount Power (GP) Inc.
<b>Project Name</b>	Wedgemount Creek Hydro
<b>Point of Interconnection (POI)</b>	R6W 25F61 approximately 0.8 km from Hwy 199 at about 12.3 km (conductor distance) from Rainbow substation or about 14 km (driving distance) from Whistler, BC 50° 10' 37.09" N 122° 52' 30.08" W
<b>BCH Proposed ISD</b>	August 31, 2017
<b>IC Proposed COD</b>	September 29, 2017
<b>Maximum Power Injection (MW)</b>	5.3 MW
<b>Number of Generator Units</b>	one
<b>Plant Fuel</b>	hydro

**EXECUTIVE SUMMARY**

Wedgemount Power Limited Partnership, a Limited Partnership by its General Partner Wedgemount Power (GP) Inc., the Interconnection Customer (IC), proposes to develop the Wedgemount Creek Hydro Project (WGM) to deliver electric energy to BC Hydro (BCH) through the Standing Offer Program (SOP). The WGM Project consists of one 5.95 MVA, 5.35 MW, 4.16 kV hydro generator. The Point of Interconnection (POI) is 50° 10' 37.09" N 122° 52' 30.08" W.

This report identifies the required system modifications for interconnecting the proposed Wedgemount Creek Power Project. These modifications are as follows:

- A new 4.2 km overhead line needs to be built to the existing 25F61 feeder to the WGM POI, along with a section of 1.2 km underground cable.
- At Rainbow substation one set of voltage transformers will need to be installed. Protection and control equipment for the feeder will need to be upgraded.
- Configurations and programming of associated line, transformer and bus protection relays will need to be adjusted to accommodate WGM.
- The BC Hydro Fraser Valley Operation Centre will need to reconfigure the existing equipment to accommodate WGM, update network models to include WGM and add new control, telemetry and alarm points. A Distribution Operating Order (DOO) will need to be prepared for this project.

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- Environmental risks are being evaluated and a mitigation plan is being developed to be implemented for this project.
- The maximum power injection into BCH system is 5.3 MW. The proposed Commercial Operation Date (COD) is September 29, 2017.

The cost estimate, +/- 20%, for the Interconnection Network Upgrades required to interconnect the proposed project to the BCH Distribution System is \$ 6,281,409.

The Revenue Metering cost estimate is \$ 54,756. The Revenue Metering costs are accounted for separately from Network Upgrades and will be paid for by the Interconnection Customer directly in the form of a cash payment.

The estimated date to complete construction of the Network Upgrades required to interconnect the project to the BCH Distribution System is August 31, 2017. The attached project schedule provides greater details of the construction timelines.

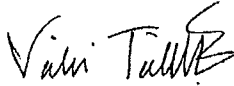
Date	Description
September 15, 2016	Project Funding Received
September 30, 2016	Project Funding Internal Approval
January 31, 2017	Substation Design Complete
TBD	Start Substation Construction
March 31, 2017	Complete Distribution Design
April 1, 2017	Start Distribution Construction
August 31, 2017	BCH Project In-service
September 29, 2017	WGM COD

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**PROJECT INTER-DEPENDENCIES**

N/A

The attached is Exhibit "D"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia







[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BC Hydro / Interconnection

Q9) The EPA with BC Hydro has two Buyer Termination provisions based on i) General Partner is insolvent or in receivership, and ii) Guaranteed COD of September 2017 not met. Has BC Hydro provided written confirmation that these provisions will not be exercised, or will BC Hydro otherwise not be allowed by the Court to exercise them?

A9) Refer to paragraph 9 of the Receivership Order. BC Hydro is prohibited from terminating the EPA without written consent of the Receiver or leave of the Court.

BC Hydro has verbally confirmed to the Receiver that the EPA will not be terminated as a result of the COD deadline of September 2017. The EPA includes various provisions for changing the Target COD (paragraphs 3.9 and 3.11). Based on discussions with BC Hydro, the Receiver understands that since the Interconnection Study Report remains in draft form and has not yet been finalized, the Estimated Interconnection Facilities Completion Date remains subject to change, and

accordingly, the Target COD may be changed subject to the provisions of paragraph 3.9 of the EPA.

BC Hydro is working with the Receiver to advance the Project and at this stage has made no indication that it intends to seek an Order of the Court for the EPA to be terminated or amended.

Q10) In the BC Hydro agreement, the estimated cost is indicated to be \$2.8M to interconnect to the BC Hydro distribution system. Current costs to date are \$4.2M with \$0.9M outstanding. Does this reflect the total payable to BC Hydro or is there any anticipation the costs could still rise from here?

A10) The model shows a total anticipated cost of \$4.2M (cell E20 in "Project Cost" tab), with \$0.9M paid to date. Accordingly, the model shows a cost to complete of \$3.3M. This budget was based on discussions with BC Hydro prior to the Receivership and as of March 2017 this number remains the best available estimate of total cost for the interconnection.

The Receiver is in discussions with BC Hydro to obtain more clarity on BC Hydro's budgeted costs. The final costs will ultimately depend on the route for the interconnection (refer to Q11 for more details).

Q11) Please clarify how the Receiver plans to resolve the BC Hydro Interconnection. Please clarify the plans associated with moving the POI.

A11) The final route for the interconnection is in the process of being determined. The Receiver has engaged Clean Energy and CMJ Project Solutions to assist with route planning and permitting. On June 30, 2017 WPLP submitted an updated Crown land tenure application covering two potential interconnection routes. Refer to the documents uploaded to the "Interconnection" folder in the dataroom. The Receiver is actively working with BC Hydro to develop plans for the route of interconnection.

Q12) Explain how the transaction will deal with the BC Hydro Credit amount of \$834k.

A12) The BC Hydro credit amount (or any portion thereof remaining at the time of transaction) will be considered part of the Project assets.

Q13) We note that the last communication from BC Hydro is 2015 and that no Facility study is on the portal. Can you confirm the status of the facility study and what BC Hydro's thoughts are regarding a schedule for completion of the interconnection (we note that there is some generation in the model allowed for 2017 and a full year for 2018).

A13) The BC Hydro-facility study is not yet completed. The model assumes an October 31, 2017 COD as per WPLP's model. The process of determining the interconnection is on-going (refer to Q11).

Q14) Is a DGIA draft completed? If so, please provide. Was the draft submitted to BC Hydro?

A14) DGIA is not completed. BC Hydro has provided a draft template for the DGIA. Now uploaded to the dataroom in the "BC Hydro" sub-folder within the "Agreements" folder.

Q15) Confirm that BC Hydro metering equipment is included in the cost-to-complete.

A15) Yes.

Q16) Is the \$834k BC Hydro Credit amount included in the \$4.2M Revised Interconnection Budget line item?

A16) \$834K is shown in Tab: "Project Cost" cell C70 under sources.

[Redacted content]



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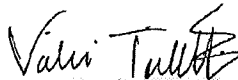
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[REDACTED]

[REDACTED]

The attached is Exhibit "E"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia

---

**From:** Chambers, Paul (CA - British Columbia)  
**Sent:** September-11-17 11:13 AM  
**To:** McKenna, Joanne  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic; Magnus C. Verbrugge (mverbrugge@blg.com)  
**Subject:** RE: Wedgemount Power LP in Receivership

Good morning Joanne,

We are conscious that the second anniversary of the Target COD is approaching, as defined in the EPA (i.e. Sept 30, 2017).

Based on our discussions in May of this year, we understand that the 2 year termination provision set-out in paragraph 8.1(a) of the EPA is not applicable since the Interconnection Study Report remains in draft form and the Estimated Interconnection Facilities Completion Date remains subject to change pursuant to paragraph 3.9 of the EPA.

Please can you confirm this for us?

By way of update, the Receiver is continuing to advance planning and design for the interconnection, and we have had several meetings with Vic Rempel and Ryan Hefflick in this regard. The Receiver is also expecting to retain a contractor to finish the intake construction in the next couple of weeks.

Many thanks,

**DELOITTE RESTRUCTURING INC.**  
In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity.

**Paul Chambers**  
Senior Manager | Financial Advisory  
Deloitte  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
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**From:** McKenna, Joanne [mailto:[Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)]  
**Sent:** Friday, May 19, 2017 9:18 AM  
**To:** Chambers, Paul (CA - British Columbia)  
**Subject:** RE: Correspondence

Hi Paul, my address is correct. Ryan Hefflick's email is [ryan.hefflick@bchydro.com](mailto:ryan.hefflick@bchydro.com).  
If you could copy him on any emails that would be great.

Thank-you, Joanne

**Joanne McKenna** | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-506-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

Smart about power in all we do.

---

**From:** Chambers, Paul (CA - British Columbia) [<mailto:pachambers@deloitte.ca>]  
**Sent:** 2017, May 18 4:44 PM  
**To:** McKenna, Joanne  
**Subject:** Correspondence

Hi Joanne,

Thank you for your participation in the call this afternoon.

Just checking I have the correct email address for you. Please also provide the email addresses of any other of your team members that you would like to be copied on correspondence moving forward.

We expect to send you the letter, as requested, first thing in the morning.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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43

The attached is Exhibit "F"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018

*Vilho Tuittis*

A Commissioner for taking Affidavits in  
the Province of British Columbia



Wedgemount Power Limited Partnership et al., in Receivership  
September 27 2017  
Page 2

Based on these representations, the Receiver and its advisors have continued to advance the Project and engaged in several planning meetings and had correspondence with BC Hydro's Distribution Generator Interconnections group, its First Nation consultant and its engineer, Om Acharya. At the request of BC Hydro, the Receiver also advanced \$105,000 as a prepayment to cover the costs incurred by BC Hydro and its consultants in advancing the interconnection design and planning from the date of the Receivership.

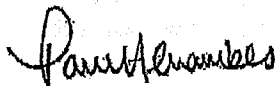
The Receiver understands that BC Hydro would like some further time to consider its position in relation to the EPA and a postponement to the Target COD, as defined in the EPA, in light of the information shared by the Receiver at the Meeting. Pursuant to the EPA, the Receiver understands that the second anniversary of the Target COD is September 30, 2017. Since BC Hydro's deliberations are expected to take us beyond this date, the Receiver hereby formally requests a postponement to the Target COD, pursuant to Section 3.9 of the EPA. In addition, the Receiver reserves its rights and remedies at law or at equity and the rights and remedies of the Group pursuant to the EPA.

We look forward to hearing from you regarding a time next week which is convenient to BC Hydro to meet again to discuss the next steps concerning the EPA. We hope that a mutually acceptable solution can soon be reached which will allow for the Project to continue to be advanced for the benefit of all stakeholders. In the meantime, should you have any queries in relation to this matter, please don't hesitate to contact the undersigned at pachambers@deloitte.ca or (604) 640 3368.

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court Appointed Receiver and Manager of  
Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc.,  
and Wedgemount Power Inc. and not in its personal capacity



Paul Chambers, CIRP, LIT  
Vice President

*Enclosures: Appendix "A" - Project Activities Summary*

cc: Magnus Verbrugge, Borden Ladner Gervais LLP, Legal Counsel to BC Hydro  
Bruce Chow, Manager, Contract Management  
Vic Rempel, Manager, Distribution Generator Interconnections

**Appendix "A"**  
**Project Activities Summary since Receiver's Appointment**

<u>Functional Area</u>	<u>Item</u>	<u>Description</u>	<u>Status</u>
<b>Current State Assessment &amp; Options Analysis</b>			
	Project Status Evaluation	Engaged Mldgard Consulting to assist the Receiver in evaluating the current status of the Project including: agreements / design / construction state / Interconnection.	Complete
	Project Economics	Completed an assessment of project revenues and estimated costs to complete as inputs into financial model.	Complete
	Stakeholder Meetings	Meetings with all major stakeholders including Industrial Alliance, BC Hydro, First Nations, and unsecured creditors.	Complete
	Options Evaluation	Evaluated strategic options in light of project status and stakeholder consultation. Concluded to continue with advancing Project towards completion while assessing interest in a transaction to qualified interested parties.	Complete
<b>Sale Process</b>			
	First Round EOI Process	Established a first round "Expressions Of Interest" bid process, including securing historical project documentation, populating a data room and conducting site visits with several prospective project owners.	Complete
	Second Round Binding Offers	Established a second round detailed due diligence and binding offers process with a select number of preferred bidders with the goal of securing a transaction closing in October/November 2017 (contingent on approval of the Court and IA as primary secured creditor). Binding offers due October 2, 2017.	Ongoing
<b>Site Husbandry</b>			
	Intake Road Stabilization	Engaged Registered Forestry Professional and qualified forestry road contractor to stabilize the Intake road and other roads in preparation of spring runoff.	Complete
	Powerhouse Inspection	Assessed powerhouse repairs, secured project materials and cleaned up powerhouse site including moving project supplies and equipment in-doors and changing the locks.	Complete
	Engagement of IE & IEM	Engaged Project IE (True North) and IEM (Cascade Environmental) as required under the terms of the water licence from FLNRO. IEM is undertaking regular site visits and monitoring reports.	Complete
	Balance of Project - Winterization	Initiated a winterization programme to secure existing project works through winter of 2017/18 pending finalization of Project interconnection routing and design.	Ongoing
<b>Permitting and Agreements (excluding Interconnection)</b>			
	Cheakamus Community Forest Road Use Agreement	Discussions with CCF to convert cutting permit road to forest permit road and concluding a road use agreement.	Ongoing
	Squamish Forest District - Works Permit	Entering into a works permit with the Squamish Forest District of MOF to ensure final sign off and acceptance of penstock crossing of Wedge FSR.	Ongoing
	Engagement with SLRD	Discussions with SLRD re: building permit status at powerhouse.	Ongoing
	Extension of project Beneficial Use Agreement in Conditional Water Licence.	Application for an amended water licence to extend beneficial use date.	Complete

**Interconnection**

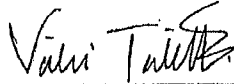
Land Tenure Application	Engaged CMJ Project solutions to prepare and submit a revised land tenure application to FLNRO to encompass the FSR Route for Interconnection. Meetings with BC Hydro Interconnections Group on same. Applications submitted by WPLP and BC Hydro in late June.	Complete
Engagement with SLRD	Confirmation of treatment of transmission line passing over SLRD park land.	Complete
First Nations Consultation	Initial introductions and identification of alternatives with Squamish FN and Lil'wat FN for Section 2 transmission line.	Complete
FLNRO - Land Tenure	Sept 29 - meeting between FLNRO and First Nations, as required by Squamish Nation as a pre-cursor to any support of an amended Interconnection route and related land tenures.	Ongoing
First Nations Agreement	Following proposal received from First Nations, Receiver has secured a draft agreement for an amended IBA that would include full support of project Interconnection routes to complete Interconnection from Wedgewoods subdivision to Section 2 and Section 1 of BC Hydro works. Agreement subject to Chief and Council ratification (anticipated in next 7-14 days).	Ongoing
Design of Section 2	Engaged Clean Energy Consulting to advance design of Interconnection. CEC has completed 3 options for a Section 2 transmission route to 35% - each negotiating a route across Highway 99, CN Rail line, BC Crown Land, SLRD land, to the Wedgewoods Subdivision. Design includes review and integration with BC Hydro OE and other stakeholders.	Complete
Design of Section 2	BC Hydro 35% Design Review for Interconnection route along forest service road ("FSR Route").	Complete
Design of Section 2	Progressing with 95% drawings for Section 2 of transmission line for FSR Route. Drawings expected by approx. October 6.	Ongoing
Interconnection ducting through subdivision	Entered into various discussions and negotiations with 28615 Yukon Inc. re: Installation of ducting for the Interconnection through the Wedgewoods subdivision.	Ongoing
Discussions with FLNRO and Front Counter BC re: tenure application	Ongoing liaison with FCBC and FLNRO regarding the land tenure application underway for both the Project and BC Hydro.	Ongoing

**Engineering and Construction - Project Works**

Engagement of Engineers	Negotiations and discussions with previously responsible engineers and specialists to transition from previous owners to Receiver.	Complete
Peer Review of Previous Design	Engaged Sigma Engineering to review intake, penstock and powerhouse design, and provide inventory of any outstanding design work.	Complete
Selection and Engagement of alternative Engineer of Record	Discussions with original EOR, identification and negotiations with alternative EOR.	Complete
Contractor Selection Process	Prepared and distributed tender documents for intake completion works - re- diversion of Wedgemount Creek and completion of site grading and clean up.	Complete
Completion of Intake	Engaged North Construction - mobilizing in week commencing Sept 25, 2017. Construction schedule to run through October and November.	Ongoing

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The attached is Exhibit "G"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



Valeri T. T. T.  
A Commissioner for taking Affidavits in  
the Province of British Columbia

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**Deloitte.**

Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street  
Vancouver  
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Canada

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www.deloitte.ca

October 11, 2017

British Columbia Hydro and Power Authority  
333 Dunsmuir Street  
Vancouver, BC V6B 5R3

**Attention: Joanne McKenna, Project Manager, Distributed Generation**

Dear Sirs/Mesdames:

**Re: Wedgemount Power Limited Partnership et al., in Receivership**

Deloitte Restructuring Inc. is the Court-appointed receiver and manager (in such capacity, the "Receiver") of all the assets, undertakings and properties of Wedgemount Power Limited Partnership ("WPLP"), Wedgemount Power (GP) Inc. ("WPGP") and Wedgemount Power Inc. ("WPI" and collectively with WPLP and WPGP, "Wedgemount").

Thank you for meeting with the Receiver on October 6, 2017 (the "Meeting") to discuss various matters related to the activities of the Receiver and to Wedgemount's run-of-river hydro power facility located on Wedgemount Creek, near to Whistler, British Columbia (the "Project").

This letter is provided in response to the various requests for additional information made by the British Columbia Hydro and Power Authority ("BC Hydro") at the Meeting. Please note that this letter and all its appendices are provided on the basis that the information contained herein will be held strictly confidential, in accordance with the terms of the non-disclosure agreement entered into between the Receiver and BC Hydro as of October 6, 2017 (the "BC Hydro NDA").

**1. Sale Process Overview**

Attached as "Appendix A" is a timeline summarizing the activities of the Receiver in relation to the process undertaken for the sale of the Project and related assets (the "Sale Process"), including Wedgemount's right, title and interest in and under the Electricity Purchase Agreement made as of March 6, 2015 (the "EPA") between WPLP, by its general partner, WPGP, and BC Hydro.

**2. Data Room and Non Disclosure Agreement**

Owing to the status of the Project at the Receiver's appointment, the Receiver did not compile any form of bid package for the marketing of the Project. However, in June 2017, in response to enquiries and indications of interest from various parties, the Receiver did set-up a data room which contained various agreements, contracts, engineering reports and financial information pertaining to the Project (the "Data Room").



Wedgemount Power Limited Partnership et al., in Receivership  
October 11, 2017  
Page 2

All parties that expressed an interest in acquiring the Project ("**Interested Parties**") were required by the Receiver to enter into a binding non-disclosure agreement ("**NDA**") with the Receiver before being granted access to the Data Room. The NDA sets out various terms and controls which ensure that information in the Data Room is kept strictly confidential by the Interested Parties. Interested Parties were granted access to the Data Room and the ability to download documents, subject to the terms of the NDA.

Attached as "**Appendix B**" is the template NDA which was used in respect of the Sale Process. The Receiver confirms that it entered into 27 NDAs with 25 different Interested Parties. In total, 47 representatives of the Interested Parties that signed NDAs were granted access to the data room.

Following receipt of non-binding letters of intent from Interested Parties on July 31, 2017, the Receiver then selected three of the Interested Parties to undertake detailed due diligence in respect of the Project ("**Phase II**"). The Receiver requested that the selected Interested Parties submit binding offers by October 2, 2017.

Further details related to the Sale Process and proposed next steps are included in Appendix A.

**3. Discussions with BC Hydro**

Due to the partly constructed status of the Project, and challenges related to obtaining a route of interconnection acceptable to all stakeholders, the Receiver was uncertain regarding the potential outcome of Phase II of the Sale Process. Owing to this uncertainty, an update on the status of the Sale Process was not provided to BC Hydro until recently. It was not the intention of the Receiver to exclude BC Hydro from status updates with respect to the Sales Process, which developed over time.

As outlined in our letter of September 27, 2017 (the "**September 27 Letter**"), over the course of the last five months, the Receiver has had several meetings and discussions with BC Hydro's Interconnections Group and its Properties Group in order to advance the interconnection design and planning. A summary of the Receiver's activities since its appointment has previously been provided as an appendix to the September 27 Letter.

Given the progress made with respect to the First Nation's support of the route of interconnection along the Wedge Forest Service Road, and in light of the offers received on October 2, 2017, the Receiver is now more confident that a transaction of the Project is feasible within the next two months, contingent on BC Hydro's continued support of the Project.

The Receiver is aware of the obligations of Wedgemount in relation to seeking BC Hydro's consent to an assignment of the EPA (section 7.4). After entering into the BC Hydro NDA, the Receiver also now expects to be able to provide more regular updates regarding the status of the Sale Process moving forward.

**4. Crown Land Utility Application Process**

The Receiver and BC Hydro has each submitted Crown land tenure utility applications with numbers 100199169 and 100205515 respectively (together, the "**Crown Land Utility Applications**"). The Crown Land Utility Applications included maps, shapefiles and a management plan that described various details of the Project (the "**Management Plan**"), copies of which have previously been provided to BC Hydro.

Wedgemount Power Limited Partnership et al., in Receivership  
October 11, 2017  
Page 3

As previously discussed with BC Hydro's Interconnections Group, Wedgemount is considering various interconnection routing options for the Project's distribution line and point of interconnection ("POI"), as follows:

1. along Wedge Forest Service Road which passes through certain unresolved Crown lands which are designated as a Squamish cultural heritage area, referred to as "Option B" and as further described in the Management Plan (the "FSR Route");
2. through certain unresolved Crown lands and through the Squamish-Lillooet Regional District ("SLRD") municipal park, with the POI also located within the SLRD municipal park, referred to as "Option A" and as further described in the Management Plan ("SLRD Route A"); and
3. through certain unresolved Crown lands and through the SLRD municipal park, following a similar route as SLRD Route A, but with the POI located on Crown land ("SLRD Route B").

Squamish First Nation and Lil'wat First Nation (together, the "Nations") entered into an Impact and Benefits Agreement with WPI dated as of August 1, 2014 (the "Initial IBA"). WPI assigned all of its rights and obligations in and to the Initial IBA to WPLP and the Nations consented to same in an Assumption and Acknowledgement Agreement dated November 25, 2014 among WPI, as assignor, WPLP, as assignee, and the Nations (as so assigned, the "IBA").

On September 12, 2017 a proposal was made by the Nations to the Receiver in respect of the terms under which the Nations would consider supporting the FSR Route for the interconnection. Following further negotiations among the Receiver, the Nations and the Nations' respective legal counsel, the terms of a draft amending agreement to the IBA ("Amending Agreement") have been agreed in principle with the Nations (subject to Chief and Council ratification).

The Amending Agreement contemplates that the Nations will support the Crown Land Utility Applications for Option B (FSR Route) as the preferred route of interconnection. It also contemplates that the Nations will support the Crown Land Utility Applications for Option A (SLRD Route A/B) in the event that Option B is not technically feasible or there is some other issue in the Crown granting a Crown Statutory Right of Way for Option B.

The Receiver is advised that the Chiefs of both of the Nations have been advised of the negotiations and terms of the Amending Agreement and that they are supportive. Based on the last update provided to the Receiver by the Nations, it is anticipated that the Amending Agreement will be ratified and executed by the Nations in the week ending October 20, 2017 (subject to the availability of Squamish Nation's Chief and Council).

BC Hydro has requested that a document be provided to set out the anticipated next steps and timing in respect of the Crown Land Utility Applications. This document is attached as "Appendix C" to this letter.

#### **5. Updates to the Data Room related to BC Hydro**

At the Meeting, BC Hydro requested that it be provided with all updates and information posted to the Data Room in relation to the EPA, and BC Hydro's activities related to the interconnection. We attach as "Appendix D" to this letter redacted copies of the following updates:

1. Additional Information Request - Responses - July 11, 2017
2. Interconnection Status Update - August 17, 2017
3. Further Due Diligence and Meeting Requests - August 30, 2017

Wedgemount Power Limited Partnership et al., In Receivership  
October 11, 2017  
Page 4

4. Further Due Diligence and Meeting Requests – September 8, 2017
5. Further Due Diligence and Meeting Requests – September 18, 2017
6. Further Due Diligence and Meeting Requests – September 28, 2017

We confirm that no information regarding BC Hydro has been redacted in the enclosed copies of the documents above.

We also attach in Appendix D the following documents which were posted to the Data Room:

1. An email from Om Archaraya (BC Hydro) to Nathan Jolly (Clean Energy, consultant to the Receiver) dated September 11, 2017 with copy to Alan Laurie (BC Hydro) and Vic Rempel (BC Hydro). The email confirms the acceptability of the proposed location of the POI for SLRD Route B.
2. Draft minutes of the meeting between BC Hydro, WPLP, Eco Flow Energy and others dated April 2, 2017 (prior to the Receiver's appointment). The status and next steps in relation to the interconnection were discussed at the meeting as described in the minutes.

We can also advise that the Receiver posted to the Data Room the following documents in relation to the EPA and interconnection:

1. Draft layout drawing for the SLRD Route B.
2. 35% concept layout drawing and permitting drawings for the FSR Route.
3. Draft Interconnection Facilities Study and Project Plan dated August 16, 2016.
4. Letter from BC Hydro (Ryan Hefflick) to Industrial Alliance and Travelers Capital Corporation dated June 22, 2015 setting out a summary of the interconnection process.
5. A draft copy of BC Hydro's standard form of Distribution Generator Interconnection Agreement (March 2016), as provided by Ryan Hefflick to the Receiver in an email dated May 24, 2017.
6. A copy of the EPA.
7. Letter from BC Hydro (Vani Campbell) to WPLP dated February 19, 2015 assigning the letter of consent dated May 1, 2013 to WPLP from WPI and extending the consent to December 31, 2015.
8. Standing Offer Program Confidentiality and Compliance Agreement revised September 2012.
9. Copies of the Crown Land Utility Applications.

Since we understand that BC Hydro already has copies of all of these documents, we have not included them as appendices to this letter. However, should you require copies of any of the above documents, please do let us know and we will be pleased to provide them.

As confirmed at the Meeting, the Receiver has made no representations in relation to the EPA, and as is customary in a sale by a Receiver it intends to sell the Project and related assets, including Wedgemount's right, title and interest in the EPA on an "as is, where is" basis with no representation, warranty or condition expressed or implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality, assignability or in respect of any other matter or thing whatsoever concerning the purchased assets or the right of Wedgemount to sell them.

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October 11, 2017  
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**6. Access to the Data Room**

During the Meeting, BC Hydro requested that the Receiver provide BC Hydro access to the Data Room. Given the confidential nature of the information in the Data Room relating to parties other than BC Hydro, and in light of the restricted purpose and information sharing contemplated by the BC Hydro NDA, the Receiver is not in a position to grant access to BC Hydro at this time.

Should BC Hydro have specific requests related to Project Information, the Receiver will consider these requests in discussions with its legal counsel. We hope that the information provided in this letter is sufficiently detailed to meet BC Hydro's needs in order to consider its position in relation to the EPA, but the Receiver would be happy to have a follow-up discussion in this regard.

**7. Next Steps**

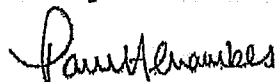
The Receiver understands that BC Hydro would like some further time to consider its position in relation to the EPA in light of the information provided at the Meeting and in this letter. We look forward to meeting again on Friday October 13, 2017 to discuss this matter further.

In the meantime, should you have any queries in relation to this matter, please don't hesitate to contact the undersigned at pachambers@deloitte.ca or (604) 640 3368.

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court Appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc. and not in its personal capacity



Paul Chambers, CIRP, LIT  
Vice President

- Enclosures: *Appendix A – Sale Process Summary*
- Appendix B – NDA Template*
- Appendix C – Crown Land Utility Applications Process*
- Appendix D – Data Room Documents*

- cc: Magnus Verbrugge, Borden Ladner Gervais LLP, Legal Counsel to BC Hydro
- Bruce Chow, Manager, Contract Management
- Vic Rempel, Manager, Distribution Generator Interconnections

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**Appendix A  
Sale Process Summary**

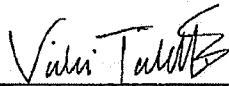
<u>Date (2017)</u>	<u>Description</u>	<u>Status</u>
<b>Initial Enquiries Phase I (a)</b>		
May 25 onwards	Receiver and Industrial Alliance ("IA") received various emails and calls from potential Interested Parties expressing an interest in acquiring the Project.	Complete
Jun 20	Given level of interest, Receiver set up a Data Room for Interested Parties to review information relating to the Project, subject to receipt by Receiver of an executed NDA.	Complete
Jun 20	Communication sent to Interested Parties: Receiver is not, at this stage, undertaking a formal sales process, but invites Interested Parties to submit non-binding letters of intent ("LOI") for the purchase of the Project by Jul 14, 2017.	Complete
Jul 11	Receiver posted to Data Room responses to various queries and requests from Interested Parties.	Complete
Jul 12	Receiver engaged Sigma to undertake Peer Review of engineering design (current status and steps to complete).	Complete
Jun 20 - Jul 14	27 NDAs received from 25 different Interested Parties. Site visits undertaken with 11 Interested Parties.	Complete
Jul 14	LOIs received from nine Interested Parties.	Complete
<b>Review and Clarification of LOIs Phase I (b)</b>		
Jul 26	LOIs received with various different assumptions related to timing of COD and acquisition structure. In order to improve comparability, the Receiver provided clarifications on potential timing of COD and various other matters and requested revised LOIs from a select group of Interested Parties by Jul 31, 2017.	Complete
Jul 31	Revised LOIs received from four Interested Parties.	Complete
<b>Detailed Due Diligence Phase I</b>		
Aug 1 - Aug 13	Receiver discussed LOIs with IA and determined to continue with sale process. A small number of Interested Parties were selected to advance to Phase II detailed due diligence. Data Room remained open to all Interested Parties who provided executed NDAs.	Complete
Aug 14	Guidance provided to selected Interested Parties requesting binding offers for acquisition of Project assets and related interests, free and clear of encumbrances. Binding offers due on Sept 15, 2017, on "as-is, where-is" basis, with no representations/warranties to be provided.	Complete
Aug 15 onwards	Receiver continues discussions and negotiations with 28615 Yukon Inc. ("Yukon") related to ducting and right of way through Wedgewoods subdivision.	Ongoing
Aug 15 - Sept 30	Receiver continued to provide updates to the Data Room on progress with respect to the interconnection design and planning process, and the Intake construction process. Receiver also provided responses to multiple queries and requests from Interested Parties.	Complete
Sept 12	Receiver approached by First Nations with proposal to support FSR Route for the interconnection. Receiver enters into discussions and negotiations with First Nations.	Complete

Sept 14	Deadline for receipt of binding offers extended to October 2, 2017 as various information related to engineering design and intake still being worked on.	Complete
Oct 2	Binding offers received from two Interested Parties. Non-binding offers received from a further four Interested Parties.	Complete
<b>Next Steps - Definitive Agreement and Stakeholder Liaison</b>		
Oct 5	Receiver discussed offers with IA and determined to continue with sale process.	Complete
Oct 10 - 13	Receiver to have discussions with Interested Parties re: conditions precedent included in offers and next steps towards negotiating a definitive Asset Purchase Agreement ("APA").	Ongoing
Oct 5 - Oct 23	Receiver to continue discussions with key stakeholders in relation to proposed transaction and support required (BC Hydro, First Nations, Yukon, FLNRO, etc.).	Ongoing
Oct 26	Target date for APA execution (to be confirmed and subject to stakeholder support).	Not Started
<b>Next Steps - Transaction Approval and Completion</b>		
Oct 27 - Oct 30	Receiver drafts Report to Court. Report outlines Receiver's activities and provides recommendation to Court re: transaction.	Not Started
Nov 1	Receiver's Report to Court and application materials served on all parties on Service List and posted to Receiver's website.	Not Started
Nov 10 - 15	Court hearing for the approval of the transaction. Order granted if Court satisfied with proposed transaction.	Not Started
Nov 30	Target closing date (to be confirmed). Closing of transaction once all remaining conditions precedent are dealt with / waived.	Not Started

**Important Note** - Next steps outlined above are indicative only and may be subject to change. Capitalized terms are defined in the attached letter.

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The attached is Exhibit "H"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia



Joanna McKenna  
Manager, Distributed Generation  
P: 604 623-4162  
E: Joanna.McKenna@bchydro.com

BY EMAIL  
pachambers@deloitte.ca  
mxxc@deloitte.ca

October 17, 2017

Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street  
Vancouver, BC  
V7X 1P4

Attention: Melinda McGill and Paul Chambers

Dear Sirs/Mesdames:

Re: Receivership (the "Receivership") of Wedgemount Power Limited Partnership et al ("Wedgemount")

We are in receipt of the letter from Deloitte Restructuring Inc. ("Receiver") and enclosures dated October 11, 2017 (collectively, the "October 11 Letter"), which followed our meeting on October 6 (the "Meeting"). BC Hydro is deeply troubled by several significant false and/or misleading statements in the October 11 Letter that concern the discussions that have taken place between BC Hydro and the Receiver with respect to the Electricity Purchase Agreement between BC Hydro and Wedgemount (the "EPA"). In our letter to you dated September 29, 2017 (the "September 29 Letter"), we indicated our concern about the Receiver's breach of the confidentiality provisions within the EPA, potential misrepresentations to bidders about BC Hydro's termination rights under the EPA, and the potential for a flawed sales process with respect to the disposition of certain assets of Wedgemount, including the EPA (the "Sale Process").

Although the October 11 Letter did not provide all of the information that was requested in the Meeting, it has magnified our concerns about the integrity of the Sale Process and the Receiver's handling of the EPA. As a result, we believe that the Sale Process has significant flaws that will result in negative outcomes for BC Hydro, the Receiver, and bidders. Furthermore, false and/or misleading statements in the October 11 Letter, combined with the scope of the Receiver's breach of the confidentiality provisions of the EPA, are extremely damaging to BC Hydro's commercial interests with respect to other electricity purchase agreements in its portfolio.



Our specific primary concerns are outlined below:

**3. Receiver's Representations to Bidders Regarding Discussions with BC Hydro Concerning the EPA.**

At the Meeting and in section 5 of the October 11 Letter, the Receiver indicated that it had not made any representations to bidders in relation to the EPA. However, in Appendix D of the October 11 Letter, the Receiver's response to Question 9 states that:

*"BC Hydro has verbally confirmed to the Receiver that the EPA will not be terminated as a result of the COD deadline of September 2017. The EPA includes various provisions for changing the Target COD (paragraphs 3.9 and 3.11). Based on discussions with BC Hydro, the Receiver understands that since the Interconnection Study Report remains in draft form and has not yet been finalized, the Estimated Interconnection Facilities Completion Date remains subject to change, and accordingly, the Target COD may be changed subject to the provisions of paragraph 3.9 of the EPA."*

This statement is both false and misleading. Prior to July 11, 2017 (the apparent date the statement was posted in the data room), BC Hydro's interaction with the Receiver with respect to the EPA was limited to a single conference call on May 18, 2017 that was brief and introductory in nature. In that call, we stated very clearly that the COD deadline was September 30, 2017, and at no time did we agree to waive our termination rights. As we have reminded the Receiver since, BC Hydro reserves, has not waived, and will not waive any of its rights or remedies under the EPA or any of its other agreements with Wedgemount, and it has not waived and will not waive any existing or future defaults, other than on terms acceptable to it in its sole discretion. Furthermore, the second and third sentences of Deloitte's response to Question 9 imply that BC Hydro and the Receiver had discussions regarding the interpretation of the EPA with respect to the draft Interconnection Study Report, which is misleading because no such conversations had taken place.

It is inconceivable that the Receiver would embark on the Sale Process, which involves assets potentially worth many millions of dollars and one primary agreement, without seeking confirmation from the counterparty (BC Hydro) on an issue as significant as a termination right. In fact, the Receiver didn't seek confirmation from BC Hydro regarding termination rights under the EPA until September 11 (only four days before final bids were originally due on September 15), when it emailed a request for confirmation to BC Hydro. As you know, BC Hydro responded that it would not be waiving its termination rights via a telephone call on September 20, and in a meeting with the Receiver on September 25, followed with written confirmation in the September 29 Letter. It is further disturbing that the Receiver neglected to advise BC Hydro of the existence of the ongoing Sale Process until our meeting on September 25.

At the Meeting, we expressed concerns about the Receiver's representations regarding BC Hydro's EPA termination rights and you indicated that you had corrected this information to bidders subsequent to our meeting on September 25. We are assuming that you were referring to the following statement in Appendix D of the October 11 Letter, in the section entitled "Further Due Diligence and Meeting Requests (September 28, 2017)":

*"The Receiver met with BC Hydro on September 25, 2017 to provide an update on the activities of the Receiver and anticipated next steps in relation to the Interconnection*

*and sale process. The Receiver made a request that BC Hydro agree to a postponement of the Target COD under the EPA. BC Hydro has committed to consider this request and will meet the Receiver again in the week commencing October 2, 2017 to discuss further.<sup>9</sup>*

This statement to bidders includes both false and misleading information. Firstly, the reference to an "update" implies that BC Hydro was already aware of the Sale Process and was receiving an update to prior briefings in the meeting (which actually occurred on September 25, rather than September 26). In fact, BC Hydro only learned that the Sale Process existed at the September 25 meeting. This is very problematic for BC Hydro because the Receiver's statement to bidders could easily be interpreted to indicate that BC Hydro was aware of and even a participant in the design of the Sale Process that the Receiver has implemented, which of course is not true. Secondly, the Receiver's request that BC Hydro consider postponement of the Target COD under the EPA was not discussed at the September 25 meeting, but was delivered to BC Hydro in the Receiver's letter dated September 27. Furthermore, at the September 25 meeting we were clear in stating that BC Hydro has not waived any termination rights under the EPA (and we reiterated this point in the September 29 Letter), and we indicated that before we could consider options for resolving BC Hydro's EPA termination rights, we needed the Receiver to provide information regarding the Sale Process and its communications with bidders.

The Receiver's communication to bidders that BC Hydro had committed to consider the request to postpone the Target COD is again false and grossly misleading and provides unfounded comfort to potential bidders that BC Hydro had committed to consider a specific amendment to the EPA.

## **2. Receiver's Breach of the Confidentiality Provisions of the EPA**

As outlined in the September 29 Letter, the Receiver has breached the confidentiality provisions in the EPA through the Sales Process. A template of the non-disclosure agreement between Receiver and each bidder (the "NDA") was attached as Appendix B to the October 11 Letter, and the Receiver has indicated that it has entered into the NDA with each of the bidders that was granted access to the data room under the Sale Process. BC Hydro nonetheless remains deeply concerned about the Receiver's breach of the confidentiality of the EPA for the following reasons:

- BC Hydro has not consented to the Receiver sharing the EPA to third parties, and the Receiver did not advise BC Hydro that the EPA was being shared in advance.
- The term of the NDA is much shorter than the term of the confidentiality provisions in the EPA.
- Individuals with access to the data room were allowed to make copies of any documents therein (including the EPA), which creates a situation where it is impossible to monitor and control confidential information in the documents.
- The scope of the breach is broad, with NDAs being signed with 25 different interested parties and 47 individuals granted access to the data room.

The impact to BC Hydro of the Receiver's breach of the confidentiality provisions of the EPA has been exacerbated by the false and/or misleading statements that the Receiver has made to the above-referenced 25 interested parties regarding discussions with BC Hydro concerning the EPA. The resulting impacts to BC Hydro extend beyond the EPA and its potential future dealings related to the Sale Process, as the Receiver's false and misleading statements will potentially impact BC

Hydro's ability to negotiate commercial arrangements where similar circumstances arise in its other electricity purchase agreements.

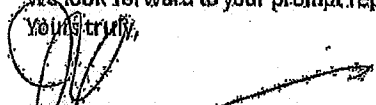
To move forward, the Receiver needs to take the following action prior to discussions with BC Hydro regarding resolution of issues related to the EPA and the Sale Process:

1. Enter into a NDA with BC Hydro related to discussions concerning the EPA.
  - a. Under this non-disclosure agreement, any releases of information concerning the discussions between the Receiver and BC Hydro will be subject to approval by BC Hydro (including those described in Item 2 below).
2. Correct false and misleading statements made by the Receiver regarding discussions with BC Hydro concerning the EPA.
  - a. Retract the response to Question 9, of the "Additional Information Request - Responses (July 11, 2017)".
  - b. Correct the statement in "Further Due Diligence and Meeting Requests (September 28, 2017)", regarding discussions with BC Hydro regarding the Receiver's request to Postpone COD.
  - c. Clarify that BC Hydro has a termination right under section 8.1(a) of the EPA effective September 30, 2017 (failure to reach COD within two years of Target COD) and under section 8.1(b) of the EPA (Insolvency) and BC Hydro has not waived any rights under the EPA.
  - d. Clarify that BC Hydro and the Receiver are in discussions with BC Hydro concerning the status of the EPA.
3. Provide the following information and documents to BC Hydro:
  - a. Index listing of all documents in the data room
  - b. Written confirmation that the October 11 Letter includes all statements made by the Receiver concerning discussions with BC Hydro regarding the EPA.
  - c. Explanation of the redactions in the materials provided in the October 11 Letter
  - d. Details concerning the nature of the 27 entities that signed the NDA and the 25 different interested parties. We note that BC Hydro was advised by the Receiver at the Meeting that there were only 10 entities.
  - e. Copies of communications issued to bidders or posted in the data room that reference BC Hydro, interconnections or the EPA that are not included in the October 11 Letter

BC Hydro believes that the Receiver should consider suspension of the Sale Process, pending the outcome of discussions with BC Hydro, and that it would be imprudent for the Receiver to advise any bidder that its bid has been selected. In BC Hydro's view, only if and when an agreement has been reached with BC Hydro, the Receiver should select a short list of bidders and request an updated bid based on the amended EPA.

We look forward to your prompt reply.

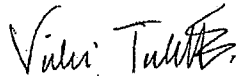
Yours truly,



Jeanne McKenna  
Manager, Distributed Generation

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The attached is Exhibit "I"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia

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**Deloitte.**

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October 31, 2017

British Columbia Hydro and Power Authority  
333 Dunsmuir Street  
Vancouver  
BC V6B 5R3

**Attention: Joanne McKenna, Project Manager, Distributed Generation**

Dear Sirs/Mesdames:

**Re: Wedgemount Power Limited Partnership et al., in Receivership**

Further to your letter of October 17, 2017, we confirm that we will be meeting with you again shortly, but in the interim wanted to respond to the requests in section 3 of your October 17 letter (as extracted in your email of October 18, 2017).

We confirm that this letter and all attachments are provided on the basis that the information herein will be kept strictly confidential, in accordance with the October 6, 2017 confidentiality agreement between the Receiver and BC Hydro.

Capitalized terms that are not otherwise defined in this letter have the meanings given to them in our October 11, 2017 letter.

**a. Index listing all of the documents in the data room**

Attached as "**Appendix A**" is a list of all documents included in the data room. The documents highlighted in yellow relate to BC Hydro and copies were previously provided with our letter of October 11, 2017. The documents highlighted in green also relate to BC Hydro and were previously referenced in section 5 of our letter of October 11, 2017.

One further document has been identified in the data room relating to BC Hydro that was not referenced in our letter of October 11, 2017. This is the BC Hydro System Impact Study dated November 28, 2014 with file reference "DGI SIS Wedgemount\_R1 Nov 28 2014.pdf" (refer to the blue highlighted line in Appendix A).

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**b. Written confirmation that the October 11 Letter includes all statements made by the Receiver concerning discussions with BC Hydro regarding the EPA**

As noted in our October 11 letter, we confirm that:

1. The documents attached to and referred to in that letter are all of the documents in the data room which relate to the EPA and the Receiver's discussions with BC Hydro related to the EPA;
2. Other than the documents attached to and referred to in that letter, the Receiver has not made any statement to suggest that BC Hydro has made any commitment with respect to the EPA; and
3. The Receiver has made it clear to the Interested Parties that any sale of the Project and related assets, including Wedgemount's right, title and interest in the EPA, is on an "as is, where is" basis.

**d. Details concerning the nature of the 27 entities that signed the NDA and the 25 different interested parties. We note that BC Hydro was advised by the Receiver at the Meeting that there were only 10 entities.**

The reference made to 10 Interested Parties in our meeting of October 6 was with respect to the number of letters of intent received in the first phase of the Sale Process, it did not refer to the number of Interested Parties that had executed NDAs. As we made clear in the meeting, this was an estimate only as we did not have the details to hand. As set-out in Appendix 1 to our letter of October 11, letters of intent were in fact received from nine different Interested Parties.

NDAs were executed with 25 different Interested Parties. These Interested Parties were primarily Canadian hydro and renewable energy companies, and a small number of private equity companies with interests/projects in the renewables sector. The Nations also executed NDAs since they have a right of first refusal pursuant to the IBA and initially expressed an interest in assessing a potential acquisition of the Project. In total, 27 NDAs were executed and received since one Interested Party also had its legal counsel and financial advisor sign and return NDAs.

**e. Copies of communications issued to bidders or posted in the data room that reference BC Hydro, interconnections or the EPA that are not included in the October 11 Letter.**

We confirm that all written communications issued to Interested Parties or posted in the data room that reference BC Hydro, dealings or discussions with BC Hydro in relation to the interconnection or the EPA have been provided to you.

We note that the Receiver has had various discussions and correspondence with 28165 Yukon Inc. ("Yukon") in relation to the ducting required for a section of the interconnection that passes through Yukon's private lands and along Riverside Drive. None of these discussions or communications relate to the EPA, and the Receiver is generally in communication with Vic Rempel of BC Hydro in relation to this matter.

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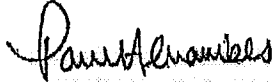
**Next Steps**

We look forward to meeting again on Thursday November 2, 2017 at 2pm to discuss this matter further. In the meantime, should you have any queries in relation to this matter, please don't hesitate to contact the undersigned at pachambers@deloitte.ca or (604) 640 3368.

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court Appointed Receiver and Manager of  
Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc.,  
and Wedgemount Power Inc. and not in its personal capacity



Paul Chambers, CIRP, LIT  
Vice President

cc: Magnus Verbrugge, Borden Ladner Gervais LLP, Legal Counsel to BC Hydro  
Bruce Chow, Manager, Contract Management  
Vic Rempel, Manager, Distribution Generator Interconnections

Appendix A - Data Room Directory

Agreements

Agreements/2017 Property Tax Notice.pdf



Agreements/Squamish and Li'wat/IBA - Wedgemount Executed - August 1 2014.pdf  
Agreements/Squamish and Li'wat/Li'wat Letter of IBA support - Wedgemount.pdf  
Agreements/Squamish and Li'wat/Squamish Letter of IBA support - Wedgemount.pdf  
Agreements/Squamish and Li'wat/Wedgemount - IBA Assignment Assumption and Acknowledgement Agreement - NOT Signed by Li'wat (01008520).pdf  
Agreements/SRCW/15-03-11 IPP Reparatons Agreement -signed.pdf  
Agreements/SRCW/Statutory Right of Way CA3110108.pdf  
Agreements/SRCW/Transfer of SROW CA3110108 - CA4113545.pdf

Design and Construction

Design and Construction/Construction and Supply Contracts/4688-1 01 Wedgemount Transformer Supply - Tender Documents - Jan 27 2015.pdf  
Design and Construction/Construction and Supply Contracts/Corporate Electric Contract June 5 2015.pdf  
Design and Construction/Construction and Supply Contracts/Lethbridge Millwright P.O. May 4 2015.pdf  
Design and Construction/Construction and Supply Contracts/Rainpower Contract - Signed Jan 30 2014.pdf  
Design and Construction/Construction and Supply Contracts/JEE 4688 Purchase Order - WP1 02 May 22 2015.pdf  
Design and Construction/Design Briefs and Other/Design Brief Summary-signed 2016-05-06.pdf  
Design and Construction/Design Briefs and Other/Memo Re May Project Report.pdf  
Design and Construction/Design Briefs and Other/Pages from Wedgemount Powerhouse - Revised For Construction Issue - 1507 (003).pdf  
Design and Construction/Design Briefs and Other/Pages from Wedgemount Powerhouse - Revised For Construction Issue - 1507 .pdf  
Design and Construction/Design Briefs and Other/Wedgemount - Generator Overturning vs Restoring - 151218.pdf  
Design and Construction/Design Briefs and Other/Wedgemount - Proposed Isolation Joist - 151218.pdf  
Design and Construction/Design Briefs and Other/Wedgemount - Slab thicknesses - 151218.pdf  
Design and Construction/Engineering Drawings/Forestry Road/JCH/CCF\_W08A\_B Access And Logging Map\_2013-09-11.pdf  
Design and Construction/Engineering Drawings/Forestry Road/JCH/KEYPLAN-FORESTRY signed Sealed.pdf  
Design and Construction/Engineering Drawings/Forestry Road/JCH/Wedgemount Power Inc-IPP\_Package.pdf  
Design and Construction/Engineering Drawings/Penstock/2015.04.15 - Penstock - IFC - Updated pr Contractor Rough In.pdf  
Design and Construction/Engineering Drawings/Penstock/HS00138\_2 - Access Penstock August 6.pdf  
Design and Construction/Engineering Drawings/Penstock/PENSTOCK-PN-CE-DET3.pdf  
Design and Construction/Engineering Drawings/Powerhouse/Powerhouse Equipment/Rainpower Powerhouse Drawings/2015.04.16 - Updated Turbine/WM-GSH800L8U42F60\_Gen. Nameplate.  
Design and Construction/Engineering Drawings/Powerhouse/Powerhouse Equipment/United Electrical Engineering - Generator Electrical/39769-M0201 R2.pdf  
Design and Construction/Engineering Drawings/Powerhouse/Powerhouse Structural - UBS/2015.07.20 - Powerhouse IFC.pdf  
Design and Construction/Inspection Reports/GeoPacific/Anchor Test Results/10560 Memo - Anchor Installation -Oct 20, 2015.pdf  
Design and Construction/Inspection Reports/United Building Systems/SKMBT\_CS54e16032412100.pdf  
Design and Construction/Photographs from Construction.zip

Development Plan & CEMP

Development Plan & CEMP/2014 09 26 CEMP\_Sigma\_Cascade Rev 1 0.pdf  
Development Plan & CEMP/2014 10 15\_Sigma\_CEMP\_1 3 Drawing.pdf  
Development Plan & CEMP/2014 10 15\_Sigma\_CEMP\_1 3.pdf  
Development Plan & CEMP/Reports/Archaeological Report/2013.10.02 Wedgemount AIA Permit Report Permit 2012-0353.pdf Final  
Development Plan & CEMP/Reports/Environmental Report/2012.10.31 CERG Wedgemount BIA Version 2.pdf  
Development Plan & CEMP/Reports/Hydrology and Power Studies/2012.09.25 Wedgemount HYDROLOGY and POWER Study 5%MAD (Sep2012).pdf  
Development Plan & CEMP/Reports/Recreation Reports/2013.04.22 CERG Wedgemount Recreation.pdf  
Development Plan & CEMP/Reports/Recreation Reports/2013.10.08 CERG Wedgemount Recreation Addendum.pdf  
Development Plan & CEMP/Wedgemount Creek Development Plan Submission post Technical Review 2014.03.28.pdf  
Development Plan & CEMP/Wedgemount DP.pdf



Appendix A - Data Room Directory

Financial Model and Narrative

Financial Model and Narrative/P0284-D008-MDL-R05-EXT - Financial Model - Wedgemount - External.xlsx  
Financial Model and Narrative/P0284-D009-MEM-R00-EXT - Wedgemount Financial Model - Narrative.pdf

Further Due Diligence Documents

Further Due Diligence Documents/6396 Wedgemount Hydro Project Peer Review Sept 8 2017 R1 .pdf  
Further Due Diligence Documents/DELOITTE - WEDGMOUNT - Asset Purchase Agreement (Generic).DOCX  
Further Due Diligence Documents/Engineering Peer Review/4688R Electrical Systems Status Report - Draft #1 - 18 September 2017.pdf  
Further Due Diligence Documents/Engineering Peer Review/6395 Wedgemount Hydro Project Peer Review Sept 8 2017 R1 .pdf  
Further Due Diligence Documents/Engineering Peer Review/6399Wedgemount EOR Proposal.pdf  
Further Due Diligence Documents/Engineering Peer Review/Appendix C Peer Review.pdf  
Further Due Diligence Documents/Engineering Peer Review/Roy Campbell - 4688R Electrical Systems Status Report - Draft #1 - 18 September 2017.pdf  
Further Due Diligence Documents/Engineering Peer Review/Roy Campbell - 4688 Wedgemount IPP Completion - Midgard.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Aug 31 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 15 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 20 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 22 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 27 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 29 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 5 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 6 17.pdf  
Further Due Diligence Documents/Further due diligence questions and meeting requests.Sept 7 17.pdf  
Further Due Diligence Documents/IEM engagement & reports/download.zip.log  
Further Due Diligence Documents/IEM engagement & reports/IEM Consulting Agreement/Attendum to Consulting Agreement - Cascade - Sept 14 2017 Signed.pdf  
Further Due Diligence Documents/IEM engagement & reports/IEM Consulting Agreement/Wedgemount Cascade consultants agreement - EXECUTED.pdf  
Further Due Diligence Documents/IEM engagement & reports/IEM Reports/170911\_Wedgemount Creek IPP EM - September 7, 2017.pdf  
Further Due Diligence Documents/IEM reports/151202\_Wedgemount Ck EM to November 23, 2015.pdf  
Further Due Diligence Documents/IEM reports/151210\_Wedgemount Ck EM to December 6, 2015.pdf  
Further Due Diligence Documents/IEM reports/151214\_Wedgemount Ck EM to December 13, 2015.pdf  
Further Due Diligence Documents/IEM reports/160505\_Wedgemount Ck EM to May 4, 2016.pdf  
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Further Due Diligence Documents/IEM reports/160804\_Wedgemount Ck EM to July 31, 2016.pdf  
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Further Due Diligence Documents/IEM reports/160920\_Wedgemount Ck EM to September 18, 2016.pdf  
Further Due Diligence Documents/IEM reports/160921\_Overwintering Measures\_Wedgemount.pdf  
Further Due Diligence Documents/IEM reports/160926\_Wedgemount Ck EM to September 25, 2016.pdf  
Further Due Diligence Documents/IEM reports/161004\_Wedgemount Ck EM to October 2, 2016.pdf  
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Further Due Diligence Documents/IEM reports/161020\_Wedgemount Ck EM to October 16, 2016.pdf  
Further Due Diligence Documents/IEM reports/161026\_Wedgemount Ck EM to October 23, 2016.pdf

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Appendix A - Data Room Directory

- Further Due Diligence Documents/DEM reports/161101\_Wedgemount Ck EM to October 30, 2016.pdf
- Further Due Diligence Documents/DEM reports/161108\_Wedgemount Ck EM to November 6, 2016.pdf
- Further Due Diligence Documents/DEM reports/161124\_Wedgemount IPP Incident Report.pdf
- Further Due Diligence Documents/DEM reports/161124\_Wedgemount Ck EM to November 13, 2016.pdf
- Further Due Diligence Documents/DEM reports/161124\_Wedgemount Ck EM to November 20, 2016 with INCIDENT REPORT.pdf
- Further Due Diligence Documents/DEM reports/161129\_Wedgemount Ck EM to November 27, 2016.pdf
- Further Due Diligence Documents/DEM reports/161206\_Wedgemount Ck EM to December 4, 2016.pdf
- Further Due Diligence Documents/DEM reports/170503\_Wedgemount Ck EM - May 1, 2017.pdf
- Further Due Diligence Documents/DEM reports/170706\_Wedgemount Ck EM - June 29, 2017.pdf
- Further Due Diligence Documents/DEM reports/170725\_Wedgemount Creek IPP EM - July 24, 2017.pdf
- Further Due Diligence Documents/DEM reports/170822\_Wedgemount Creek IPP EM - August 15, 2017.pdf
- Further Due Diligence Documents/DEM reports/download.zip.log
- Further Due Diligence Documents/DEM reports/170911\_Wedgemount Creek IPP EM - September 7, 2017.pdf
- Further Due Diligence Documents/Intake Tender/110R1.pdf
- Further Due Diligence Documents/Intake Tender/170907 Intake Channel and Berms.pdf
- Further Due Diligence Documents/Intake Tender/BC MOT R/prop.pdf
- Further Due Diligence Documents/Intake Tender/Intake Works Tender Package - Letter of Invitation.generic.pdf
- Further Due Diligence Documents/Intake Tender/P0284-D035-DOC-R00-EXT- Intake Works Tender - Hydrology Information.pdf
- Further Due Diligence Documents/Intake Tender/P0284-D034-SRV-R00-EXT - Intake Works Tender - Baseline Survey Information.csv
- Further Due Diligence Documents/Intake Tender/P0284-D033-MEM-R00-EXT - Intake Works Tender - Amendment 1 (Signed).pdf
- Further Due Diligence Documents/Intake Tender/P0284-D022-CON-R01-EXT- Intake Works Tender Package - Supplementary conditions.pdf
- Further Due Diligence Documents/Intake Tender/P0284-D036-DOC-R00-EXT - Intake Works Tender - Technical Specifications.pdf
- Further Due Diligence Documents/Intake Tender/170912 Channel and Berms Tender.pdf
- Further Due Diligence Documents/Intake Tender/P0284-D037-MEM-R00-EXT - Intake Works Tender - Amendment 2 (Signed).pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/09. CCDC 3 - P0284-D021-CON-R02-EXT - Intake Works.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/01. Supplementary Conditions - CCDC 3.docx
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/02. Technical Specifications.doc
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/03. Drawings.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/04. CEMP.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/05. Contractor's Team.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/06. Contractor's Cost Estimate.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/07. Contractor's Rate Schedule.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/08. Construction Schedule.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/09. Progress Payment Schedule.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/10. Progress Payment Request Form.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/11. Estimated Mobilization Progress Payment Request.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/12. Baseline Survey Information.csv
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/13. Hydrology Information.pdf
- Further Due Diligence Documents/Intake Tender/Executed Intake Contract/Compiled & Executed Wedgemount Intake Works - Contract Documents.pdf
- Further Due Diligence Documents/Intake Tender/Other Intake Project Documents/2017 GOI - #66 - Deloitte Restructuring Inc..pdf
- Further Due Diligence Documents/Intake Tender/Other Intake Project Documents/WorkSafeBC Online - Notice of Project.pdf
- Further Due Diligence Documents/Interconnection/DRAFT Amendment to Impacts and Benefits Agreement.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6000\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6005\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6010\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6015\_0.pdf
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- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6025\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6030\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6035\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/1383.2-T-6040\_0.pdf
- Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/Transmittal 1383-016.pdf

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Appendix A - Data Room Directory

Further Due Diligence Documents/Interconnection/FSR Route/Permitting Drawings/Wedgemount Overhead Line Crossing Drawings for Permitting  
Further Due Diligence Documents/Interconnection/SLRD Route B/Layout Drawing/Transmittal 1383-017.pdf  
Further Due Diligence Documents/Interconnection/SLRD Route B/Layout Drawing/Wedgemount Realignment.msg  
Further Due Diligence Documents/License of Occupation Assignment to WPLP - 20141219155844.pdf  
Further Due Diligence Documents/License of Occupation Final Executed.pdf  
Further Due Diligence Documents/Offer & Application/DELOITTE - WEDGMOUNT - Asset Purchase Agreement (Generic).DOCX  
Further Due Diligence Documents/Offer & Application/Schedule A - Contract Holdbacks.pdf  
Further Due Diligence Documents/Offer & Application/Superseded Version of APA - Do Not Use/DELOITTE - WEDGMOUNT - Asset Purchase Agreement (Generic).DOCX  
Further Due Diligence Documents/Offer & Application/WEDGMOUNT - Asset Purchase Agreement v2.DOCX  
Further Due Diligence Documents/Offer & Application/Wedgemount - model approval and vesting order.DOCX  
Further Due Diligence Documents/Offer & Application/Wedgemount - Phase II Offer Extension Letter - Sept 14 2017.pdf  
Further Due Diligence Documents/Offer & Application/WSCompare\_27732260v2\_DELOITTE - WEDGMOUNT - Asset Purchase Agreement (Generic) - 27732260\_4.pdf  
Further Due Diligence Documents/Other/15.12.04 Avalanche Risk Assessment Wedgemount Hydro Project.pdf  
Further Due Diligence Documents/Other/Certificate of Insurance.pdf  
Further Due Diligence Documents/Other/CMW Policy 2017.pdf  
Further Due Diligence Documents/Other/MFLNRO Invoice WSI254611 - Jul 15 2016.pdf  
Further Due Diligence Documents/Other/MNFLNRO Invoice WSI294884 - Jul 25 2017.pdf  
Further Due Diligence Documents/Other/Correspondence re Wedge FSR Works Permit.pdf  
Further Due Diligence Documents/Other/Email re CN Correspondence with CEC 1 June 2017.pdf  
Further Due Diligence Documents/Other/Insurance Invoice - PAID - COC June 30, 2018 Ext. Invoice.pdf  
Further Due Diligence Documents/Other/Insurance Policy Endorsement - Sept 30 2017.PDF  
Further Due Diligence Documents/Other/NRS103-Works-Permit-Template-(Feb27-2017) Draft.pdf  
Further Due Diligence Documents/Other/Orig-1078996.Extension of Consent2016.pdf  
Further Due Diligence Documents/Other/Orig-1078996.FPP.Compatible Use-Conditional Letter.pdf  
Further Due Diligence Documents/Other/Orig.B77182.pdf  
Further Due Diligence Documents/Other/Orig.VAP 10394RX.pdf  
Further Due Diligence Documents/Other/Summary of Coverages - Insurance Renewal.pdf  
Further Due Diligence Documents/Previous construction contracts/2015 Creus Professional Insurance.pdf  
Further Due Diligence Documents/Previous construction contracts/4688-1 01 Wedgemount Transformer Supply - Tender Documents - Jan 27 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/4688-4 0 Wedgemount Hydro - Cable Supply - Tender Documents - Jan 29 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/CME - Wedgemount Penstock Contract.pdf  
Further Due Diligence Documents/Previous construction contracts/CoreCoat Quotation - Pipe Lining.pdf  
Further Due Diligence Documents/Previous construction contracts/Corporate Electric Contract June 5 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/Corrocoat - P.O. May 25 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/Creus MMCD Agreement Wedgemount Power Ltd Partnership.pdf  
Further Due Diligence Documents/Previous construction contracts/downloadzip.log  
Further Due Diligence Documents/Previous construction contracts/Emco - Ductile Iron Pricing.pdf  
Further Due Diligence Documents/Previous construction contracts/Emco - Purchase Order - May 25 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/Emco - Romax Quote Aug 29 2014.pdf  
Further Due Diligence Documents/Previous construction contracts/Glacier Creek Contract - Powerhouse.pdf  
Further Due Diligence Documents/Previous construction contracts/Langley Concrete P.O. - June 10 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/Lethbridge - Turbine- Generator install.pdf  
Further Due Diligence Documents/Previous construction contracts/Lethbridge Millwright P.O. May 4 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/MMCD - General Conditions.pdf  
Further Due Diligence Documents/Previous construction contracts/Mountain Lake - WPLP Intake Contract .pdf  
Further Due Diligence Documents/Previous construction contracts/Rainpower - SE Bank Performance Guarantee.pdf  
Further Due Diligence Documents/Previous construction contracts/Rainpower Contract - Assignment to WPLP - Mar 16 2015.pdf  
Further Due Diligence Documents/Previous construction contracts/Rainpower Contract - Signed Jan 30 2014.pdf  
Further Due Diligence Documents/Previous construction contracts/UEE 4688 Purchase Order - WP1 02 May 22 2015.pdf

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**Appendix A - Data Room Directory**

Further Due Diligence Documents/Previous construction contracts/Victaulic Quotation.pdf  
Further Due Diligence Documents/Previous construction contracts/WPI - Murrelgs Contract Executed Oct 17 2013.pdf  
Further Due Diligence Documents/Previous construction contracts/PO for Power Transformer - EECOL.pdf  
Further Due Diligence Documents/Previous construction contracts/Rainpower#150189ChangeOrders.pdf  
Further Due Diligence Documents/Process Update - Sept 14 2017.pdf  
Further Due Diligence Documents/Short Term Water Use Application/170912 ApplicationFormReport.pdf  
Further Due Diligence Documents/Short Term Water Use Application/2017-09-25 APPROVAL-2005737.pdf  
Further Due Diligence Documents/Short Term Water Use Application/Cover Letter - FrontCounter - ST Water Use Appln - Sept 13 2017.pdf  
Further Due Diligence Documents/Short Term Water Use Application/Sep 13 2017 Payment Receipt for Application 100223728.pdf  
Further Due Diligence Documents/SLRD/FW Wedgemount IPP Power line & SLRD Parkland.msg  
Further Due Diligence Documents/Water Licence Amendment\_Abandonment 180222234.pdf

Independent Engineers Report

Independent Engineers Report/Wedgemount Project Review Report vClosing.pdf

Interconnection



Interested Party Questions



Lending Documents

Lending Documents/07 - Credit Agreement.pdf  
Lending Documents/14 - Debenture in the amount of \$25,000,000.pdf

LTC

LTC/1 - Intake Diversion/Wedgemount Drawing Log - Nov 3, 2014.xls  
LTC/2 - Surface Penstock - Preliminary Excavation/PN-CE-W/6.pdf  
LTC/2 - Surface Penstock - Preliminary Excavation/Wedgemount Creek IPP CME Work Plan Investigative Works.pdf  
LTC/3 - Project Bulk Ex - Part 1/CME - Site Map for Magazine.pdf  
LTC/3 - Project Bulk Ex - Part 1/Drawings.pdf  
LTC/3 - Project Bulk Ex - Part 1/WCHP LTC 3 - Supporting Material/CME - Site Map for Magazine.pdf  
LTC/6 - Powerhouse/Final Work Plan.pdf  
LTC/6 - Powerhouse/WCWP LTC 6 Drawings/2015.07.20 - Powerhouse IFC.pdf

LTCC

LTCC/LTCC Appendices  
LTCC/LTCC Appendices/Appendix C - DFO LOA.pdf  
LTCC/LTCC Appendices/Appendix K - Penstock Drawings - Details.pdf  
LTCC/Wedgemount Creek Leave to Commence Construction - v2.pdf

Permits and Approvals

Permits and Approvals/CCF - WPI Road Use Agreement & Amendments.pdf  
Permits and Approvals/CCF Agreement Sep 21 2012.pdf  
Permits and Approvals/MLFNRO - Leave to Commence Construction - Oct 17 2014.pdf  
Permits and Approvals/SLRD - Building Permit - Powerhouse.pdf  
Permits and Approvals/SLRD Temporary Use Permit - Nov 18 2014.pdf  
Permits and Approvals/Transport Canada - Navigatable Waters Act response.pdf

Receivership Materials

Receivership Materials/VAN\_LAW-#2324311-v1-Order\_Made\_After\_Application\_on\_May\_12\_\_2017.pdf

19

The attached is Exhibit "J"  
referred to in the affidavit #1  
of Melinda McKie sworn before  
me at VANCOUVER, British Columbia.  
this 12<sup>th</sup> day of MARCH, 2018

Vain Tulve  
A Commissioner for taking Affidavits in  
the Province of British Columbia

---

**From:** Chambers, Paul (CA - British Columbia) <pachambers@deloitte.ca>  
**Sent:** January-10-18 3:11 PM  
**To:** McKenna, Joanne  
**Cc:** Chow, Bruce; McKie, Melinda (CA - British Columbia); Hefflick, Ryan  
**Subject:** RE: EPA Proposal

Joanne,

Happy new year. Hope you had enjoyable holidays.

Further to your email of December 14th, would you kindly provide an update regarding BC Hydro's considerations in relation to the Wedgemount EPA.

The Receiver has been in correspondence with the EPA group since mid-September in order to try to resolve a way forward. During this time, the Receiver has continued to work on advancing the project construction, interconnection design and permitting process. The sales process has also been moved forward. However, the project is now at a critical stage with several critical path decisions on hold pending resolution of the EPA. Any further delays in resolving the EPA will negatively impact the schedule to COD and the project value for all stakeholders, including Industrial Alliance, and the Squamish and Lil'wat Nations.

Lastly, could you please also confirm if BC Hydro has now executed the NDA and provide us with an executed copy for our records.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**

Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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of the Canadian Olympic team

---

**From:** McKenna, Joanne [mailto:Joanne.McKenna@bchydro.com]  
**Sent:** Thursday, December 14, 2017 1:59 PM  
**To:** Chambers, Paul (CA - British Columbia) <pachambers@deloitte.ca>  
**Cc:** Chow, Bruce <Bruce.Chow@bchydro.com>; McKie, Melinda (CA - British Columbia) <mmckie@deloitte.ca>; Hefflick, Ryan <Ryan.Hefflick@bchydro.com>  
**Subject:** RE: EPA Proposal

Paul,

We need some additional time internally to consider the EPA and our team's mandate. We will let you know as soon as we are in a position to discuss further.

Regards, Joanne

---

**Joanne McKenna** | Sr. Manager, Distributed Generation, Business & Economic Development

**BC Hydro**  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-505-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

Smart about power in all we do.

---

**From:** Chambers, Paul (CA - British Columbia) [<mailto:pachambers@deloitte.ca>]  
**Sent:** 2017, December 12 4:57 PM  
**To:** McKenna, Joanne  
**Cc:** Chow, Bruce; McKie, Melinda (CA - British Columbia); Hefflick, Ryan  
**Subject:** EPA Proposal

Hello Joanne,

Please could you provide an update on your expected timing for providing the proposal regarding the EPA?

When we last met, I think you indicated that you were aiming to have it drafted by around the first week of December (2 weeks from our meeting).

As I understand it, the NDA is fully executed by IA and the Receiver, and is now with BC Hydro for signing.

Thanks,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
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D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
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of the Canadian Olympic team

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No. S-174308  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

PLAINTIFF

AND:

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

DEFENDANTS

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AFFIDAVIT

---

**GOWLING WLG (CANADA) LLP  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5**

Tel. No. 604.683.6498  
Fax No. 604.683.3558

File No. L67090009

DS

THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Valérie Yvan Sibert, notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec



This is the 1<sup>st</sup> affidavit  
of P. Chambers in this case and was  
made on March 13<sup>th</sup>, 2018

NO. S-174308  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, Paul Chambers, of 2800 - 1055 Dunsmuir Street, Vancouver, British Columbia, V7X 1P4  
SWEAR THAT:

1. I am a Vice President of Deloitte Restructuring Inc. ("Deloitte" or the "Receiver"), the court appointed Receiver and Manager of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP"), and Wedgemount Power Inc. (collectively, the "Wedgemount Entities") and as such, have personal knowledge of

the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I am authorized to swear this Affidavit on behalf of the Receiver.

3. I have read the Affidavit of Bruce Chow made January 19, 2018 (the "**Chow Affidavit**") and the Affidavit of Melinda McKie (the "**McKie Affidavit**") sworn in this matter. I have adopted the capitalized terms used in the McKie Affidavit, unless otherwise defined herein.

#### **Receivership**

4. To the best of my knowledge, the McKie Affidavit is accurate in all respects. I make this affidavit to provide some further comments on some of the meetings, calls and correspondence mentioned in the McKie Affidavit and to outline a few other matters.

5. On May 18, 2017, I was on the initial call which took place between the Receiver and BCH representatives. This call is referred to in paragraph 9 of the Chow Affidavit and paragraphs 10 and 11 of the McKie Affidavit. I do not recall Mr. Chow being on that call. The McKie Affidavit provides an accurate description of what took place on that call.

6. I attended the June 6 Meeting with BCH representatives Mr. Hefflick and Mr. Rempel, together with Ms. McKie and the Receiver's engineering consultant, Michael Potyok of Midgard Consulting Inc. Paragraphs 15-19 of the McKie Affidavit accurately reflect what took place at the June 6 Meeting.

7. Attached hereto as **Exhibit "A"** is a copy of my contemporaneous notes of the June 6 Meeting (the "**June 6 Meeting Notes**"). The June 6 Meeting Notes are dated June 5, 2017 due to the fact that I dated the notes by reference to the date on my watch, which incorrectly stated that the date was June 5, 2017 on the morning of June 6, 2017. However, I can confirm that the June 6 Meeting Notes are in fact notes of the June 6 Meeting.

8. I specifically recall Mr. Hefflick and Mr. Rempel advising the Receiver that because the Draft Interconnection Study Report was only in draft form there was no Target COD set and consequently there was no COD deadline of September 30, 2017 for the Receiver

to be concerned about. This is reflected on page 3 of the June 6 Meeting Notes, where I recorded that "EPA tied to finalizing of facilities study. Still in draft, so not kicked in." That approach was consistent with the Receiver's view of the EPA terms.

9. I also recall that Mr. Hefflick and Mr. Rempel indicated that achieving COD by the end of the summer of 2017 may be challenging from BCH's perspective. In particular, they mentioned that BCH has certain interconnection design review and approval processes that take time to complete. They also expressed concern that it may be difficult for BCH to engage a contractor to construct the distribution line within this timeframe once the interconnection route and engineering design had been fully determined. Further, since the construction would likely take place during the summer, BCH raised concerns about the roads near the Project being busy which would potentially cause problems if road closures would be required to get the work completed. BCH indicated that all of these issues, in addition to prospective permitting timelines, would potentially make a COD in the late summer of 2017 challenging.

10. I also attended the June 15 Meeting to discuss the Project. Paragraphs 20 and 21 of the McKie Affidavit accurately reflect what took place at the June 15 Meeting.

11. In reliance upon the BCH representations at the June 6 Meeting, the representations I was aware of which BCH had made to IA, the Receiver's understanding of the EPA terms, and the fact that BCH was actively working with the Receiver to advance the Project, I had no reason to believe that BCH would attempt to terminate the EPA.

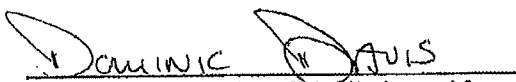
12. As a result, I was surprised when I received a voicemail and an email from Ms. McKenna on September 19, 2017, advising me that she was not at that time able to provide the Receiver with the assurances with respect to the EPA that the Receiver had sought in its email dated September 11, 2017 (attached as Exhibit E to the McKie Affidavit), as she was waiting for information that she expected to receive on September 20, 2017. Attached hereto as **Exhibit "B"** is a copy of the email dated September 19, 2017 that I received from Ms. McKenna.

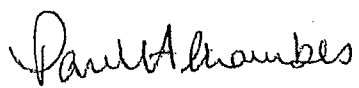
13. On October 13, 2017, the Receiver provided BCH with updated (95%) design drawings for the interconnection distribution line and point of interconnection following the FSR Route for BCH's review. Attached hereto as **Exhibit "C"** is a copy of the email I sent to Mr. Rempel, with a copy to Mr. Chow and Ms McKenna (among others), dated October 13, 2017.

14. In the fall of 2017, well after September 30, 2017, the Receiver and its engineering consultants continued to work with BCH to advance the interconnection engineering design. For example, on October 27, 2017, Mr. Acharya of BCH provided feedback and comments on the drawings that the Receiver had provided to BCH on October 13, 2017, and requested that the Receiver's engineering consultant, Clean Energy Consulting Inc., address BCH's comments and notify BCH before the design was finalized for work order. Attached hereto as Exhibit "D" is a copy of the email dated October 27, 2017 received from Mr. Acharya by Matthew Obee of Clean Energy Consulting Inc. and subsequently forwarded to me on the same day.

15. I attended the meetings on September 25, 2017, October 6, 2017 and November 20, 2017 which the Receiver had with BCH. The McKie Affidavit accurately sets out what took place at those meetings. During those meetings, I had no sense from BCH that it would attempt to terminate the EPA altogether, but rather it appeared that BCH might try to negotiate an amendment of the EPA. Given all the progress made in advancing the Project and based on all the correspondence and meetings with BCH since the Receiver's appointment, I was surprised when Ms. McKenna indicated for the first time, on the January 19, 2018 call she had with Ms McKie and I, that BCH was seeking leave to terminate the EPA for the Project altogether.

SWORN BEFORE ME at the City of  
Vancouver, British Columbia, this 13<sup>th</sup> day  
of March, 2018.

  
A Commissioner for Affidavits in and for  
the Province of British Columbia

  
PAUL CHAMBERS

**DOMINIC A. DAVIS**  
*A Commissioner for Taking Affidavits  
Within the Province of British Columbia*  
Suite 2800 - 1055 Dunsmuir Street  
Vancouver, B.C. V7X 1P4  
Appointment Expires: November 30, 2018

1

The attached is **Exhibit "A"**  
referred to in the affidavit #1  
of Paul Chambers sworn before  
me at VANCOUVER, British Columbia.  
this 13<sup>th</sup> day of MARCH, 2018

  
A Commissioner for taking Affidavits in  
the Province of British Columbia

BC 110010

Jan 5, 2017

V.C + Ryan

Comm Op. Date (COD) - all req. met per EPA.

In Service Date → needs to receive power

ISA → 2 wire to Inverter → COD.

Commissioning  
Process

← from EPA  
group

Substation, field work

IGA = Interco. Agreement.

Nothing to prevent. Indus 10

① scope of work

② financial commitment

Facilities Study completed Dec 2016 (ASST)

cost estimate sign. higher

scope of work changes

underground crossings of Hwy 99 - concern

101



Timelines for permitting issue  
About WPL to take that risk

BEH section ready to go, Rocketed ready to go  
SLAD route - known issues

- ① Confirmation from Developer.  
to secure private line whichever route that is
- ② Scope of work agreeable.

Used for construction drawing  
Then use to collect.

SLAD discussions going well, then didn't  
Peter Zell: not limited to his satisfaction  
Rel option in reliance of design.  
10 yr tenure with ball back - ~~initial~~ may work  
2 yr job won't work.

Interc, Paperies, EPA.

Good conversations to have about Obsec (clean energy)

- ④ IFC
- ④ 700k + 48T.

- Releasees
- Rollback
- Load closure
- Prop deed date

can identify schedule once have drawings.

Confirm Sept -> finalize P. Study -> DGA -> Permit -> closure.

EPA tied to finalizing of facilities study  
Bill in draft, so not issued it.

L.C. Brent Hardy \$247k, Westwood Pools  
EBC requested to release 460 Ltd.  
Equity contribution  
Active until Aug 2012.

Ⓢ direction to Hydro re: letter of credit

5

The attached is Exhibit "B"  
referred to in the affidavit #1  
of Paul Chambers sworn before  
me at VANCOUVER British Columbia.  
this 13<sup>TH</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia

6

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**From:** McKenna, Joanne <Joanne.McKenna@bchydro.com>  
**Sent:** September-19-17 11:44 AM  
**To:** Chambers, Paul (CA - British Columbia)  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic; Magnus C. Verbrugge (mverbrugge@blg.com); McKenna, Joanne  
**Subject:** RE: Wedgemount Power LP in Receivership

Hi Paul, as per my voicemail, we are currently waiting on information that I expect to receive tomorrow afternoon. I will call you as soon as I have it. At this time, I can't provide you with the assurances that you are seeking.

Joanne

---

**Joanne McKenna** | Sr. Manager, Distributed Generation, Business & Economic Development

**BC Hydro**  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-505-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

**Smart about power in all we do.**

---

**From:** Chambers, Paul (CA - British Columbia) [mailto:pachambers@deloitte.ca]  
**Sent:** 2017, September 19 11:16 AM  
**To:** McKenna, Joanne  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic; Magnus C. Verbrugge (mverbrugge@blg.com)  
**Subject:** RE: Wedgemount Power LP in Receivership

Hello Joanne,

Just following up on my email below.

Would it be help if we had a call? Given the timing, we would appreciate a response in the next couple of days if possible.

Many thanks,

**DELOITTE RESTRUCTURING INC.**  
In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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7

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**From:** Chambers, Paul (CA - British Columbia)  
**Sent:** Monday, September 11, 2017 11:13 AM  
**To:** McKenna, Joanne <[Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)>  
**Cc:** McKie, Melinda (CA - British Columbia) <[mmckie@deloitte.ca](mailto:mmckie@deloitte.ca)>; Hefflick, Ryan <[Ryan.Hefflick@bchydro.com](mailto:Ryan.Hefflick@bchydro.com)>; Rempel, Vic <[Vic.Rempel@bchydro.com](mailto:Vic.Rempel@bchydro.com)>; Magnus C. Verbrugge ([mverbrugge@blg.com](mailto:mverbrugge@blg.com)) <[mverbrugge@blg.com](mailto:mverbrugge@blg.com)>  
**Subject:** RE: Wedgemount Power LP in Receivership

Good morning Joanne,

We are conscious that the second anniversary of the Target COD is approaching, as defined in the EPA (i.e. Sept 30, 2017).

Based on our discussions in May of this year, we understand that the 2 year termination provision set-out in paragraph 8.1(a) of the EPA is not applicable since the Interconnection Study Report remains in draft form and the Estimated Interconnection Facilities Completion Date remains subject to change pursuant to paragraph 3.9 of the EPA.

Please can you confirm this for us?

By way of update, the Receiver is continuing to advance planning and design for the interconnection, and we have had several meetings with Vic Rempel and Ryan Hefflick in this regard. The Receiver is also expecting to retain a contractor to finish the intake construction in the next couple of weeks.

Many thanks,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Senior Manager | Financial Advisory  
Deloitte  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
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**From:** McKenna, Joanne [<mailto:Joanne.McKenna@bchydro.com>]  
**Sent:** Friday, May 19, 2017 9:18 AM  
**To:** Chambers, Paul (CA - British Columbia)  
**Subject:** RE: Correspondence

Hi Paul, my address is correct, Ryan Hefflick's email is [ryan.hefflick@bchydro.com](mailto:ryan.hefflick@bchydro.com).  
If you could copy him on any emails that would be great.

Thank-you, Joanne

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-823-4162  
M 604-505-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

Smart about power in all we do.

---

**From:** Chambers, Paul (CA - British Columbia) [<mailto:pachambers@deloitte.ca>]  
**Sent:** 2017, May 18 4:44 PM  
**To:** McKenna, Joanne  
**Subject:** Correspondence

Hi Joanne,

Thank you for your participation in the call this afternoon.

Just checking I have the correct email address for you. Please also provide the email addresses of any other of your team members that you would like to be copied on correspondence moving forward.

We expect to send you the letter, as requested, first thing in the morning.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**

Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
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The attached is Exhibit "C"  
referred to in the affidavit #1  
of Paul Chambers sworn before  
me at VANCOUVER, British Columbia.  
this 13<sup>th</sup> day of MARCH, 2018



A Commissioner for taking Affidavits in  
the Province of British Columbia



11

---

**From:** Rempel, Vic <Vic.Rempel@bchydro.com>  
**Sent:** October-13-17 3:29 PM  
**To:** Acharya, Om  
**Cc:** Chambers, Paul (CA - British Columbia); McKenna, Joanne; Chow, Bruce; McKie, Melinda (CA - British Columbia); Matt Obee (matthew.obee@cleanenergyconsulting.ca); Michael Potyok; Chow, Warren  
**Subject:** RE: WPLP Interconnection

Hi Om.

The 95% overhead line design dwgs for the FSR o/h alternative are accessible via the site link below.

Please review/comment/accept as appropriate. Regards

---

**Victor Rempel** | Manager, Distribution Generator Interconnections

BC Hydro

P 604 528 2623  
E [vic.rempel@bchydro.com](mailto:vic.rempel@bchydro.com)

---

**From:** Chambers, Paul (CA - British Columbia) [mailto:pachambers@deloitte.ca]  
**Sent:** 2017, October 13 2:36 PM  
**To:** Rempel, Vic  
**Cc:** McKenna, Joanne; Chow, Bruce; McKie, Melinda (CA - British Columbia); Matt Obee (matthew.obee@cleanenergyconsulting.ca); Michael Potyok  
**Subject:** WPLP Interconnection

Vic,

As discussed at our meeting last week, I attach a link below to the updated (95%) overhead line design drawings for the FSR interconnection routing, as drafted by Clean Energy. If you have any difficulties downloading the drawings, please let me know.

<https://cleanenergy.egnyte.com/fi/6UKSE0lzZG>

As regards the overhead line component, this drawings set is nearly finalized pending final acceptance from CN, MOTI, Transport Canada, and FLNRO.

Additionally, an assessment of foundation requirements for structures located adjacent to the highway near the bank of the Green River is pending with pole and anchor setting prescriptions for those specific structures to follow. All other works are to be undertaken in accordance with BC Hydro standards of practice. It is our understanding that environmental reviews are in place and that the project CEMP will cover these works.

Feel free to discuss with Matt Obee of Clean Energy on 604-301-3060 if you have any queries or comments.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Vice President | Financial Advisory

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The attached is Exhibit "D"  
referred to in the affidavit #1  
of Paul Chambers sworn before  
me at VANCOUVER, British Columbia.  
this 13<sup>th</sup> day of MARCH, 2018



\_\_\_\_\_  
A Commissioner for taking Affidavits in  
the Province of British Columbia

14

---

**From:** Matthew Obee <matthew.obee@cleanenergyconsulting.ca>  
**Sent:** October-27-17 4:40 PM  
**To:** Chambers, Paul (CA-- British Columbia)  
**Cc:** Michael Potyok; Peter Helland; Matt Good  
**Subject:** FW: OE Design Review Comments - Section 2 (p48 to POI and Crossings) for Revised Design  
**Attachments:** RE: WPLP Interconnection; OE Design Review Comments - Section 2 (p48 to POI and Crossings) Revised Design.docx

Paul,

We received comments from BCH. Will review next week and call to discuss.

Matthew Obee, P.Eng.  
C: 604.351.7691  
P: 604.301.3060  
F: 604.301.3061  
450 -- 1090 W Georgia St  
Vancouver, BC V6E 3V7  
[matthew.obee@cleanenergyconsulting.ca](mailto:matthew.obee@cleanenergyconsulting.ca)  
[www.cleanenergyconsulting.ca](http://www.cleanenergyconsulting.ca)

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---

**From:** Acharya, Om [mailto:Om.Acharya@bchydro.com]  
**Sent:** October 27, 2017 4:36 PM  
**To:** Nathan Jolly <nathan.jolly@cleanenergyconsulting.ca>; Matthew Obee <matthew.obee@cleanenergyconsulting.ca>  
**Cc:** Chhokar, Gurpreet <Gurpreet.Chhokar@bchydro.com>; Rempel, Vic <Vic.Rempel@bchydro.com>; Chow, Warren <Warren.Chow@bchydro.com>  
**Subject:** OE Design Review Comments - Section 2 (p48 to POI and Crossings) for Revised Design

Nathan,

We have reviewed the revised design you submitted for OE review. Attached are the OE Comments (including comments from our Quality Assurance Personnel) for you to address and notify us before the design is finalized for work order.

Let me know if any question.

THANKS

=====  
**Om P Acharya, P.Eng,**  
Regional Distribution Engineer, AIM & DE  
**BC Hydro**  
6911 Southpoint Drive, Edmonds, Burnaby, BC V3N 4X8

Tel 604-528-3445  
Cell 250-714-8222  
Email [om.acharya@bchydro.com](mailto:om.acharya@bchydro.com)

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**Sent:** October-13-17 3:29 PM  
**To:** Acharya, Om  
**Cc:** Chambers, Paul (CA - British Columbia); McKenna, Joanne; Chow, Bruce; McKie, Melinda (CA - British Columbia); Matt Obee (matthew.obee@cleanenergyconsulting.ca); Michael Potyok; Chow, Warren  
**Subject:** RE: WPLP Interconnection

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Hi Om.

The 95% overhead line design dwgs for the FSR o/h alternative are accessible via the site link below.

Please review/comment/accept as appropriate. Regards

---

**Victor Rempel | Manager, Distribution Generator Interconnections**

BC Hydro

P 604 528 2623  
E [vic.rempel@bchydro.com](mailto:vic.rempel@bchydro.com)

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**From:** Chambers, Paul (CA - British Columbia) [mailto:pachambers@deloitte.ca]  
**Sent:** 2017, October 13 2:36 PM  
**To:** Rempel, Vic  
**Cc:** McKenna, Joanne; Chow, Bruce; McKie, Melinda (CA - British Columbia); Matt Obee (matthew.obee@cleanenergyconsulting.ca); Michael Potyok  
**Subject:** WPLP Interconnection

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<https://cleanenergy.egnyte.com/fi/6UKSE0lzG>

As regards the overhead line component, this drawings set is nearly finalized pending final acceptance from CN, MOTI, Transport Canada, and FLNRO.

Additionally, an assessment of foundation requirements for structures located adjacent to the highway near the bank of the Green River is pending with pole and anchor setting prescriptions for those specific structures to follow. All other works are to be undertaken in accordance with BC Hydro standards of practice. It is our understanding that environmental reviews are in place and that the project CEMP will cover these works.

Feel free to discuss with Matt Obee of Clean Energy on 604-301-3060 if you have any queries or comments.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc.,

17

and not in its personal capacity

**Paul Chambers**  
Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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BC Hydro Distribution: Design Review Comments

ESP: Clean Energy		Date: Oct 27, 2017	
Project Number/Title: Wedgemount IPP – Section 2 (P48 to POI+Crossings) 95% Review – Design Changed based on Sep 9, meeting with Nathan Jolly		Design Number: Section 2 (P48 to POI+Crossings)- 0004114222	
Reviewer: Om Acharya (including QA, Gurpreet Chhokar)		Review Stage: 1	
#	Document Page #	BCH Comment	ESP Comments
1	General Comments	I am assuming approvals from various stakeholders outlined in 65% review have been obtained.	
2		Rail crossing: Contact from Rail company needs to be added on construction plot/notes for crews to coordinate work with, as rail flaggers will be required.	
3	Structure Data Sheet 1383.2-T-9005	On Structure Data Sheet 1383.2-T-9005 some of the u/b poles are referencing standards with one circuit STR 50 & 51. ES43 Section H U/B standards should be referenced. Otherwise detail drawing will need to be created for structure and accepted by BCH O.E.	
4	Structure Data Sheet 1383.2-T-9005	Lead lengths for anchors have not been specified I.E. Anchor to be installed 5.0m south of pole.	
5		Stub poles need to be digitized on Construction drawings. Also staking coordinates for stub poles need to be provided.	
6		Separate anchors have to be installed for Telus. Telus is responsible for Down Guy installation to their anchors.	



7		For removal poles with Telus should indicate "Cut pole to Tel" not "To be removed". Poles that are hydro only should be indicated as "to be removed".	
8	Structure 54 – 1382.2-T-2005	Drawing for modified structure needs to be stamped and sealed.	
9	DAD/PA#	N/A	
10	Drawing		
11			
12	Pole Permit	N/A	
13	Passport Estimate	N/A	
14	JPF	JPF not included and there for not reviewed. Please include JPF with WO construction package.	
15	Pole 48 – AMEC and Clean Energy	Common Pole - Need to have a discussion/meeting with AMEC in order to finalize the design (both parties acceptance required) as discussed before.	
16	Railway Crossing	Approval from CN is required	
17	Hwy 99 Crossing	MOTI approval required	
18	Transmission Line Crossings	BCH Transmission Approval required. However, I don't see any issue.	
19	Green River Crossing	NAV Canada approval required.	
20	SbD Spreadsheet	Needed to be prepared?	

**BEhydro**


Notes:

No. S-174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

PLAINTIFF

AND:

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

DEFENDANTS

---

**AFFIDAVIT**

---

**GOWLING WLG (CANADA) LLP**  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498  
Fax No. 604.683.3558

File No. L67090009

DS

THIS IS EXHIBIT "9" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Veronique Morin Sibert, notary (H1133)  
A Notary for taking Affidavits within the Province of Quebec



This is the 1<sup>st</sup> affidavit  
of M. Potyok in this case and was  
made on March 13, 2018

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.,  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDINGS LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

1. I, Michael Potyok, P.Eng, MBA, of Suite 828 – 1130 West Pender Street, Vancouver, BC V6E 4A4 SWEAR THAT:

2. I am a principal of Midgard Consulting Inc. ("Midgard"). Midgard has been engaged as an engineering consultant by Deloitte Restructuring Inc. ("Deloitte" or the "Receiver"), in its capacity as the court appointed Receiver of Wedgemount Power Limited Partnership ("Wedgemount LP"), Wedgemount Power (GP) Inc. ("Wedgemount GP"), and Wedgemount Power Inc. (collectively, the "Wedgemount Entities") and as such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.

3. I have read the Affidavit of Bruce Chow made January 19, 2018 (the "**Chow Affidavit**"), the Affidavit of Melinda McKie (the "**McKie Affidavit**") and the Affidavit of Mr. Chambers (the "**Chambers Affidavit**") sworn in this matter. I have adopted the capitalized terms used in the McKie Affidavit, unless otherwise defined herein.

### **Background**

4. The Wedgemount Entities are the owner and developer of a partly-constructed run-of-river hydro power facility located on Wedgemount Creek, near Whistler, British Columbia (the "**Project**").

5. The Project was developed with the intention that it would generate electricity which would then be sold to the British Columbia Hydro and Power Authority ("**BCH**"). BCH agreed to purchase electricity generated by the Project once it was completed and connected to the BCH electrical grid, a process known as "interconnection".

6. Over the course of my 20 year career as a Professional Engineer, I have worked on a number of ventures which were similar to the Project. Prior to the appointment of the Receiver, I was engaged as a sub-consultant of 1169417 Ontario Inc., operating under the trade name of True North Energy, by Industrial Alliance Insurance and Financial Services Inc. ("**IA**"), the major secured lender to the Project, to act as IA's independent engineer in connection with the Project.

### **System Impact Study**

7. In November 2014, BCH issued a System Impact Study (the "**SIS Report**") which is a step in the process of producing electricity for sale to BCH. The SIS Report provides the interconnection customer, in this case the Wedgemount Entities, an estimate of both the expected costs and expected schedule for the completion of BCH system works required to accept connection between the project and the BCH system. Attached hereto as **Exhibit "A"** is a copy of the System Impact Study dated November 28, 2014.

8. In the SIS Report, the project cost estimate of network upgrades that would be required to interconnect the Project to the BCH system was \$2.8 million.

9. BCH, in the SIS Report, projected that the facility study report for the Project would cost \$374,000, and would be completed in June 2015.

#### **Electricity Purchase Agreement**

10. Wedgemount LP, by its general partner Wedgemount GP, and BCH entered into an Electricity Purchase Agreement dated March 6, 2015 (the "EPA"). A redacted copy of the EPA is attached as Exhibit "A" to the Chow Affidavit.

11. The EPA defines the "Commercial Operation Date" or "COD" as the date on which Wedgemount LP would have satisfied certain conditions necessary to begin selling electricity to BCH. Under the terms of the EPA, COD could occur anytime up to two years after the "Target COD" was set.

12. Commencing in September 2016, when little progress on the interconnection process was evident to the lender, I became involved in this interconnection aspect of the Project, initially as IA's independent engineer on the Project and then later as the consultant to the Receiver.

13. Throughout my time working on this Project I was aware that there were ongoing discussions about both the Target COD and the COD amongst various parties, including between the Wedgemount Entities and BCH. Essentially, the Wedgemount Entities were wanting written confirmation on the postponement of these dates given that the Target COD initially set out in the EPA was September 30, 2015 and COD could occur anytime up to two years after the "Target COD".

14. However, while I understood the desire for certainty about a new Target COD, I was always of the view that the EPA precluded BCH from cancelling the EPA for this Project unilaterally on the basis of expiration of time as it appears it is trying to do now. This view was based in part upon the fact that BCH controlled to a large extent whether or not the Project could meet any dates that were set for the Target COD and COD. In addition, I was aware of a number of issues the Wedgemount Entities had with BCH over the course of the Project which resulted in substantial increases in cost as well as delays to the completion of the Project.

15. On June 22, 2015, BCH provided a letter to IA (the "Comfort Letter") stating that the next report, the Facility Study Report, would be complete by February 2016. This represented an 8 month delay from the date the Facility Study Report was projected to be complete in the SIS Report. The Comfort Letter further stated that the parties would enter into a final interconnection agreement (called a DGIA) by March 2016. Attached hereto as **Exhibit "B"** is a copy of the Comfort Letter.

#### **Draft Facility Study Report**

16. The "draft" facilities study report for the Project came out on August 16, 2016 (the "**Draft Report**"). The Draft Report, prepared by the engineering company, Amec Foster Wheeler Americas Ltd. ("**Amec**") on behalf of BCH is attached as Exhibit C of the McKie Affidavit.

17. The Draft Report states that the "proposed COD" for the Project is September 29, 2017. The Draft Report further notes that the "proposed COD" could be impacted if construction of the Project is delayed. I took this to be a clear indication that BCH acknowledged that this date did not necessarily represent the "Estimated Interconnection Facilities Completion Date", as defined in the EPA and that therefore, the Target COD did not necessarily remain as September 30, 2015, as was initially set out in the EPA.

18. There were a number of issues that arose from the interconnection proposed by the Draft Report, including:

- a) a missing right of way for existing poles along a section of Highway 99;
- b) a new requirement that some existing lines be moved underground in what was known as section 2 of the interconnection route;
- c) the proposed interconnection route was designed to pass through park land under the control of the Squamish Lillooet Regional District ("**SLRD**");
- d) significant increase in costs for the Project;
- e) doubling of the fees charged for the final version of the Draft Report; and
- f) a number of delays.



19. Each of the above concerns with the Draft Report are addressed in more detail in the paragraphs that follow in my affidavit.

#### **Missing Section 1 Right of Way**

20. The Draft Report required the Project to replace all of the poles along a stretch of land adjacent to Highway 99. The Wedgemount Entities discovered, in the late fall of 2016, BCH did not have the legal right of way over land adjacent to the highway where their existing poles stood. This was an historical BCH problem and nothing to do with the Project, but this right of way was necessary to begin the first section of interconnection work (the "**Section 1 Missing Right of Way**"). It is my understanding that BCH builds distribution voltage (i.e. 25 kV or less) pole lines under the auspices of a permit from the B.C. Ministry of Transportation and Infrastructure ("**MOTI**") wherein MOTI grants access rights as an adjunct to its right of way. It turned out that in fact, Highway 99 was constructed without a right of way and hence there was no way for MOTI to assign an access right to BCH under a permit. The highway and pole line just existed.

21. On January 23, 2017, I attended a meeting at the regional office of the Ministry of Forests, Lands, Natural Resource Operations ("**MFLNRO**") in Squamish in which it was indicated that the requisite right of way for MOTI; and subsequent permit for Section 1 of the line, would be corrected at the MFLNRO level. In my experience, the resolution of the Section 1 Missing Right of Way necessary for the existing BCH poles and proposed re-build for Section 1, was remarkably quick.

#### **Moving Lines Underground**

22. The section which was often referred to as Section 2 is a narrow section of highway, pinned between competing elements including a right of way granted to CN Rail, the Green River, Highway 99 and a BCH high voltage transmission line overhead ("**Section 2**"). The existing distribution line through this section, which was designed and built by BCH to serve the Soo River power project approximately 20 years ago, was to be rebuilt to enable it to also carry the line for the project interconnection. As currently built, this system is mounted to the cliff side in a manner that does not comply with current BCH or MOTI standards. Through communication with MOTI, I was made aware that the line's placement precluded MOTI work crews from safely

maintaining the highway as scaling the cliff with the distribution line attached was unsafe. MOTI desired to have the transmission system moved away from the cliff.

23. The plans contained in the Draft Report required this pre-existing issue with the line installed on the cliff in Section 2 be resolved to current standards. The solution proposed by Amec was to move the lines (existing and new) underground (the "**Underground Relocation**"). Under the Draft Report, this relocation would be at the full cost to the Project.

24. In January 2017, Clean Energy Consulting Inc. ("**Clean Energy**") was engaged by the Wedgemount Entities, in part to design and propose an alternative solution to this Underground Relocation issue. Clean Energy was able to develop an alternative, overhead solution which was ultimately acceptable to both MOTI and BCH engineers, met all applicable safety standards, and cost significantly less than the Underground Relocation which had been proposed in the Draft Report. Attached hereto as **Exhibit "C"** is a copy of a drawing created by Clean Energy showing both the elevation of Section 2 and relocation of the transmission poles. The handwriting on Exhibit "C" is mine.

25. In addition to accepting the work around proposed for the Underground Relocation, BCH eventually allowed Clean Energy to assume design responsibility of this Section 2 of the line. I am unaware of another time that BCH granted design responsibility to a non-pre-authorized consultant who did not have access to BCH internal systems. In my view BCH allowed this to take place because it was aware of the delays and problems the Draft Report, including the proposed Underground Relocation, had caused the Project.

#### **Park Lands in the SLRD**

26. The Draft Report proposed a route through lands that were zoned for use as a regional park owned by the SLRD (the "**SLRD Route**"). It was my understanding that BCH could not be granted an exclusive right of way over the park land without a lengthy land application process to change that designation and ultimately BCH was not comfortable allowing this SLRD Route to proceed in any event. As such, the facilities design proposed in the Draft Report by AMEC on BCH's behalf was unachievable. Further solutions were required for BCH to design its system to receive interconnection from the Project and these contributed to delays in the Project.

### **Significant Increase in Cost**

27. The Draft Report also included a revised BCH estimate for Network Upgrades required for the Project to connect to the BCH system. The new estimate prepared by AMEC for BCH was \$6.3 million which represented a 225% increase over the previous estimate from the SIS Report (the "BCH Budget Increase").

28. The BCH Budget Increase was quite problematic for the Wedgemount Entities. This increase led to issues for the Wedgemount Entities in terms of the commercial viability of the Project and issues with their lender, IA, with respect to the advances being made on the Project. This contributed to further delays of the Project after the Draft Report was released.

29. In an effort to solve some of these BCH Budget Increase problems the Wedgemount Entities engaged two consultants, Clean Energy and DBS Energy Services Inc. ("DBS"), to provide two independent estimates for comparison with the BCH cost estimates. Both estimates were significantly less than the estimate presented in the Draft Report. These estimates were used to assist the Wedgemount Entities in discussions with BCH to identify an achievable path forward. BCH and the project continued to work through solutions to the various challenges presented as a result of the Draft Report. Cost effective technical solutions to these issues were ultimately arrived at with collaborative effort between BCH, Clean Energy and the Wedgemount Entities, but the issues arising from the Draft Report added expense and further delay. Attached hereto as **Exhibit "D"** are true copies of the estimates provided by Clean Energy and DBS.

### **Doubling of cost for Final Report**

30. The cost to produce the final version of the Draft Report was also increased to \$850,000. This represents a 118% increase in the cost of that report from the estimate in the SIS Report. On January 31, 2017 I received an email (attached as **Exhibit "E"** to this affidavit) from Peter Zell, a consultant on the Project. This email outlines Amec's billing summary on the Project and appears to include 93 different engineers and staff of Amec billing 4397 cumulative hours on the Project. It is notable that at some point during the discussions between the Project, BCH and Amec, both the Amec Project Manager and the BCH Project Manager on this project were replaced by BCH. I interpreted this move to represent acknowledgement from BCH that the development of the Draft Report had not been as efficient as desired.

### **Delays**

31. The SIS Report called for a final version of the Facility Study to be completed by June 2015 and the Comfort Letter stated that the final version of the Facility Study would be completed by February of 2016, however the Draft Report was finally issued in August of 2016. A final version of the Facility Study has never been completed.

32. The SIS Report called for a COD of March 2016 and the Comfort Letter called for an In Service Date of August 31, 2016, however the Draft Report sets the In Service Date as August 31, 2017, a full year later than the Comfort Letter.

33. It is my view that many of these delays are as a result of the complexities of the interconnection including the interaction between BCH, MOTI, MFLNRO, Amec and the Project. The Draft Report contained a level of detail, design and study commensurate with my expectations of a BCH Facilities Study. The delays, however, were exacerbated by the fact that this level of study had been completed much later than originally planned, and yet it still contained plans that were unpalatable to the interconnection customer and fatal flaws which were unacceptable to BCH itself, including the SLRD Route.

### **Meetings with BCH**

34. On March 10, 2017, I attended a meeting at BCH offices in Burnaby on behalf of IA, along with Brett Robinson, David Ehrhardt, and Dave Delainey who attended on behalf of Wedgemount LP and Greg Reimer, Frank Lin and Ryan Hefflick who attended on behalf of BCH. The purpose of the March 10, 2017 meeting was to discuss the critical next steps in the construction of the Project. While there was also some discussion in this March 10, 2017 meeting and a request was made for written confirmation of the necessary change to the Target COD and COD in the EPA, my recollection is this issue was not addressed in detail at this meeting and was left more so to a follow-up meeting on March 29, 2017.

35. On March 29, 2017, I attended another meeting at the BCH offices in Burnaby. Mr. Robinson and Mr. Ehrhardt also attended for the Wedgemount Entities and Mr. Lin, Mr. Hefflick, Vic Rempel, Russell Dobie and Warren Chow all attended on behalf of BCH (the "**March 29 Meeting**").

36. Attached hereto as **Exhibit "F"** is a copy of an email dated August 24, 2017 from Vic Rempel of BCH to myself attaching the minutes of the March 29 Meeting (the "**March 29 Meeting Minutes**").

37. In the March 29 Meeting I understood that BCH had agreed to fix its costs for Section 1 of interconnection of the Project. I further understood that BCH would agree to meet some fixed timelines for its work, but that there remained concerns about land use permits and the routing concerns raised above, including the SLRD park land problem.

38. The minutes of the March 29 Meeting also indicate that subsequent to the March 29 Meeting, on March 31, 2017, Mr. Lin of BCH updated on the "outstanding EPA termination date language change requested by WPLP on March 10, 2017" that he "has followed up with procurement with a commitment to work with WPLP and the lender in order to provide the form of written assurances that are required." I understood this to mean that a formal written extension respect to termination provision of the EPA was in the works and was not a concern. This written extension was not a focus of mine at that time for the reasons discussed in paragraph 14 above.

#### **Events During the Receivership Proceedings**

39. I did not attend any meetings with BCH between the March 29 Meeting and the start of the Receivership and my engagement as a consultant to the Receiver on May 17 2017. However, I was aware of some challenges still facing interconnection and I reached out to BCH on May 23, 2017 to advise of my appointment as consultant to the Receiver and to begin discussions on the progress of the Project and next steps to address these challenges. Attached hereto as **Exhibit "G"** is a copy of an email dated May 23, 2017 from myself to Ryan Hefflick of BCH.

40. On June 6, 2017, I attended with Paul Chambers and Melinda McKie at the BCH office in Burnaby to meet with BCH representatives Mr. Hefflick and Vic Rempel (the "**June 6 Meeting**") to discuss the Project.

41. On June 15, 2017, I attended a meeting (the "**June 15 Meeting**") to discuss the Project at the BCH offices in Burnaby. The June 15 Meeting was attended by the following individuals:

- a) Mr. Chambers and Ms. McKie on behalf of the Receiver;
- b) Rhonda Roland on behalf of CMJ Project Solutions Inc., retained by the Receiver to assist with permitting matters related to the Project;
- c) Matthew Obee on behalf of Clean Energy Consulting Inc., retained by the Receiver to assist with engineering design related to the Project's distribution line and point of interconnection, and
- d) Mr. Hefflick and Mr. Rempel on behalf of BCH.

42. Paragraphs 15-21 of the McKie Affidavit and paragraphs 8 and 9 of the Chambers Affidavit accurately reflect my recollection of what took place at the June 6 Meeting and the June 15 Meeting. However, while I do recall either Mr. Hefflick or Mr. Rempel acknowledging that the Facilities Study remained in draft form, was not finalized and as such changed the interpretation of Target COD as defined in the EPA, I do not specifically recall whether it was in the June 6 Meeting or the June 15 Meeting when this took place.

43. This acknowledgment from BCH made sense to me given that BCH controlled to a large extent whether or not the Project could meet any dates that were set for the Target COD and given the deficiencies in the Draft Report.

44. Attached hereto as Exhibit "H" is a copy of an email dated August 29, 2017 from myself to Vic Rempel attaching a memorandum I prepared detailing my understanding of the remaining steps necessary to complete the interconnection of the Project and achieve COD. In my email, I expressed to Mr. Rempel that I anticipated that once an acceptable interconnection route had been determined and the permitting necessary for the route obtained, that the rest of the process would follow in due course. I did not receive any response to this email or memorandum.

45. If the Project is abandoned, returning the lands to their natural state will require removing substantial concrete structures, removal of a buried penstock, regrading of the entire area, rerouting Wedgemount Creek back to its original path, and planting and seeding the area for regrowth. This work will cost millions of dollars to complete in my high-level estimation.

SWORN BEFORE ME at the City of  
Vancouver, in the Province of British  
Columbia, this 13 day of March, 2018.

  
A Commissioner for Affidavits in and for  
the Province of British Columbia

**COLIN BROUSSON**  
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A Commissioner for taking Affidavits in British Columbia  
OF March, 2018.  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
THIS IS EXHIBIT "H" REFERRED TO IN THE

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System Impact Study  
Wedgemount Power Project

November 28, 2014  
File Reference: DGI-DSIS-13.07.01.R1

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## EXECUTIVE SUMMARY

Wedgemount Power Limited Partnership, the Interconnection Customer (IC), proposes to develop the Wedgemount Power project to deliver electric energy to BC Hydro (BCH) through the Standing Offer Program (SOP). This project consists of one generating station, located near Whistler in British Columbia.

This report documents the evaluation of the impact of interconnecting the proposed generating facilities to the BCH system and identifies the required system modifications to obtain acceptable performance. The project consists of one unit and is located approximately 1.1 km from BC Hydro's 25 kV feeder RBW 25F61 (the "Project"). The aggregate rating of the Project as specified in the Application is 5.5 MW. The proposed Commercial Operation Date (COD) is March 31, 2016.

To interconnect the Project and its facilities to the BCH Distribution System at the POI, this System Impact Study has identified the following conclusions:

- Distribution feeder upgrades at the Point of Interconnection (POI) are required to connect the Project. Upgrades include the extension of distribution line (approximately 5.5 km) and the addition of distribution cable (approximately 0.8 km), and a new 3 phase recloser.
- Removal of existing 4/0 cable to replace with distribution feeder cable.
- Feeder protection upgrades are required at the Rainbow Substation (RBW). Upgrades include the addition of a set of new 25 kV voltage transformers on the feeder side of the circuit breaker, upgrades of the protective relays and the addition of SCADA.
- Installation of VISTA switchgear, near the POI.
- There are several project specific requirements identified in Section 5 of this report.
- The planning level cost estimate for the Interconnection Network Upgrades required to interconnect the Project to the BCH Distribution System is \$ 2.8 million.
- The Facilities study estimate is \$374 k. No risk analysis has been done at the time of this estimate. There is a high degree of risk and uncertainty, particularly related to Geotechnical issues, Survey, Transmission engineering and extensive Aboriginal/Property costs.
- A full risk analysis will be done as part of the Facilities study and project plan. It should be noted that this distribution circuit is located along a complex section of Highway 99 with various potential complications. This would include traffic routing, design, structural, weather impacts, outage requirements and stakeholder considerations. Also, no allowance for ROW costs have been estimated or included here.
- Due to risk mitigation required for this project, the estimated time for completion for the Facilities study is June 2015.
- The Revenue Metering cost, to be paid separately by Wedgemount Power, is estimated at \$ 40,000.
- The estimated time to construct the Interconnection Facilities, following BC Hydro's receipt of an executed DGIA and the required security and funding, will be determined at the end of the detailed design for the project during the Facilities Study.

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## **1.0 INTRODUCTION**

The project reviewed in this Distribution System Impact Study (DSIS) report is as described in Table 1 below.

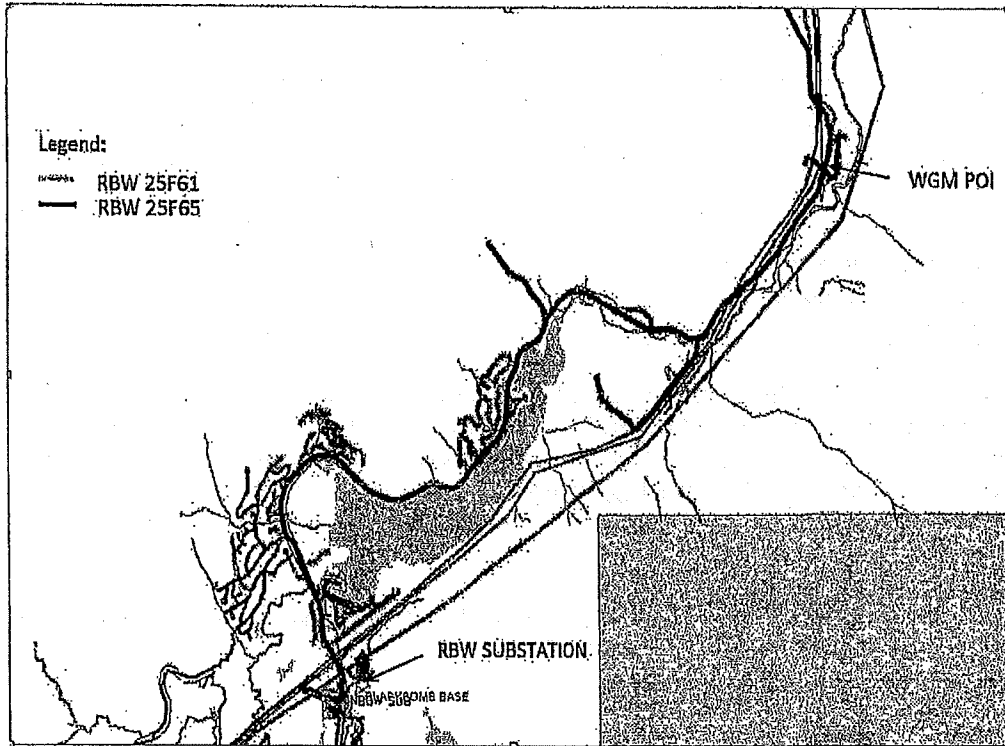
Table 1: Summary Project Information

Project Name	Wedgemount Power Project (WGM)	
Interconnection Customer	Wedgemount Power Inc.	
Point of Interconnection Coordinates	Longitude	Latitude
	50° 10' 55.20" N	122° 52' 31.0" W
IC Proposed COD	March 31, 2016	
Maximum Power Injection (MVA)	5.5	
Number of Generator Units	1	
Plant Fuel	hydro	

Wedgemount Power Limited Partnership, the Interconnection Customer (IC), proposes to develop the Wedgemount Power project near Whistler, British Columbia to deliver electric energy to BC Hydro (BCH) through the Standing Offer Program. The Project is comprised of one unit within one generating station. The unit is rated at 6.1 MVA, 0.9/0.9 lagging/leading power factor. The units will be stepped-up by a 4.16 / 25 kV, 6.5 MVA transformer, and then connected to 25kV distribution feeder 25F61 approximately 0.3 km from the Project.

Figure 1 shows the connection of the Project to the BCH System. The single-line diagram with the Project can be found in Appendix A. Figure 1 shows the 25 kV circuit 25F61.

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**Feeder Layout: RBW 25F61 with Wedgemount Power Interconnected****FEEDERS RBW 25F61 and RBW 25F65****2.0 PURPOSE OF STUDY**

The purpose of this DSIS is to assess the impact of the interconnection of the proposed project on the BCH System. This study will identify the constraints and Interconnection Facilities required for interconnecting in compliance with BC Hydro's "35 kV and Below Interconnection Requirements for Power Generators" ("DIR") dated May 2010.

**3.0 TERMS OF REFERENCE**

This study investigates and addresses the voltage and overloading issues of the distribution and transmission networks in the vicinity of Whistler as a result of the proposed interconnection. Topics studied may include equipment thermal loading and rating requirements, system transient stability and voltage stability, transient over-voltages, protection coordination, operating flexibility, and telecom requirements. BCH planning methodology and criteria are used in the studies.

The scope of this DSIS also includes Revenue Metering requirements. The latest version of the BC Hydro Requirements for Remotely Read Load Profile Revenue Metering can be found at [bchydro.com](http://bchydro.com) (your account - electrical connections - forms & guides - revenue metering requirements).

**4.0 ASSUMPTIONS**

- a. BC Hydro will have no control over the WGM facilities.
- b. It will be determined at a later date if live line methods (and/or associated live line protection mode) will be required to carry out the work on RBW 25F61.
- c. The IPP Data Concentrator at ING DCP (Data Collection Point) has sufficient capacity to add WGM.
- d. This WGM project will precede the project of Rainbow Substation PCM Upgrade with VVO Project Phase 6G.
- e. There will be no planned (intentional) islanding of WGM with BCH load.
- f. The WGM entrance transformer was assumed grounded via a grounding reactor ( $X_g = 9.4 \Omega$  (1.0 p.u.)).

**5.0 SYSTEM STUDIES AND RESULTS**

Power flow, short circuit and other studies were carried out to evaluate the impact of the proposed interconnection. Studies were also performed to determine the protection, control and communication requirements and to evaluate possible over-voltage issues.



## Project Specific Interconnection Requirements

### 5.1 General

- a. Voltage dips at the POI can exceed allowable limits when the WGM interconnecting transformer (tag # T1) is energized from the high voltage side. Therefore, the inrush current needs to be reduced by:
  - energizing the transformer T1 from the generator side, or
  - using point-on-wave closing of the WGM entrance breaker (25CB1) where the residual flux in the transformer core is accounted for.
- b. WGM shall provide a Power Parameter Information System (PPIS).

Fault levels on feeder RBW 25F61, at the POI with the WGM entrance transformer disconnected, are:

	3-phase (Amp)	Phase to Ground (Amp)
Present Stage	1767	1232
Ultimate Stage	Refer to Table 1 in BCH's "35 kV and Below Interconnection Requirements for Power Generators"	

Geographical locations of the BCH substations referenced in telecommunication sections:

	Street Address	Latitude, Longitude
Ingleadow (ING)	12430-88th Av., Surrey	N 49:09:30.8, W 122:52:27.9
Meridian (MDN)	1735 Eagle Mountain Drive, Coquitlam	N 49:18:34.9, W 122:48:23.3

### 5.2 Protection Requirements

- a. A neutral grounding reactor (NGR) is required to be installed in the High Voltage neutral of the WGM entrance transformer (tag #T1). The ohmic value could be 1.0 to 1.5 times the transformer zero-sequence reactance (1 times is recommended).
- b. Out-of-step protection is to be implemented by WGM since the swing centre is located within the WGM facility.

### 5.3 Control Planning

WGM will provide the required telemetry (plant MW, MVar, hourly MWh, kV) and status information via a DNP3 RTU for continuous SCADA data reporting to the control centre, in accordance with the "BC Hydro 35 kV and Below Interconnection Requirements for Power Generators" (Interconnection Requirements). The WGM's telemetry and status information will be available to the AREVA FEPs or the FVO satellite data concentrator at the nearest suitable BC Hydro site through a dedicated telephone leased line. WGM will need to ensure that the communications provided meet the performance objectives stated in the Interconnection Requirements.

#### 5.4 Telecommunication Planning

WGM is to provide dial-up communication facilities for real-time continuous, SCADA circuit to a BC Hydro Data Collection Point (DCP) via dedicated telephone leased line to ING substation DCP. WGM will need to ensure that the communications provided meet the performance objectives stated in the Interconnections Requirements.

#### 5.5 Revenue Metering

Revenue class meters approved and sealed by Measurement Canada (MC) shall be installed on the output of the generator. As per federal regulations, the meter should be periodically removed and re-verified in a MC authorized laboratory. The CTs and VTs used on the metering scheme shall also be of a model/type approved by Measurement Canada. The IC's remote read load profile revenue metering should be in accordance with the BC Hydro Requirements for Remotely Read Load Profile Revenue Metering. The latest version of this document is published at BC Hydro webpage under Forms and Guides.

The revenue metering responsibilities and charges (IC and BCH) shall be in accordance with Section 10 (10.1 and 10.2). For details about the specific responsibilities, see table on pages.23-25.

Main and backup bi-directional load profile interval meters are required to measure the power received and the power delivered (by BCH to the IC) during each 30 minute time period. The meters will be programmed for 5 minutes interval and will be remotely read each day by BCH/ABSU Enhanced Billing Group using MV-90; the POM shall have a dedicated communications line (landline or wireless BCH approved IP alternative) available for revenue metering use only. If there is digital cell phone coverage for data, BCH will supply the wireless communications. In this case, there will be an incremental cost to the IC.

The revenue class meters (main and backup) are Measurement Canada (MC) approved and will be supplied and maintained by BC Hydro. The main meter will be leased by BCH to the IC. The revenue class instrument transformers (CTs and VTs units) are supplied by the IC and should be Measurement Canada (MC) approved models.

A 3--element metering scheme with 3 CTs and 3 VTs connected L-N (L-Grd) shall be used. The point of metering (POM) should be located on the BC Hydro side of the power transformer.

**Note 1:** the tap for the station service transformer must be located on the IC side of the POM so, the revenue metering correctly registers both, the power received and the power delivered to the IC.

In order to power up the main meter auxiliary power supply and the communications equipment, a 15A-120V AC station service shall be provided by the IC to the BCH meter cabinet.

During the planning phase, BCH Revenue Metering department should be contacted to discuss the specifics of the project such as meter cabinet location, secondary cables length, need of JB's, etc. The IC should send drawings to BCH Revenue Metering Department showing the 1-line diagram (SLD) and informing the planned metering scheme, meter cabinet location, CTs and VTs model/maker, connections, location and MC Approval numbers, as well as any other related document.

If the impedance and losses between the POM and the PODR are significant, the meters will be programmed to account for the line and/or transformer losses between the POM and PODR. The PG or its consultant shall provide the line parameters data and the power transformer testing data signed and stamped by a professional engineer.

### **5.6 Unplanned Islanding**

Unplanned Islanding is not approved for this project. Power quality protection will be required at the generating unit to detect abnormal system conditions such as under/over voltage and under/over frequency and subsequently trip the unit. The settings of these protective relays must conform to existing BCH practice for generating plants so that the generator will not trip for normal ranges of voltages and frequencies.

### **5.6 Other issues**

None.

## **6.0 BC HYDRO SYSTEM UPGRADES**

### **6.1 Upgrades**

The proposed Wedgemount Power project is located in a congested area and its interconnection will exacerbate the existing thermal overload under single contingencies in the transmission network. The existing generation shedding remedial action scheme (RAS) in the Bridge River and Cheekye area (Operating Order 7T-14) will be relied on to address the concern.

In order to interconnect the Project to the BCH Distribution System at the POI, this DSIS has identified the following major upgrades and requirements:

#### **6.1.1 Work on feeder RBW 25F61:**

- A new overhead line is needed to connect the existing feeder RBW 25F61 to the WGM POI, along with a section of cable. The approximate length of the overhead line is 5.5 km, while that of the cable is 0.8 km. The new overhead line will be 336.4 ASC and will be built by double circuiting feeder RBW 25F65 from the end of the existing feeder RBW 25F61. From the end of the overhead line a cable section will be installed to the WGM POI.
- A new 3-phase recloser is needed to be installed at the point where the new overhead line meets the existing overhead line. The recloser shall have voltage sensing on both the line and the load side.
- Removal of existing 4/0 cable from the TP #4763 and replacement with feeder cable (750 kcm XLPE).
- Installation of a VISTA switchgear in the vicinity of the POI, between BCH and WGM.
- Installation of approximately 0.8 km of feeder cable from M/H #4763 to the VISTA switchgear.

#### **6.1.2 At RBW substation:**

- Add a set of new 25 kV voltage transformers (25VT61) on the feeder side of the RBW 25F61 feeder circuit breaker.

#### **6.1.3 Protection Upgrades:**

**RBW substation:**

- 2L1 Protection  
Modify 2L1 PN to include direct tripping of 25CB61 to avoid transient over-voltage, and 25CB61 BF initiation (internal to RBW 25F61 PN), when 2L1 is supplying RBW 25F61.
- 2L2 Protection  
Modify 2L2 PN to include direct tripping of 25CB61 to avoid transient over-voltage, and 25CB61 BF initiation (internal to RBW 25F61 PN).
- T1 Protection  
Modify T1 PN to include direct tripping of 25CB61 for anti-islanding, and 25CB61 BF initiation (internal to RBW 25F61 PN), when T1 is supplying RBW 25F61.
- T2 Protection  
Modify T2 PN to include direct tripping of 25CB61 for anti-islanding, and 25CB61 BF initiation (internal to RBW 25F61 PN).
- 25B1 Protection  
Modify 2B1 PN to include direct tripping of 25CB61 to remove IC infeed, 25CB61 BF initiation (internal to RBW 25F61 PN), and blocking 25CB61 A/R, when 25B1 is supplying RBW 25F61.
- 25B2 Protection  
Modify 2B2 PN to include direct tripping of 25CB61 to remove IC infeed, 25CB61 BF initiation (internal to RBW 25F61 PN), and blocking 25CB61 A/R.

**RBW 25F61 feeder**

- Remove the existing RBW 25F61 E/M relays
- Install a new SEL-351S-6 for 25F61 PN
- Modify RBW 25F61 AC connections to include 25VT61 as a 3-phase source and a single phase source from 25kV VT change-over scheme
- Modify RBW 25F61 PN settings to IC standard
- Include all 25CB61 controlled closing to ensure the IC is not closed onto out of synchronism with the BCH system

**6.1.4 Control (SCADA) Upgrades:**

**RBW 25F61:**

Currently RBW reports to MDN DCP via RTU285 and S299-T190.

- Provide 25CB61 local/remote Auto-reclose on-off.
- Provide three-phase kV, Amps, MW, MVar telemetry from RBW 25F61 SEL-351S relay via DTA.
- Connect new alarms to the station alarm system.
- Provide remote data access for the new relay via the existing SEL communication processor.

**Control Centre:**

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The IC's telemetry and status will be routed to the ING DCP site. Re-configure the AREVA FEPs or FVO satellite data concentrator, and update the existing database and displays at FVO/SIO to accommodate the new IC. Update the network model to show the new generator.

In association with the Rainbow station work, update the existing database and displays at FVO and SIO to add the new points.

**6.1.5 Telecom Requirements**

None Required.

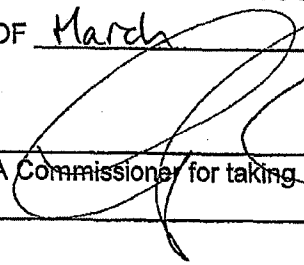
**6.2 Cost Estimate and Schedule**

The planning level cost estimate for the Interconnection Network Upgrades required to interconnect the proposed project, WGM, to the BC Hydro Distribution System is \$ 2.8 million.

The estimated time In-Service Date of the Interconnection Facilities will be provided after the detailed design for the project is completed during the Facilities Study. A more detailed construction timeline will be provided in the DGIA.



THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March, 2018.



A Commissioner for taking Affidavits in British Columbia

**COLIN BROUSSON**  
GOWLING WLG (CANADA) LLP  
BARRISTER & SOLICITOR  
550 BURRARD STREET - SUITE 2300  
BENTALL 5 - VANCOUVER, B.C. V6C 2B5  
TELEPHONE: (604) 683-6498



BC HYDRO  
Generator interconnections  
Edmonds BO3 – 6911 Southpoint Drive  
Burnaby, BC V3N 4X8

Industrial Alliance Insurance and Financial Services Inc., as lender  
1080 Grande Allée Ouest  
C.P. 1907, Succursale Terminus  
Québec (Québec) G1K 7M3

Travelers Capital Corporation, as agent  
Suite 501 – 4180 Lougheed Hwy.  
Burnaby, British Columbia V5C 6A7

June 22, 2015

Dear Sirs/Mesdames:

**Re: Wedgemount Creek 5.4 MW Capacity Run-Of-River hydroelectric facility located near Whistler, British Columbia - Latitude 50° 06' 36" North and 122° 57' 00" West (the "Project"); Confirmation of status of Distribution Generator Interconnection Agreement ("DGIA") to be entered into between British Columbia Hydro And Power Authority ("BCH") and Wedgemount Power Limited Partnership ("WPLP")**

BCH has been approached by WPLP with respect to the development of the Project and BCH and WPLP have entered into an electricity purchase agreement (standing offer program) ("EPA") made as of March 6, 2015.

We are advised by WPLP that you are considering providing the construction and term financing for the Project.

As part of the interconnection of the Project to enable the flow of electric power from WPLP's Plant (as defined in the EPA) to the Distribution System or Transmission System (as defined in the EPA), BCH prepared a Distribution System Impact Study for the Project on November 28, 2014 (the "Project DIS"). BCH confirms that it is currently conducting a facilities study of the Project (the "Facilities Study").

Subject to implementation of the recommendations put forth in the Project DIS, BCH does not anticipate any concerns or risks to arise in connection with the Facilities Study. The Facilities Study is expected to be available for WPLP to review by the end of February 2016.

Upon completion of the Facilities Study, BCH and WPLP will enter into a DGIA. BCH anticipates the DGIA to be fully executed by BCH and WPLP by the end of March 2016.

BCH understands that it may be beneficial to WPLP for some of the load interconnection steps to be conducted in parallel to the Facilities Study. BCH will commit to discuss this possibility and the Early





Engineering and Procurement Agreement with WPLP as soon as the opportunity arises. In any event, BCH expects that the implementation phase should be finalized for an August 31, 2016 in-service date.

Yours truly,

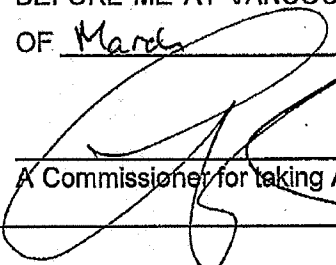
**BRITISH COLUMBIA HYDRO  
AND POWER AUTHORITY**

A handwritten signature in black ink, appearing to read "R. Hefflick", written over a horizontal line.

Per:

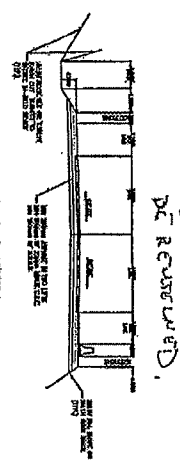
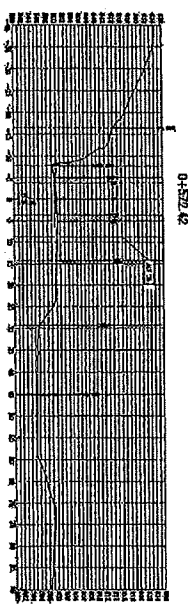
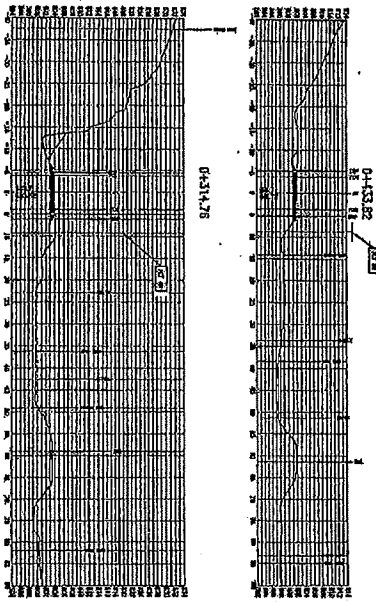
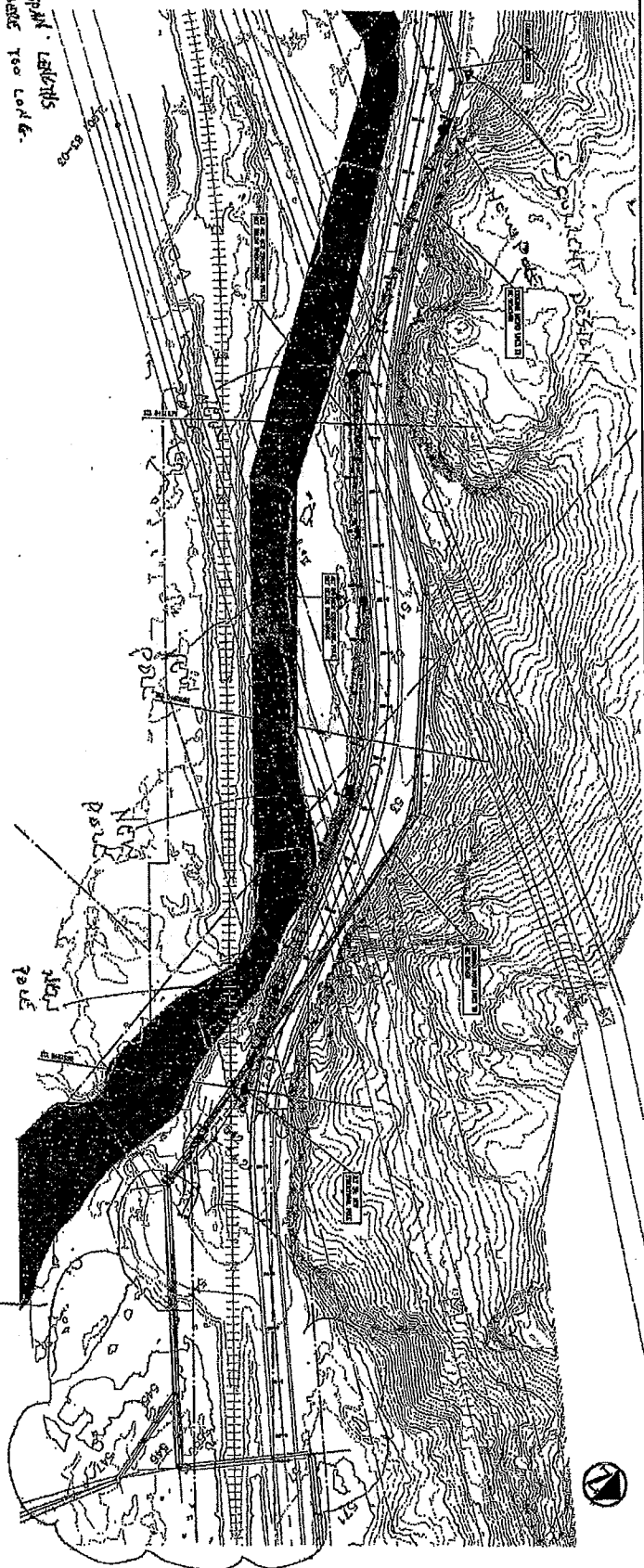
**Ryan Hefflick  
Manager, Generator Interconnections**

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March, 2018.



A Commissioner for taking Affidavits in British Columbia

**COLIN BROUSSON**  
GOWLING WLG (CANADA) LLP  
BARRISTER & SOLICITOR  
550 BURRARD STREET - SUITE 2300  
BENTALL 5 - VANCOUVER, B.C. V6C 2B5  
TELEPHONE: (604) 683-6498



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UNIVERSITY OF CALIFORNIA  
SCHOOL OF CIVIL ENGINEERING  
SAN DIEGO

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March 2018.

A Commissioner for taking Affidavits in British Columbia

**COLIN BROUSSON**  
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TELEPHONE: (604) 683-6498



PROJECT No: 1383  
DOCUMENT No.: 1383-T-9000  
REVISION No: 0

DATE: December-20-16

TO: David Ehrhardt  
COMPANY: Col Mac Capital Inc.  
EMAIL: dehrhardt@telus.net

FROM: Matthew Obee, P.Eng  
EMAIL: matthew.obee@cleanenergyconsulting.ca

PROJECT: Wedgemount Power Project

RE: WGM Interconnection High Level Cost Estimate/Cost Review



2016-12-20

**1 PROJECT BACKGROUND**

The Wedgemount Power Project (WGM) is located within the Wedgewoods Subdivision, approximately 15 km north of Whistler, British Columbia on the east side of the Sea to Sky Highway (HWY 99) and is owned by the Wedgemount Power Limited Partnership. The project consists of a 5.35 MW run of river hydro power generation project. The horizontal axis pelton turbine and 5.9 MVA generator unit are installed along with all supporting infrastructure, including intake, penstock, powerhouse, and primary electrical systems. WPLP estimates approximately 2 months of final clean-up and commissioning work is required for the plant to be operational.

The project cannot reach its Commercial Operation Date (COD) until BC Hydro completes the interconnection work for the project. The Interconnection Facilities Study and Project Plan (FS) issued on August 16, 2016 suggests a delay in the completion of this work until August 2017 and provides an updated project cost estimate that has more than doubled from the estimate provided in the System Impact Study (SIS).

**2 SCOPE OF WORK**

Clean Energy Consulting (CEC) was retained to provide an independent, high level estimate of the interconnection work, as outlined in the draft Feasibility Study and to provide comment on potential areas of improvement or alternatives to current design prepared by BCH and their Service Provider. A particular focus has been placed on the distribution scope of work as this encompasses the vast majority of the costs and complexity of the interconnection scope.

A summary of the interconnection requirements as provided in the draft Facility Study are:

- A new 4.2 km overhead line needs to be built to the existing 25F61 feeder to the WGM POI, along with a section of 1.2 km underground cable.
- At Rainbow substation, one set of voltage transformers will need to be installed. Protection and control equipment for the feeder will need to be upgraded.
- Configurations and programming of associated line, transformer, and bus protection relays will need to be adjusted to accommodate WGM.

- The BC Hydro Fraser Valley Operation Centre will need to reconfigure the existing equipment to accommodate WGM, update network models to include WGM, and add new control, telemetry, and alarm points. A Distribution Operating Order (DOO) will need to be prepared for this project.

CEC completed a high level review of the design of the distribution scope of work as it currently stands and estimated costs for implementation based on continuing with the same basic design as is currently proposed. Areas for further design review and potential alternatives are suggested for further consideration.

Construction costs are based on recent costs from similar installations and high level pricing provided by BC Hydro approved contractors (ROC contractors) familiar with BC Hydro requirements and construction standards. Detailed contractor estimates should be pursued as a next step to firming up actual pricing.

No plus or minus level of accuracy is associated with this cost estimate. It is a good faith estimate based on experience with this type of installation. Further work and design definition are required to provide confidence intervals in accordance with AACE guidelines or those used by BC Hydro.

### 3 BASIS OF ESTIMATE

#### 3.1 Distribution Scope of Work

A new overhead line is needed to connect the existing feeder 25F61 RBW to the WGM POI, along with a section of underground cable. The approximate length of the overhead line is 4.2 km, while the total underground cable length is 1.2 km over 2 separate cable runs. The new overhead line will be 336.4 ASC and will be built by double circuiting feeder 25F65 RBW and extending 25F61 RBW. From the overhead line, an underground cable is to be installed up to the WGM POI in newly built duct banks inside the Wedgewood Subdivision.

The scope as defined in the facility study:

- Section 1
  - Installation of an upgraded overhead line for 3.4 km along Highway 99. Current design has 47 new/replaced structures and 2 decommissioned poles for service feeders.
  - Installation of a new 3-phase recloser on a new pole structure north of existing pole #2083072 (existing pole #2083072 is also to be replaced and relocated and transformer added for recloser). The recloser shall have voltage sensing on both sides of the line.
- Section 2
  - Installation/replacement of 4 structures along existing alignment for second circuit underbuild and undergrounding.
  - Installation of new 230 m duct bank and a new manhole for both circuits 25F65 and 25F61 RB along shoulder of Highway 99 between structures 49/50 to 50/51.
  - 350 m of new alignment (current configuration has approximately 150 m double circuit, 200 m single circuit). New alignment includes a highway crossing, CN rail crossing, Green River crossing and approximately 1 ha of clearing and right of way preparation.
- Section 3
  - Installation of 1 km of 25 kV cable within Wedgewoods Subdivision to POI. For half of this length, the cable duct is already installed. The other 500 m of cable duct is to be installed by the subdivision developer and costs shared evenly between the subdivision development and the IPP project as it will be a joint use duct bank. Costs for this duct

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installation are outside of this estimate. Pulling and commissioning cable for the full 1 km is a part of this estimate. Design of duct bank is being undertaken by BC Hydro Squamish field office to maintain consistency as they have done this for remainder of the subdivision development. Those design costs are born by the subdivision developer.

- Supply and install of new Vista Switch which is to act as the new POI. This is located within Wedgewood's Subdivision approximately 400 m south of the IPP step-up transformer.
- Revenue Metering
  - CT's and VT's are supplied separately by IPP but shall satisfy model/type approved by BCH.
  - Revenue meter costs are paid separately from the interconnection costs but are included in the estimate.

### 3.2 Substation/Transmission Scope of Work

To integrate this IPP into the BCH system, one set of voltage transformers 25VT61 is required to be added on 25F61 feeder at RBW substation.

Protection and control equipment for 25F61 will be upgraded. Configurations and programming of associated line, transformer, and bus protection relays need to be adjusted for changes required for the new generator.

### 3.3 Electrical/Structural Scope of Work

- Add a set of new 25 kV voltage transformers (25VT61) on the feeder side of 25F61 RBW circuit breaker. This is MMBU Cat ID 3633011 and installation is in accordance with ES44-T0205-01. Cables run through existing ducts.
- Structural design scope includes mounting of 25VT61 onto existing bus support using BCH standard steel. The existing concrete footing will be enlarged to support the increased loading.

### 3.4 Protection, Control, and Telecommunication Scope of Work

- Modify 2L1 ON to include tripping of 25CB61 to avoid transient over-voltage, and 25CB61 BF initiation (internal to 25F61 PN), when 2L1 is supplying 25F61.
- Modify 2L2 PN to include direct tripping of 25CB61 to avoid transient over-voltage, and 25CB61 BF initiation (internal to 25F61 PN).
- Modify T1 PN to include direct tripping of 25CB61 for anti-islanding, and 25CB61 BF initiation (internal to 25F61 PN), when T1 is supplying 25F61.
- Modify T2 PN to include direct tripping of 25CB61 for anti-islanding, and 25CB61 BF initiation (internal to 25F61 PN).
- Modify 25B1 PN to include direct tripping of 25CB61 to remove IPP infeed, 25CB61 BF initiation (internal to 25F61 PN), and blocking 25CB61 A/R, when 25B1 is supplying 25F61.
- Modify 25B2 PN to include direct tripping of 25CB61 to remove IPP infeed, 25CB61 BF initiation (internal to 25F61 PN), and blocking 25CB61 A/R, when 25B1 is supplying 25F61.
- Remove the existing DTAs plus associated transducers for 25F52 and 25F64.
- Provide 25CB61 local/remote auto-reclose on/off, three phase voltage, current, active, and reactive power telemetry from the newly installed 25F61 relay. Metering to be digital via existing 3332 and GE Ibox RTU 285. Integrate new alarms to station alarm system and connect the new relay to the station data concentrator for remote access.



- Revise the existing RTU point assignment to reflect the changes to metering, alarm, and control points and to coordinate with Fraser Valley operations (FVO) / South Interior Operations (SIO) to revise their database and displays.
- Re-configure the AREVA FEPs or FVO satellite data concentrator and update the database and displays at FO and SIO to accommodate the new IPP.
- Update the network model to show the new generator.
- Update existing database and displays at FVO and SIO to add the new points added in RBW.

**3.5 Commissioning Scope of Work:**

- Field verification of both BCH and WGM facilities
- Commissioning of PPIS and update of ION server
- Installation and commissioning of Revenue Metering equipment

**4 ESTIMATE FOR INTERCONNECTION SCOPE**

CEC's estimate to complete the interconnection works is Two Million Seven Hundred Eighty-Five Thousand Dollars (\$2,785,000 CAD), excluding taxes. This price does not include costs for work already completed by BCH or their service provider to date. No contingency has been added. CEC believes this estimate is conservative based on our experience and understanding of the scope of work as described in the SIS, FS and corresponding design documentation.

Item	Estimated Cost	Comments
<b>Distribution Materials and Construction Costs</b>		
Overhead Line Material	\$350,000	Major items priced. Minor items and coincidental material estimated. All material to be sourced from MMBU. Assume existing x-arms, insulators, conductors etc. are reused; nuts and bolts replaced. Existing plant looks good by observation. Class 2 poles used in estimate rather than H1/H2 as indicated in current design.
Overhead Line Construction	\$1,000,000	ROC Contractor Consulted. Suggest \$200,000 km 9-10 week duration. Could crash to 6-7 weeks with additional crew. Assume live line conditions. This should be a high side estimate. Potential to reduce by as much as \$250,000.
Section 2 Clearing and Access	\$30,000	(1 ha)
Section 2 Cable Civil	\$207,000	(\$900/m for 230 m)
Section 2 Cable Electrical	\$80,500	(\$350/m for 230 m)
Section 3 Cable Civil (Approx. 500 m remaining)	\$175,000	(50% of estimate to complete from Coast Mountain Ex)
Section 3 Cable Elec. (Approx. 1 km)	\$95,000	(50% of estimate from BCH Squamish Field Office)
Vista Switch Supply and Install	\$42,000	(\$24,000 Install, \$18,000 Vista Cost)
Material Salvage	\$50,000	(Estimate)
<b>Engineering Costs</b>		
Section 1 and 2	\$80,000	Assumes new engineering consultant used to finish
Station Works	\$80,000	Assumes new engineering consultant used to finish
Section 3 (BCH Squamish Field Office)	\$25,000	Estimate from other design work undertaken in Wedgewood Subdivision



Item	Estimated Cost	Comments
<b>Station materials and Construction</b>		
Station materials and Construction	\$27,000	
Station construction/system upgrades	\$200,000	BCHCS recommended to undertake work at Rainbow Station.
<b>Metering Costs</b>		
Revenue Metering	\$45,000	As per F.S.
PPIS Metering	\$12,000	As Per F.S.
<b>Commissioning</b>	\$96,500	As per F.S.
Environmental Monitor	\$50,000	10 weeks
3rd Party Service Coordination	\$20,000	MOTI, CN Rail, SLRD, FN, Telus, Transport Canada
BCH PM/CM (7% of Total)	\$180,000	
<b>Total Estimated Cost of Interconnection</b>	<b>\$2,785,000</b>	

## 5 DESIGN AND IMPLEMENTATION CONSIDERATIONS WHICH SHOULD BE FURTHER INVESTIGATED

- 1) Review current design use of very heavy poles, primarily H1 and H2 poles. Class 2 should suffice, is typical for installations of this nature, and is currently used in the existing section of 25F65/61 double circuit which is being extended.
- 2) Investigate options to eliminate the underground section between structures 49/50 to 51/52. Two options should be further investigated
  - a) Use of a single, self supporting steel pole on the opposite side of the highway.
  - b) An adaptation of the existing arrangement which is supported directly from the rock face could be repeated.

A site meeting with MoTI is recommended to review and discuss these options.

- 3) Optimize the proposed design installation where the new overhead line departs the existing alignment as it is very congested and busy. Some background might add clarity to why it has been designed as shown; however, on the surface it appears that some design optimization could lead to greatly simplified layout and provide cost savings.
- 4) Assess the option to leave 25F65 on existing plant on north side of highway from structure P054 onward and only have circuit 25F61 cross and over along new alignment. If structures are not modified or changed in anyway then IPP/BCH should not be required to change or revise existing pole locations. Further discussion with MoTI is required.

## 6 DISCUSSION

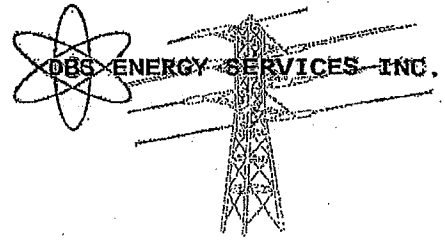
The interconnection cost estimate prepared by CEC herein does not align with the estimate provided by BCH in the draft Facility Study report. There is a disparity of roughly \$3,500,000-\$4,000,000, depending on which numbers in the draft FS are used. On the distribution scope of work, the engineering fees, material cost, and construction costs presented in the Facility Study are significantly higher than what we would

expect to see. The overhead line work, in particular, appears very straight forward so it is unclear why the costs are so high. Further discussion should be pursued to better understand how these costs have been arrived at.

The transmission/station scope of work is significantly smaller than the distribution scope. Our internal estimate of the costs associated with this scope are roughly half of that which is included in the draft Facility Study. It is unclear what benefit all of the additional costs are expected to bring to either BCH or the IPP as the installation is straightforward. We expect there are opportunities to further reduce these costs from the amounts carried in the internal estimate with a well specified scope of work and active management.

GEC understands that brown field work of this nature is difficult to estimate and that costs often exceed that of green field projects; however, the estimated costs appear very high in this instance and should be reviewed. In addition, there are design alternatives which should be considered and may improve the overall design, reduce costs, and potentially improve reliability based on our high-level review of the drawings and trip to site.

CEC recommends further refinement of the scope of work and estimate including further review of the current design and inputs, preparing detailed material take-offs, soliciting BC Hydro approved contractors to provide construction cost estimates based on design drawings available, and having discussion with 3<sup>rd</sup> party service providers and stakeholders to fully understand limitations, options, and risks. Recognizing that the design prepared by BCH's service provider is not finalized, we believe this refinement should be undertaken before work proceeds.



# Engineering Report

To: Peter Zell, Eco Flow Energy Corp.  
 From: Norm Geishelmer, Dennis Schlender; DBS Energy  
 CC: Michael Potyok, George Steeves, Luc Fournier  
 Date: 2017-02-24  
 Re: WEDGEMOUNT POWER PROJECT SECTION ONE ESTIMATE REPORT

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## INTRODUCTION

This estimate report is for Section One of the Wedgemount Power Project (WGM) overhead line extending BCHydro (BCH) 25kV line 25F61 to the WGM point of interconnection (POI), and establishing reconnection to the existing BCH 25kV line just north of the turn to Wedgemount Lake. The attached map T15-PP-P1737-001 shows the general layout of the line.

## OVERVIEW OF THE LINE

The extension of BCH line 25F61 will be created by double circuiting feeder BCH 25F65 from the end of the existing feeder BCH 25F61 located near Emerald Park/ Green Lake Park, to near the WGM POI. At this point, BCH 25F65 will continue as a single circuit reconnecting to the existing BCH 25kV line on Highway 99.

The length of Section One being considered for this estimate is approximately 4.2kms in length. 3.5kms follows the existing BCH alignment along BC Highway 99. The remaining 0.7kms of the line will be built at a new alignment to avoid a major rock outcrop along Highway 99 approximately 300M south of the turnoff to Wedgemount Lake connecting to the WGM POI then extending to make the reconnection to the existing BCH 25kV line. When complete, .52kms of existing line along Highway 97 will be removed.

## ESTIMATE DETAILS

### Assumptions:

- Existing conductor is 336.4 ASC. New installed conductor will be same.
- New construction will be built to BCH distribution standards with CSA C22.3 No 1-15 Overhead Systems Heavy Loading weather conditions.
- The proposed alignment has land rights for the powerlines, communication lines, and associated anchors
- Estimate is based on information provided by Midgard, namely AMEC drawing 409-D08-01003 REV1 for structures P000-P046, AMEC drawings 409-D08-01007 REV1 for structures P047 / P048, and a new alignment drawing named Wedgemount Centerline2.dwg
- The work is estimated to be done with live line methods with some outages required to transfer customers and reconnection to the mainline.
- The estimate does not include any environmental study costs, substation work, or POI connection costs.
- The estimate is based on regular work hours, with the ability to traffic control Highway 99 to one lane as required.

## ESTIMATE FOR SECTION ONE

Item	Estimated Cost	Comments
Material:	\$362,188	All new material other than one transformer at structure
Material Loading 10%	\$36,219	P029 which will be transferred to the new pole. Includes 5% of minor items for spares/extras
<b>Total New Material</b>	<b>\$398,407</b>	

Custom:		
Excavation	\$71,200	Pole and earth set anchors. Assumes 10% of pole holes will require blasting. See note 2.
Rock anchors	\$222,500	Assumes rock anchors 50-50 split 1.0M and 2.4M depth
Traffic Control	\$40,375	Assumes 2 person for duration of project
Survey	\$20,000	
Backfill material	\$12,200	BCH requirement for pole sets
Brushing	\$6,000	Major brushing for .5km new alignment (\$3500) + minor brushing on existing alignment (\$2500)
<b>Total Custom</b>	<b>\$372,275</b>	

Construction Labor:		
Unit costs Install	\$279,480	Based on typical BCH ROC contractor rate
Unit costs Salvage	\$57,010	See note 3
BCH onsite construction assistant	\$33,649	Typically, BCH assigns a representative to oversee project
<b>Total Labor Cost</b>	<b>\$336,490</b>	

<b>Design and Engineering</b>	<b>\$231,434</b>	20% of project costs above (Includes BCH engineering costs, 2 RR crossings design /permitting, and any costs spent to date )
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<b>Contingency</b>	<b>\$200,791</b>	15% of project costs above
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<b>Project Management (owner)</b>	<b>\$80,316</b>	6% of project costs excluding contingency
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PST	\$27,888	7% on materials only
<b>Total with PST</b>	<b>\$1,647,602</b>	
<b>TELUS Transfer costs and New Installs</b>	<b>\$102,953</b>	\$101,404 + \$1,549 PST on materials. See note 4
<b>Grand Total</b>	<b>\$1,750,555</b>	



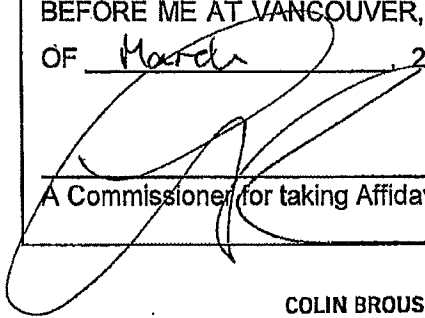
Notes:

1. This estimate should be considered as a Class 3 estimate. Accuracy level of +/- 15%
2. It is assumed that the cost to excavate the existing poles to be taken out will be done by TELUS forces as they are the last off the pole and joint owners of the pole. This amount is included in the TELUS cost. (Note 4)
3. Includes removal of existing BCH plant and cut poles to TELUS level, return equipment and pole top to BCH yard. Does not include removal of poles with TELUS contacts.
4. TELUS transfers are assumed for the existing messenger/cable P000 to P048. New installation is needed for messenger/cable along the new alignment from P048 to P057, splicing of cables at 3 locations, materials, labor, traffic control and salvage costs to remove BCH poles where TELUS is last off the structure. Please note, the cost shown is very high level since TELUS was not available to answer any questions regarding their plant. The costs shown do not include any funding payable to BCH for pole ownership. The full pole replacement (capital) cost is included under the BCH line estimate above.
5. No capitalized overhead and loadings has been provided for BCH or TELUS. This can be considerable, and could amount to be 25% of the project cost.
6. Activities such as engineering and survey may have been completed already. This completed work costs is showing as a fully rolled up item (i.e. contains past spent and future expected work)

**ITEMS FOR CONSIDERATION**

1. The section of line from P000 to P046 has been designed with no containment/deadend structures. Deadend along the line should be considered not only for containment purposes but to also facilitate reconductoring.
2. There is a considerable safety risk to electrical crews attempting to relocate the existing 25kV to the new higher upper circuit position on the BCH heavy angle corners in live state. It should be a consideration to instead install the new circuit on the upper circuit. Then energize the top circuit to service the existing customers (4) along the line and beyond WGM. Lastly cut temporary openers in the lower circuit to de-energize the circuit and allow the electrical crews to relocate the lower circuit to the new structures in a de-energized state. This method will not only be considerably safer, but slightly less expensive. To facilitate this alternative method, the height of the new structures should be reviewed to ensure adequate safe clearances can be maintained between the upper circuit and the existing energized lower circuit during the stringing operation.
3. Due to the very narrow roadway, and lack of adequate shoulder room along the highway, lane closures will be required. At risk is a possibility of MOTI limiting lane closures along Highway 99, or restricting the hours of lane closures which could seriously affect the labor estimate if the work needs to be done at night.
4. Considerable BCH capital improvements are being completed with the proposed design. There should be a possibility of cost sharing between the customer and BCH that needs to be discussed.

THIS IS EXHIBIT "E" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March 2018.



A Commissioner for taking Affidavits in British Columbia

**COLIN BROUSSON**  
GOWLING WLG (CANADA) LLP  
BARRISTER & SOLICITOR  
550 BURRARD STREET - SUITE 2300  
BENTALL 5 - VANCOUVER, B.C. V6C 2B5  
TELEPHONE: (604) 683-6498

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**From:** "Peter Zell" <[pzell@ecoflowenergy.com](mailto:pzell@ecoflowenergy.com)>  
**Subject:** **Wedgemount Hour Summary 170131 pivot table count issue to MP.xlsx**  
**Date:** January 31, 2017 at 10:54:12 AM PST  
**To:** "Michael Potyok" <[mpotyok@midgard-consulting.com](mailto:mpotyok@midgard-consulting.com)>

Mike,  
Per our call.  
Numerous pivot tables already built for analysis.  
Not a good story.

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Area	Disc	Activity	Date	Employee Name	Job Title Description	Department Description	Regular Hours	Prem 1 Hours
97	290	150	19/07/2013	Brolly Richard	Sr Archaeologist	Environmental	0.8	
97	290	150	19/07/2013	Eng Clifford	Environmental Mgmt	Environmental	0.3	
97	290	150	23/07/2013	Frewing Faith	Sr Clerical Administration	Environmental	0.3	
97	290	150	19/07/2013	Frewing Faith	Sr Clerical Administration	Environmental	0.5	
97	290	150	19/07/2013	Hawkes Darryl	Sr Geotechnical Specialist	Environmental	3	
97	290	150	19/07/2013	Little Greg	Sr Environmental Mgmt	Environmental	1	
97	290	150	19/07/2013	Seed Liam	Int Environmental Mgmt	Environmental	4.2	
97	290	150	19/07/2013	Stryd Zoe	Jr Clerical Administration	Environmental	1.1	
21	290	4822	10/07/2015	Burns Stephanie	Cost Controller - Int	Environmental	0.3	
21	290	4822	17/07/2015	Burns Stephanie	Cost Controller - Int	Environmental	0.3	
21	290	4822	10/07/2015	Harron David	Env Professional - Spc	Environmental	0.5	
21	290	4822	10/07/2015	Lofgren Raymond	Surveyor (Topo Survey) - Spc	Environmental	4	
97	290	150	19/07/2013	Seed Liam	Sr Environmental Mgmt	Environmental	0.1	
97	290	150	26/07/2013	Seed Liam	Sr Environmental Mgmt	Environmental	4.1	
21	290	4822	08/07/2015	Seed Liam	Env Professional - Int	Environmental	0.5	
21	290	4822	10/07/2015	Seed Liam	Env Professional - Int	Environmental	5.2	
21	290	4828	17/07/2015	Brolly Richard	Archaeologist - Spc	Environmental	0.5	
21	290	4822	26/07/2013	Frewing Faith	Sr Clerical Administration	Environmental	0.3	
21	290	4822	17/07/2015	Seed Liam	Env Professional - Int	Environmental	1.9	
21	290	4822	31/07/2015	Seed Liam	Env Professional - Int	Environmental	0.5	
21	290	4822	07/08/2015	Seed Liam	Env Professional - Int	Environmental	4.6	
21	290	4828	17/07/2015	Fox Michael	Archaeologist - Jnr	Environmental	1	
97	290	150	19/07/2013	Brolly Richard	Sr Archaeologist	Environmental	0.7	
97	290	150	19/07/2013	Eng Clifford	Environmental Mgmt	Environmental	-0.3	
97	290	150	19/07/2013	Frewing Faith	Sr Clerical Administration	Environmental	-0.5	
97	290	150	26/07/2013	Frewing Faith	Sr Clerical Administration	Environmental	-0.3	
97	290	150	26/07/2016	Gresh Roger Theodore	Environmental Mgmt Specialist	Environmental	1	
97	290	150	19/07/2013	Hawkes Darryl	Sr Geotechnical Specialist	Environmental	3	
97	290	150	19/07/2013	Little Greg	Sr Environmental Mgmt	Environmental	-1	
97	290	150	19/07/2013	Penner Michelle	Sr Environmental Mgmt	Environmental	0.7	
21	290	4822	14/08/2015	Seed Liam	Env Professional - Int	Environmental	13.3	
21	290	4822	28/08/2015	Seed Liam	Env Professional - Int	Environmental	5.3	
97	290	150	19/07/2013	Stryd Zoe	Sr Environmental Mgmt	Environmental	1.1	
21	290	2002	04/09/2015	Hawkes Darryl	Geotechnical Engineer - Spc	Environmental	3	
21	290	2002	04/09/2015	Laxdal John	Geotechnical Engineer - Spc	Environmental	0.5	



21	290	4822	25/09/2015	Bell Geoffrey	Contam Professional - Int	Environmental	1.5
21	290	4822	04/09/2015	Bell Geoffrey	Contam Professional - Int	Environmental	2.3
21	290	4822	25/09/2015	Drinkwater Theodore	Env Professional - Int	Environmental	3
21	290	4822	25/09/2015	Horne Brad	Env Professional - Spc	Environmental	1.5
21	290	4822	04/09/2015	Houwers Claudia	Env Professional - Snr	Environmental	0.8
21	290	4822	04/09/2015	Kwon Paul	Env Professional - Int	Environmental	0.5
21	290	4822	04/09/2015	Laxdal John	Geotechnical Engineer - Spc	Environmental	0.5
21	290	4822	11/09/2015	Sears Christopher	Env Professional - Int	Environmental	2.2
21	290	4822	04/09/2015	Seed Liam	Env Professional - Int	Environmental	1.3
21	290	4822	11/09/2015	Seed Liam	Env Professional - Int	Environmental	0.3
21	290	4822	25/09/2015	Seed Liam	Env Professional - Int	Environmental	6.8
21	290	4822	04/09/2015	Smedley Rosalyn	Env Professional - Int	Environmental	1
21	290	4822	11/09/2015	Smedley Rosalyn	Env Professional - Int	Environmental	1.2
21	290	4822	25/09/2015	Smedley Rosalyn	Env Professional - Int	Environmental	2.5
21	290	4822	25/09/2015	Steeger Christopher	Env Professional - Snr	Environmental	3
21	290	4828	25/09/2015	Brolly Richard	Archaeologist - Spc	Environmental	0.2
21	290	4828	04/09/2015	Brolly Richard	Archaeologist - Spc	Environmental	0.4
21	290	4828	11/09/2015	Brolly Richard	Archaeologist - Spc	Environmental	1.2
21	290	4828	11/09/2015	Kwon Paul	Env Professional - Int	Environmental	0.5
21	290	4828	18/09/2015	Kwon Paul	Env Professional - Int	Environmental	0.8
21	290	4828	25/09/2015	Seed Liam	Env Professional - Int	Environmental	0.5
21	290	4828	18/09/2015	Wiederick Brock	Archaeologist - Jnr	Environmental	0.5
21	290	4828	11/09/2015	Wiederick Brock	Archaeologist - Jnr	Environmental	12.1
21	290	4822	16/10/2015	Bell Geoffrey	Contam Professional - Int	Environmental	0.3
21	290	4822	23/10/2015	Bell Geoffrey	Contam Professional - Int	Environmental	3.5
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21	290	4822	02/10/2015	Drinkwater Theodore	Env Professional - Int	Environmental	0.5
21	290	4822	30/10/2015	Harron David	Env Professional - Spc	Environmental	1
21	290	4822	23/10/2015	Hildrebrand Arthur	Contam Professional - Spc	Environmental	2.5
21	290	4822	16/10/2015	Hildrebrand Arthur	Contam Professional - Spc	Environmental	3.5
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21	290	4822	02/10/2015	Seed Liam	Env Professional - Int	Environmental	0.8
21	290	4822	09/10/2015	Seed Liam	Env Professional - Int	Environmental	4.5
21	290	4822	02/10/2015	Steeger Christopher	Env Professional - Snr	Environmental	1.5
21	290	4822	09/10/2015	Steeger Christopher	Env Professional - Snr	Environmental	2

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21	290	4822	16/10/2015	Yuen Matthew	Env Professional - Int	Environmental	2
21	290	4822	09/10/2015	Yuen Matthew	Env Professional - Int	Environmental	3
21	290	4828	23/10/2015	Brolly Richard	Archaeologist - Spc	Environmental	0.3
21	290	2002	27/11/2015	Forsyth Bob	Geotechnical Engineer - Snr	Environmental	0.5
21	290	2002	27/11/2015	Hawkes Darryl	Geotechnical Engineer - Spc	Environmental	10
21	290	4822	30/10/2015	Burns Stephanie	Cost Controller - Int	Environmental	0.3
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21	290	4822	23/10/2015	Burns Stephanie	Cost Controller - Int	Environmental	1.5
21	290	4822	30/10/2015	Clements Lesley	Env Professional - Snr	Environmental	0.3
21	290	4822	30/10/2015	Collier Elvera	Administration Clerical - Snr	Environmental	0.3
21	290	4822	30/10/2015	Harron Donald	Env Professional - Spc	Environmental	1
21	290	4822	23/10/2015	Seed Liam	Env Professional - Int	Environmental	4.6
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21	290	4822	30/10/2015	Steege Christopher	Env Professional - Snr	Environmental	0.3
21	290	4822	11/12/2015	Taylor Mike	Env Professional - Int	Environmental	3.4
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21	290	4822	08/01/2016	Burns Stephanie	Cost Controller - Int	Environmental	0.3
21	290	4822	29/01/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
21	290	4822	15/01/2016	Seed Liam	Env Professional - Int	Environmental	7.3
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21	290	4822	29/01/2016	Seed Liam	Env Professional - Int	Environmental	4.6
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21	290	4822	22/01/2016	Steege Christopher	Env Professional - Snr	Environmental	0.7
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21	290	2002	19/02/2016	Dal Santa Enzo	Geotechnical Tech/Dsgn - Int	Environmental	1.5
21	290	2002	19/02/2016	Forsyth Bob	Geotechnical Engineer - Snr	Environmental	1.5
21	290	2002	19/02/2016	Hawkes Darryl	Geotechnical Engineer - Spc	Environmental	5
21	290	2002	19/02/2016	Laxdal John	Geotechnical Engineer - Spc	Environmental	1
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21	290	4822	05/02/2016	Harron Donald	Env Professional - Spc	Environmental	1

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21	290	4822	05/02/2016	Seed Liam	Env Professional - Int	Environmental	3.3
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21	290	4822	11/03/2016	Seed Liam	Env Professional - Int	Environmental	2.8
21	290	4822	18/03/2016	Seed Liam	Env Professional - Int	Environmental	6.3
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21	290	4822	01/04/2016	Seed Liam	Env Professional - Int	Environmental	4.1
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21	290	2002	01/04/2016	Laxdal John	Geotechnical Engineer - Spc	Environmental	1
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21	290	2002	22/04/2016	Forsyth Bob	Geotechnical Engineer - Snr	Environmental	0.6
21	290	4822	22/04/2016	Yuen Matthew	Env Professional - Int	Environmental	3.5
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21	290	4822	08/04/2016	Yuen Matthew	Env Professional - Int	Environmental	6.5
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21	290	4822	22/04/2016	Smedley Rosalyn	Env Professional - Int	Environmental	14
21	290	4822	29/04/2016	Smedley Rosalyn	Env Professional - Int	Environmental	10
21	290	4822	29/04/2016	Vruegde Jennifer	Administration Clerical - Int	Environmental	0.3
21	290	4822	08/04/2016	Sears Christopher	Env Professional - Int	Environmental	0.5
21	290	4822	15/04/2016	Sears Christopher	Env Professional - Int	Environmental	0.5
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21	290	2002	22/04/2016	St Pierre Daniel	Geotechnical Engineer - Spc	Environmental	2.5
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21	290	4822	15/04/2016	Seed Liam	Env Professional - Int	Environmental	6.3

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21	290	4822	16/04/2016	Seed Liam	Env Professional - Int	Environmental	9.3
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21	290	4828	15/04/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	1.6
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21	290	4828	29/04/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	12
21	290	4822	08/04/2016	Steeger Christopher	Env Professional - Snr	Environmental	3.6
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21	290	4822	06/05/2016	Yuen Matthew	Env Professional - Int	Environmental	2
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21	290	4828	06/05/2016	Brolly Richard	Archaeologist - Spc	Environmental	2.8
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21	290	4822	13/05/2016	Sears Christopher	Env Professional - Int	Environmental	0.5
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21	290	4822	06/05/2016	Seed Liam	Env Professional - Int	Environmental	1.1
21	290	4822	13/05/2016	Seed Liam	Env Professional - Int	Environmental	6.6
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21	290	4822	27/05/2016	Seed Liam	Env Professional - Int	Environmental	4.9
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21	290	4828	27/05/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	0.4
21	290	4822	06/05/2016	Steeger Christopher	Env Professional - Snr	Environmental	1
21	290	4822	13/05/2016	Steeger Christopher	Env Professional - Snr	Environmental	6.5
21	290	4822	20/05/2016	Steeger Christopher	Env Professional - Snr	Environmental	1.1

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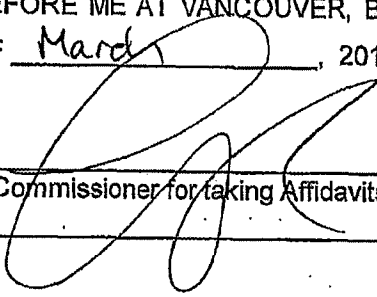
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21	290	4822	20/05/2016	Von Wittgenstein Kayleigh	Document Control Clerk - Snr	Environmental	1
21	290	4822	01/04/2016	Langford Mathew	Env Professional - Snr	Environmental	3
21	290	4822	08/04/2016	Langford Mathew	Env Professional - Snr	Environmental	3.5
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21	290	4828	10/06/2016	Brolly Richard	Archaeologist - Spc	Environmental	1.9
21	290	4828	24/06/2016	Brolly Richard	Archaeologist - Spc	Environmental	0.6
21	290	4822	17/06/2016	van Riet Willem	Env Professional - Int	Environmental	1.7
21	290	4822	03/06/2016	van Riet Willem	Env Professional - Int	Environmental	2
21	290	4822	03/06/2016	Frewing Faith	Cost Controller - Int	Environmental	0.6
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21	290	4822	17/06/2016	Seed Liam	Env Professional - Int	Environmental	6.8
21	290	4828	17/06/2016	Seed Liam	Env Professional - Int	Environmental	0.7
21	290	4822	17/06/2016	Seed Liam	Env Professional - Int	Environmental	2
21	290	4822	03/06/2016	Burns Stephanie	Cost Controller - Int	Environmental	0.6
21	290	4822	10/06/2016	Burns Stephanie	Cost Controller - Int	Environmental	0.7
21	290	4822	24/06/2016	Burns Stephanie	Cost Controller - Int	Environmental	0.3
21	290	4828	03/06/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	0.5
21	290	4828	10/06/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	4
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21	290	4828	24/06/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	1.5
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21	290	4822	10/06/2016	Tableman Katie	Env Professional - Int	Environmental	0.5
21	290	4822	24/06/2016	Tableman Katie	Env Professional - Int	Environmental	1
21	290	4822	03/06/2016	Harron Donald	Env Professional - Spc	Environmental	1
21	290	4822	10/06/2016	Harron Donald	Env Professional - Spc	Environmental	1
21	290	4822	24/06/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
21	290	4822	08/04/2016	Langford Mathew	Env Professional - Snr	Environmental	3.5
21	290	4822	08/04/2016	Langford Mathew	Env Professional - Snr	Environmental	3.5
21	290	4828	24/06/2016	Brolly Richard	Archaeologist - Spc	Environmental	0.6
21	290	4822	24/06/2016	Seed Liam	Env Professional - Int	Environmental	9.2
21	290	4822	01/07/2016	Seed Liam	Env Professional - Int	Environmental	4.2

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21	290	4822	15/07/2016	Seed Liam	Env Professional - Int	Environmental	1
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21	290	4822	29/07/2016	Seed Liam	Env Professional - Int	Environmental	8.1
21	290	4828	24/06/2016	Wiederick Brock	Archaeologist - Jnr	Environmental	-1.5
21	290	4822	08/07/2016	Tableman Katie	Env Professional - Int	Environmental	1.5
21	290	4822	29/07/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
21	290	4822	05/08/2016	Smedley Rosalyn	Env Professional - Int	Environmental	2.5
21	290	4822	05/08/2016	van Riet Willem	Env Professional - Int	Environmental	3.3
21	290	4822	19/08/2016	Frewing Faith	Cost Controller - Int	Environmental	0.3
21	290	4822	05/08/2016	Seed Liam	Env Professional - Int	Environmental	2.3
21	290	4822	12/08/2016	Seed Liam	Env Professional - Int	Environmental	9.9
21	290	4822	19/08/2016	Seed Liam	Env Professional - Int	Environmental	6.7
21	290	4822	26/08/2016	Seed Liam	Env Professional - Int	Environmental	9.6
21	290	4822	19/08/2016	Burns Stephanie	Cost Controller - Int	Environmental	0.4
21	290	4822	26/08/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
21	290	4822	12/08/2016	Harron Donald	Env Professional - Spc	Environmental	1
21	290	4822	05/08/2016	Harron Donald	Env Professional - Spc	Environmental	1
21	290	4822	02/09/2016	Seed Liam	Env Professional - Int	Environmental	0.5
21	290	4822	09/09/2016	Seed Liam	Env Professional - Int	Environmental	1
21	290	4822	16/09/2016	Seed Liam	Env Professional - Int	Environmental	2.2
21	290	4822	23/09/2016	Seed Liam	Env Professional - Int	Environmental	1
21	290	4822	16/09/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
21	290	4822	21/10/2016	van Riet Willem	Env Professional - Int	Environmental	2
21	290	4822	21/10/2016	Frewing Faith	Cost Controller - Int	Environmental	0.3
21	290	4822	30/09/2016	Seed Liam	Env Professional - Int	Environmental	0.5
21	290	4822	07/10/2016	Seed Liam	Env Professional - Int	Environmental	2.3
21	290	4822	14/10/2016	Seed Liam	Env Professional - Int	Environmental	4.2
21	290	4822	21/10/2016	Seed Liam	Env Professional - Int	Environmental	4.4
21	290	4822	28/10/2016	Seed Liam	Env Professional - Int	Environmental	8.2
21	290	4822	07/10/2016	Harron Donald	Env Professional - Spc	Environmental	0.5
							607.5



THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March, 2018.



A Commissioner for taking Affidavits in British Columbia

**COLIN BROUSSON**  
GOWLING WLG (CANADA) LLP  
BARRISTER & SOLICITOR  
550 BURRARD STREET - SUITE 2300  
BENTALL 5 - VANCOUVER, B.C. V6C 2B5  
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**From:** "Rempel, Vic" <Vic.Rempel@bchydro.com>  
**Subject:** FW: Wedgemount: Draft Minutes of March 29  
**Date:** August 24, 2017 at 3:31:01 PM PDT  
**To:** "Michael Potyok (mpotyok@midgard-consulting.com)" <mpotyok@midgard-consulting.com>

Hi Mike. As requested, please see attached Minutes of March 29 2017. Regards

---

**Victor Rempel** | Manager, Distribution Generator Interconnections

BC Hydro

P 604 528 2623  
E [vic.rempel@bchydro.com](mailto:vic.rempel@bchydro.com)

**From:** Brett Robinson [<mailto:brxlr8@gmail.com>]  
**Sent:** 2017, April 09 3:44 PM  
**To:** Lin, Frank; Hefflick, Ryan; [Russell.Dobie@bchydro.co](mailto:Russell.Dobie@bchydro.co); Rempel, Vic; Chow, Warren  
**Cc:** David Ehrhardt; Peter Zell  
**Subject:** Wedgmont: Draft Minutes of March 29

Please find attached draft minutes from March 29.

Let me know if there is any errors or omissions.

Thanks,

Brett

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<b>** Draft ** Meeting Summary (March 29, 2017)</b>	
Date:	2017/04/02
Subject:	Wedgemount Creek Power Interconnection
Prepared By:	Brett Robinson, Eco Flow Energy
Prepared For:	BC Hydro, Industrial Alliance and Wedgemount Power Limited Partnership (WPLP)
Attendees:	BCH: Frank Lin, Ryan Hefflick, Vic Rempel, Russell Dobie, Warren Chow EFE: Brett Robinson, on behalf of Peter Zell Industrial Alliance: Michael Potyok, Independent Engineer WPLP: David Ehrhardt

Minutes of discussion held during meeting of March 29 2017. Black text represents draft agenda with Blue bolded discussion points summarized below each item.

**Agenda:**

1. Update by WPLP on Applications for Section 1b & 1C
  - Hydro Engineer – we understand that Om In emails of March 27<sup>th</sup> and 28<sup>th</sup> has now provided approvals for submission of drawing to:
    - o MoTi – Poles 49 – 53 and Poles 56 -57
    - o CN – Poles 53 – 54
  - Clean Energy still looking for confirmation of routing of poles on SLRD lands and POI details

David provided an overview of permitting application efforts to date. This included BC Hydro engineers site visit, review of drawings and feedback to Clean Energy required prior to submissions. Discussions continued relating to all in attendance interest in progress to date and current status. Effort ongoing under the leadership of David, WPLP with support from EcoFlow and BC Hydro project champions. See Item 4 related recommendations.

2. Update requested by WPLP on design for Section 3. It is understood by WPL that there is currently acceptance by Hydro of a "variance" for the portion of Section 3 already constructed. WPLP still looking for a response on the treatment of the remaining ~500m of this section

BCH provided an overview of their required approach. Existing installation would be grandfathered with several details to be done by WPLP while the new installations will be required to follow BCH current standards. Vic gave a comprehensive overview of the list of items that would need to be done to satisfy the variance and followed up the next day with a concise set of documents outlining all the items that were discussed. (Please see Vic's email of March 30<sup>th</sup> for further clarity) In addition, the grandfathered section is under review by BCH

legal department which may require WPLP to sign off on certain maintenance practices and working relationship. The WPLP team members thanked all parties for their efforts to drive efficiencies for the whole installation and acknowledged the positive efficiencies that would be gained with the partial variance through grandfathering.

- 3. WPLP looking for update from BC Hydro on pricing by Rokstad for Section 1 works.

Russell took the lead on the contractor feedback regarding section 1. The contractors had completed their detailed review and committed to a fixed schedule of 3 months and 2 days requiring on award of contract in time for an April 2nd start with an early July completion. As permitting approvals are still outstanding, there is a low probability of this being met so they have cautioned that if work slides into the summer season additional traffic may impact schedule or cost.

The fixed price estimate is \$1.6 Million based on AMEC's IFC drawings but only general layout drawings form CEC. Once the CEC IFC drawings are forwarded, BCH assured the team that they would be able to confirm the \$1.6 Million price as a not to exceed price subject to no changes in the design or material requirements. In addition, BCH requested all CEC drawings in original format such that they may convert and post them to their system. WPLP agreed and will communicate requirements to CEC.

- 4. Discussion on critical path

Brett referenced the team's discussion at previous meeting related to permitting as the most significant critical path item weighing on everyone's minds. WPLP/EcoFlow upon reflection suggested that key stakeholders and team members working on the various aspects of permitting, get together the week of April 3<sup>rd</sup>. The goal is to carry out a comprehensive review of permitting requirements and action plans with full transparency across all parties to ensure nothing has been missed with the added potential to find further efficiencies with the depth of knowledge and experience across the team. EcoFlow committed to take the lead.

New Items

- A. Permitting: Last Friday, March 17<sup>th</sup>, WPLP was informed by the SLRD that there was a potential constraint between the SLRD and BC Hydro requirements as to the form of document that would permit the installation of Poles 54 – 56 on the SLRD lands. The term of tenure Hydro and WPLP are looking for is in conflict with the tenure constraints with the Community Charter that SLRD is required to manage within. SLRD staff understand and are working in conjunction with WPLP to find a solution.

Options

- SLRD has suggested they would co-operate in a friendly expropriation to get around this impasse. Is this a viable alternative? Least desirable option for BCH as this requires Minister's direction.
- There may be an alternate route that would allow us to bypass the SLRD lands. Incremental costs to WPLP and permitting issue under investigation. Discussion ensued with several additional ideas and general agreement that WPLP make this top priority in the short

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term. David outlined several meetings and discussions he has already set up over the next week and thanked the team for the input and offers of support from BCH.

B. Any new business?

Frank raised the station work requirements and outlined schedule constraints that had been identified. While the permanent solution would have taken to December, the BCH team had identified an interim solution with a seamless transition to ensure the target schedule was maintained. EcoFlow and WPLP thanked the BCH team member for their creative solution and proactive efforts.

Brett recognized the combined experience in the room and challenged the team to put themselves into the future three months, asking "what other things will we wish we were focused on today?" A great discussion ensued with the following items noted.

-Is PPIS Meter purchased and received? David confirmed for WPLP.

-Do we have or will there be any constraints with power house communications? David confirmed this was not expected to be an issue.

-What about intake communications? David acknowledged this was on their list of outstanding items and a key task to complete.

-Material for completion of work? BCH confirmed stores quantities meet material requirements.

-Michael asked a few probing questions but all were identified to be well in hand.

Some general discussions ensued before the meeting was brought to a close. Brett thanked the team for their support while he covered Peter who would be returning from vacation next week and went on to recognize the value of this meeting, previously suggested by Frank.

Subsequent to the meeting

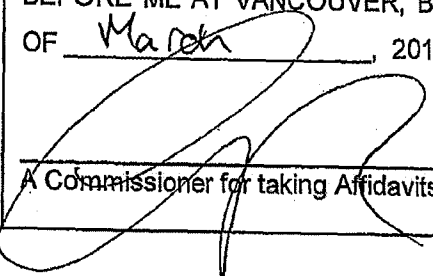
Friday March 31<sup>st</sup> David updated that all Crown Land's applications have been submitted.

Friday, March 31<sup>st</sup> Frank updated on the outstanding EPA termination date language change requested by WPLP on March 10<sup>th</sup>. He has followed up with procurement with a commitment to work with WPLP and the lender in order to provide the form of assurances that are required. Left with Dave Delainey to follow up with Peter and then Frank.

Friday, March 31<sup>st</sup> WPLP has incorporated all the above progress into a fullsome Recapitalization Proposal to the lender and will advance discussions with regular progress updates to be provided to BCH by Peter.

Tuesday, April 4<sup>th</sup> Peter Zell back to Canada and onto the project for EcoFlow.

THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March, 2018.



A Commissioner for taking Affidavits in British Columbia

COLIN BROUSSON  
GOWLING WLG (CANADA) LLP  
BARRISTER & SOLICITOR  
550 BARRARD STREET - SUITE 2300  
DENTALL 5 - VANCOUVER, B.C. V6C 2B5  
TELEPHONE: (604) 683-6498

**From:** Michael Potyok <[mpotyok@midgard-consulting.com](mailto:mpotyok@midgard-consulting.com)>  
**Subject:** Wedgemount - Interconnection  
**Date:** May 23, 2017 at 7:54:58 PM PDT  
**To:** Ryan Hefflick <[ryan.hefflick@bchydro.com](mailto:ryan.hefflick@bchydro.com)>

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Hi Ryan;

Thanks for chatting earlier today. I understand that you are unavailable all day tomorrow (with the exception potentially of an early morning call). But, to the extent there are some queries we had with respect to the project, you would be willing to ask your team to take a look and perhaps be able to respond.

As discussed, we have been engaged by Deloitte to assist with the Wedgemount project.

Because of my past role in which I attended some but not all meetings, I have only partial information as it pertains to the current interconnection process.

The last meeting I attended was March 29 during which Russell had indicated an ability for Hydro to complete their required works with a fixed timeline and a fixed cost. This was contingent on timely project commitments and cost recovery. However, there was an issue potentially with the SLRD land use permit for that portion of line passing through SLRD lands.

Although it was suggested that BCH would potentially accept a short term permit (as would be acceptable to the lender) it appears that since that time, the concept has shifted to using an alternate route to a similar POI that would avoid that route.

I am seeking clarification on how that decision arose and if this concept was locked down or if further work is done.

From the perspective of the project, it will be necessary to ensure that land applications contemplate any revised route.

Also, in general, it would be beneficial in general to have a discussion with you and/or your team to fully flesh out:

- 1) any remaining issues that require resolution;
- 2) role and responsibility assignment for any required study / work toward their resolution;
- 3) immediate next steps and process in generation to finalize planning and move toward execution;
- 3) status of discussions on a DGIA or other agreements that are required to finalize project planning.

That is a big list - our motivation is to ramp fully up to speed on all of these issues quickly in order to resolve any matters from the project side as soon as practical.

I am available to discuss further in the morning if needed or perhaps will follow up with Vic after lunch time.

Best regards,

Michael

*Michael Potyok P.Eng.  
Principal*

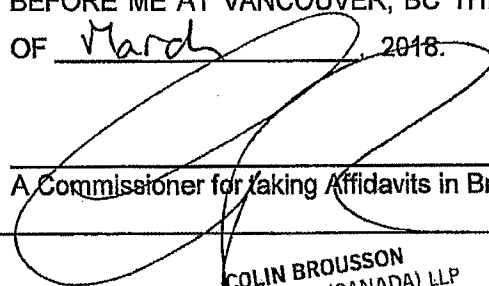
Midgard Consulting Inc.  
828-1130 West Pender St.  
Vancouver, BC, V6E 4A4

cell: 1.604.315.3840

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF MICHAEL POTYOK, SWORN  
BEFORE ME AT VANCOUVER, BC THIS 13 DAY  
OF March, 2018.

---

A Commissioner for Taking Affidavits in British Columbia



COLIN BROUSSON  
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550 BARRARD STREET - SUITE 2300  
BENTALL 5 - VANCOUVER, B.C. V6C 2B5  
TELEPHONE: (604) 683-6498



From: Michael Potyok <[mpotyok@midgard-consulting.com](mailto:mpotyok@midgard-consulting.com)>

Subject: **Wedgemount Interconnection Process**

Date: August 29, 2017 at 2:22:56 PM MST

To: "Rempel, Vic" <[Vic.Rempel@bchydro.com](mailto:Vic.Rempel@bchydro.com)>

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Hi Vic;

Thanks again for the meeting last week. As discussed, we have tried to flesh out our understanding of the remaining process between now and COD for the project interconnection.

What I am trying to do is confirm to parties interested in the project that it is following a standing interconnection agreement process now and that, once an acceptable route is achieved and tenure obtained, the balance of the process should unfold in due course.

Can I ask you to take a look at this process and confirm that we have not missed any material steps or hold points?

Thanks and regards,

Michael

*Michael Potyok P.Eng. MBA  
Principal*

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V6E 4A4

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## MEMORANDUM

**To:** Vic Rempel, BC Hydro  
**From:** Michael Potyok, Midgard  
**Date:** August 29, 2017  
**Subject:** Wedgemount – BC Hydro Process – Remaining Interconnection Steps to Operation

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Vic;

Pursuant to our discussion, this memo contains a listing of our understanding of the steps in the BC Hydro Interconnection Process that the Wedgemount Hydro project will need to pass through prior to COD. It does not include supporting activities that need to be completed but are not strictly part of the interconnection process (e.g. CN crossing permits, etc.), which are expected but not strictly part of the BC Hydro process.

Will you please review and confirm that we have not overlooked any key steps and further confirm that the project, once a route is determined and tenure obtained, that the project will follow a standard BC Hydro interconnection process?

Best Regards,

Michael

**Table 1 – Remaining Interconnection Steps to Operation**

Ref No.	Step	Who	Description
1	Outstanding drawings submitted to BCH to complete 85% design review	Project	BCH has indicated that drawings are still required showing POI to powerhouse (electrical and physical). Drawings are: 1) Site Plan and Single Line Diagram (POI to Powerhouse) 2) Subdivision civil Works Drawings: Civil drawings including cross sections demonstrating adherence to BC Hydro underground clearance requirements between BCH duct work and generator duct work in the subdivision. 3) Modifications to 35% design drawings needed to correct identified issues.
2	Drawings submitted for 95% design review	Project	Based on feedback from 35% design review, the 65% design review is not necessary.
3	Review and acceptance of 95% design package	BCH	Expect Owner's engineer comments will require some minor modifications of design package.
4	Update Cost Estimate for Interconnection	BCH (AMEC/ROC Contractor)	Forms the basis for the amount of security and deposit required from the customer.
5	Prepare Project Plan for Interconnection	BCH (AMEC)	Establishes the schedule and ability to deliver the system modifications required for the projects.
6	Assemble Facility Study for Internal Approval, Secure Approval and Issue for Client Review	BCH	Package the required components of the cost estimate and project plan into the Facility Study, secure internal approval to issue to client.
7	Review & Accept Facilities Study	Project	Customer reviews and confirms they are ready to proceed to DGIA execution.
8	Assemble DGIA appendices	BCH	Prepare the project-specific appendices to the DGIA (e.g. schedule, security amount, project interconnection requirements)



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Ref No.	Step	Who	Description
9	Provide DGIA security	Project	Customer directs their bank to provide a letter of credit for security and funds for directly funded items.
10	Sign & Tender DGIA	BCH	DGIA provided to customer.
11	Execute DGIA	Project	Customer executes DGIA.
12	Kick-Off Execution Phase	BCH	BCH initiates next phase of their internal project delivery process.
13	Construction Procurement	BCH (AMEC)	BCH procures necessary services and material to perform system upgrades/modifications.
14	Interconnection Construction	BCH (AMEC)	Physical work completed.
15	Commissioning	BCH (AMEC) Project	BCH and the customer are coordinated through the commissioning process outlined in System Operating Order 11-28 to verify that the interconnection is complete and safe to be operated as planned designed and constructed.

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

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**AFFIDAVIT**

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**GOWLING WLG (CANADA) LLP  
Barristers & Solicitors  
Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5**

**Tel. No. 604.683.6498  
Fax No. 604.683.3558**

**File No. L67090009**

**DS**

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Valmyr MainSibert, notary (M1B3)  
A Notary for taking Affidavits within the Province of Quebec



This is the 1<sup>st</sup> affidavit  
of M. Durivage in this case and was  
made on March 13, 2018

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
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PLAINTIFF

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28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.

DEFENDANTS

**AFFIDAVIT**

I, MAXIME DURIVAGE, of 1080 Grande Allée West, Quebec City, Quebec G1K 7M3  
SWEAR THAT:


1. I am the Director, Private Placements working for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc. ("IA"), and as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.
2. I have read the Affidavit of Bruce Chow made January 19, 2018 (the "**Chow Affidavit**"), the Affidavit of Melinda McKie (the "**McKie Affidavit**"), the Affidavit of Paul Chambers (the

"Chambers Affidavit"), the Affidavit of Michael Potyok (the "Potyok Affidavit"), the Affidavit #2 of Luc Fournier (the "Fournier Affidavit"), and the Affidavit of Stefanie Leduc (the "Leduc Affidavit") sworn in this matter. I have adopted the capitalized terms used in the Fournier Affidavit.

3. Paragraphs 3 through 12 of the Fournier Affidavit accurately set out the background facts of this matter.

4. On June 14, 2017, I attended a meeting between IA and BCH to discuss the Project following the appointment of the Receiver. Vic Rempel, Ryan Hefflick, Olha Lui and Joanne McKenna attended the meeting on behalf of BCH. I attended on behalf of IA along with Luc Fournier and Stéfanie Leduc. I understood that Olha Lui and Joanne McKenna represented the BCH department responsible for EPAs. During this meeting, Olha Lui informed us that IA should not worry about the EPA remaining valid even if the COD was not achieved by September 30, 2017. Olha Lui explained that the time did not start until the facility study was finalized. Paragraph 4 of the Leduc Affidavit accurately reflects my memory and understanding of that meeting.

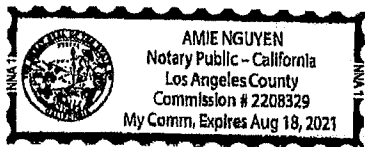
SWORN BEFORE ME at the City of  
Los Angeles, in the State of California,  
this 13 day of March, 2018.

Amie Nguyen   
A Notary Public in and for State of  
California.

  
MAXIME DURIVAGE

My commission expires: 8/18/2021

I attach here my official seal:





No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.

PLAINTIFF

AND:

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DEFENDANTS

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**AFFIDAVIT**

---

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Suite 2300, 550 Burrard Street  
Vancouver, BC V6C 2B5

Tel. No. 604.683.6498  
Fax No. 604.683.3558

File No. L67090009

DS

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Veronique Hain Gilbert, notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec



This is the 1<sup>st</sup> Affidavit  
of Bruce Chow in this case and was made  
on January 19, 2018

No. S-174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, BRUCE CHOW, of 333 Dunsmuir Street, 17<sup>th</sup> Floor, in the City of Vancouver, in the Province of British Columbia, make oath and say as follows:

1. I am the Manager, Power Acquisitions, Contracts and Evaluation at British Columbia Hydro and Power Authority ("BCH"), a stakeholder in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true.
2. BCH is a Crown corporation owned by the government of British Columbia. BCH is responsible for generating and purchasing electricity that is provided to its customers. As part of this mandate BCH acquires power from independent power producers ("IPPs").
3. In order to be awarded an electricity purchase agreement pursuant to BCH's Standing Offer Program ("SOP"), an IPP must meet a number of eligibility requirements, including, but

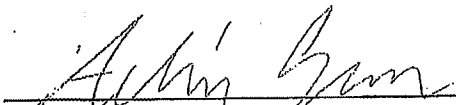
not limited to, having all material permits and a completed and valid interconnection system impact study. Under BCH's power acquisition programs, including the SOP, the IPP is responsible for the development of its project, and a project cannot achieve commercial operation until it is connected to the BCH grid. The SOP rules in place at the time of Wedgemount's application provided that the target commercial operation date (the "Target COD"), as defined in the electricity purchase agreement, submitted by an IPP must be within three years of signing an electricity purchase agreement.

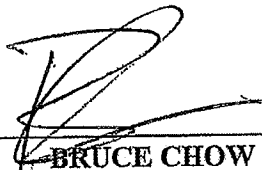
4. Under the SOP, BCH entered into an electricity purchase agreement with Wedgemount Power Limited Partnership, a limited partnership IPP represented by its general partner Wedgemount Power (GP) Inc. ("Wedgemount") with respect to the Wedgemount Creek IPP project (the "Project"). Attached and marked as Exhibit "A" is a true copy of the electricity purchase agreement dated March 6, 2015 (the "EPA") between BCH and Wedgemount, in redacted form. The EPA provides that the commercial operation date for the Project must occur within two years of the Target COD, being September 30, 2015, the date selected by Wedgemount.
5. Pursuant to the terms of the EPA, BCH has the right to terminate the EPA if, among other things, the Project doesn't reach commercial operation by September 30, 2017 or if Wedgemount is insolvent or declared bankrupt.
6. As of January 19, 2018, the Project has not reached commercial operation.
7. Based on information received from members of BCH's interconnection group, I understand that the Receiver has yet to finalize the distribution line routing and point of interconnection to the BCH system and has yet to receive all of the required permitting and stakeholder approvals to proceed to the next steps in the interconnection process. As such, the timeline for completion of the interconnection studies and commercial operation of the Project is uncertain and will not occur in the near future.
8. On May 12, 2017, Deloitte Restructuring Inc. was appointed as receiver and manager (the "Receiver") over the assets and property of Wedgemount and Wedgemount Power Inc., including the Project.

9. Based on a review of notes and summaries of a call between BCH and the Receiver on May 18, 2017, and discussions with BCH staff that participated in that call, I understand that BCH confirmed that the Project needed to achieve commercial operation by September 30, 2017 and that at no time during the May 18, 2017 call did BCH waive its termination rights under the EPA. Throughout the receivership, BCH has reserved its termination rights and maintained that its termination rights for the EPA have not been waived. Attached and marked as **Exhibit "B"** is a true copy of a letter dated September 29, 2017 from BCH to the Receiver, in redacted form.
10. Once BCH exercises its termination rights in accordance with the terms of the EPA for Wedgemount failing to reach commercial operation by the date specified in the EPA or its insolvency, the termination has immediate effect. There is no provision allowing Wedgemount to cure either default.
11. On June 12, 2015, BCH, Wedgemount and Travelers Capital Corporation (as agent for Wedgemount's lenders) (the "Agent") entered into a lender consent agreement (the "**Lender Agreement**") with respect to the Project. Attached and marked as **Exhibit "C"** is a true copy of the Lender Agreement, in redacted form.
12. Pursuant to the Lender Agreement, BCH agreed that it would provide the Agent with notice of termination at the same time as it is provided to Wedgemount and that it would not terminate the EPA solely as a result of Wedgemount's insolvency (if the lenders were promptly and diligently enforcing their security) until 30 days after the expiry of any court order period restricting the termination of the EPA. BCH also agreed that, where the EPA required BCH to deliver a notice of termination that would entitle BCH to terminate, those termination rights would be effective 45 days after issuing its notice of termination. The Lender Agreement does not contain any provision allowing Wedgemount or the Agent to cure defaults (unless the defaults are curable under the EPA).
13. BCH has considered its options with respect to the EPA and determined that it is not in the best interests of BCH or its ratepayers to proceed with the EPA. Accordingly, BCH has decided to terminate the EPA in accordance with its terms.

14. I make this affidavit in support of an application by BCH to obtain leave pursuant to the receivership order to allow BCH to terminate the EPA.

SWORN BEFORE ME at the City of )  
Vancouver, in the Province of British )  
Columbia, this 19th day of January 2018 )

  
A Commissioner for taking oaths in and for )  
the Province of British Columbia )

  
BRUCE CHOW

**ADRIAN GREER**  
*Articling Student*  
**BORDEN LADNER GERVAIS LLP**  
1200 Waterfront Centre, 200 Burrard Street  
P.O. Box 48600, Vancouver, Canada V7X 1T2  
604-640-4238

BC Hydro Standing Offer Program - EPA

This is Exhibit "A" referred to in the affidavit of Bruce Chan sworn before me at Vancouver this 19<sup>th</sup> day of January A.D. 2018.

BC HYDRO  
ELECTRICITY PURCHASE AGREEMENT  
STANDING OFFER PROGRAM

Heinrich  
A Commissioner for taking Affidavits  
within British Columbia

THIS ELECTRICITY PURCHASE AGREEMENT ("EPA") is made as of March 6, 2015 (the "Effective Date")

BETWEEN:

Wedgemount Power Limited Partnership a limited partnership represented by its General Partner Wedgemount Power (GP) Inc., a corporation incorporated under the laws of the Province of British Columbia with its head office at 5403 Buckingham Avenue, Burnaby, BC V5B 1Z9

("Seller")

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act* R.S.B.C. 1996, c. 212, with its head office at 333 Dunsmuir Street, Vancouver, BC V6B 5R3

("Buyer").

The Parties agree as follows:

1. **INTERPRETATION**
  - 1.1 The definitions and certain principles of interpretation that apply to this EPA are set out in Appendix 1.
2. **TERM**
  - 2.1 The term ("Term") of this EPA commences on the Effective Date and continues until the [REDACTED] anniversary of COD, unless it is terminated earlier as authorized under this EPA.
3. **CONSTRUCTION AND OPERATION**
  - 3.1 **Construction and Operation Costs and Liabilities** - Except as set out in Appendix 3, the Seller shall be responsible for all costs, expenses, liabilities and other obligations associated with the design, engineering, construction, Interconnection, commissioning, operation, maintenance and decommissioning of the Seller's Plant.
  - 3.2 **Standard of Construction and Operation** - The Seller shall own the Seller's Plant and shall ensure that the Seller's Plant is operated by qualified and experienced individuals. The Seller

represents, warrants and covenants that the location, design, engineering, construction, Interconnection, commissioning, operation and maintenance of the Seller's Plant, are and, except as otherwise consented to by the Buyer, shall be carried out at all times during the Term in compliance with: (a) the information in the Application in all material respects; and (b) the Project Standards as defined in Appendix 1, provided that if the requirements for Clean Energy are amended or replaced after the Effective Date, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that allows the Delivered Energy to continue to qualify as Clean Energy under the new requirements.

**3.3 Project Changes** - Without limiting any other section of this EPA under which the Buyer's consent is required, the Seller shall not make any change to:

- (a) those aspects of the Seller's Plant described in sections 1 - 3 of Appendix 2; or
- (b) any other aspects of the Seller's Plant or the information in any interconnection study completed for the Seller's Plant prior to the Effective Date where such change would increase the Buyer's liability for Network Upgrade Costs or any other costs with respect to the Seller's Plant or any other project,

in either case without the Buyer's prior consent, such consent not to be unreasonably withheld, conditioned or delayed. The Seller shall not make any change to the Plant Capacity without the Buyer's prior consent. The Seller acknowledges that the Buyer may require as a condition of its consent to any change described in this section, or any other change to the Seller's Plant for which the Buyer's consent is required under any other section of this EPA, that the Seller agree in writing to reimburse the Buyer for any incremental liability for Network Upgrade Costs with respect to the Seller's Plant or any other project, and any other losses, costs and damages incurred by the Buyer as a result of any change described in this section. The Buyer may also require the Seller to provide security to the Buyer to secure such reimbursement obligation.

**3.4 Development Reports** - The Seller shall deliver a Development Report to the Buyer on each January 1, April 1, July 1 and October 1 after the Effective Date until COD.

**3.5 Network Upgrades** - The Parties' obligations with respect to Network Upgrade Costs and Network Upgrade Security are set out in Appendix 3.

**3.6 Revenue Metering Equipment** - The Seller shall ensure that a Revenue Meter is installed, operated and maintained at a location approved by the Buyer, acting reasonably. The Revenue Meter must be tested and sealed according to Measurement Canada standards by a facility that is accredited by Measurement Canada. The Revenue Meter must be capable of accurately measuring the quantity of Energy generated by the Seller's Plant and delivered to the POI independent of all other generation equipment or facilities. If there is any dispute regarding the accuracy of the Revenue Meter, either Party may give notice to the other Party of the dispute. In that case the Parties will resolve the matter in accordance with the *Electricity and Gas Inspection Act* (Canada). The Buyer may, at its cost, install a duplicate revenue meter at the Seller's Plant at a location agreed to by the Seller, acting reasonably. The Seller shall allow the Buyer to access the Seller's Plant to install, inspect and maintain any such duplicate meter. The Seller shall make equipment and telephone access available to the Buyer as required for the duplicate revenue meter. If the Seller's Plant is rated 1.00 MVA or higher, the Seller shall ensure that the Seller's Plant is equipped with SCADA capability.



- 3.7 Insurance** - The Seller shall obtain, maintain and pay for (i) policies of commercial general liability insurance with a per occurrence limit of liability not less than \$3,000,000 applicable to the Project, and (ii) construction insurance and, in respect of the Seller's Plant, property insurance, with limits of liability and deductibles consistent with those a prudent owner of a facility similar to the Seller's Plant would maintain and those the Facility Lender requires. All commercial general liability policies must include the Buyer, its directors, officers, employees and agents as additional insureds and must contain a cross liability and severability of interest clause. All policies of insurance must include a waiver of subrogation in favour of the Buyer. All policies of insurance must be placed with insurers that have a minimum rating of A- (or equivalent) by A.M. Best Company and are licensed to transact business in the Province of British Columbia and must be endorsed to provide to the Buyer 30 days' prior written notice of cancellation, non-renewal or any material amendment that results in a reduction in coverage. The Seller shall give the Buyer a copy of the insurance certificate(s) for the insurance required to be maintained by the Seller under this section 3.7 not more than 30 days after the effective date of coverage and promptly upon renewal thereafter. The Seller shall be responsible for the full amount of all deductibles under all insurance policies required to be maintained by the Seller under this section 3.7.
- 3.8 Early COD** - Except with the Buyer's prior consent, COD may not occur earlier than 90 days prior to Target COD. The Buyer shall not be required to incur any incremental expense or other liability of any kind to enable COD to occur prior to Target COD.
- 3.9 Change in Target COD** - If the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.
- 3.10 No Liability For Delay** - The Buyer shall have no liability under this EPA for delays in completion of (i) any Network Upgrades, or (ii) other work undertaken by the Distribution Authority or the Transmission Authority on the Seller's Plant side of the POI, in each case howsoever arising.
- 3.11 Buyer Target COD Deferral** - The Buyer may at any time not later than 365 days after the Effective Date deliver written notice to the Seller that the Buyer may require the Seller to extend the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA. Within 30 days after receipt of a notice under this section, the Seller shall deliver to the Buyer an estimate of all costs that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, solely as a result of a deferral of Target COD under this section together with all information required to verify the cost estimate. The Seller shall provide any additional information reasonably requested by the Buyer to verify the cost estimate and shall permit the Buyer and any third party retained by the Buyer to verify the cost estimate complete access to the Seller's books, records, contracts and other documents as required to verify the cost estimate. Within 45 days after receiving a complete and accurate cost estimate, the Buyer shall provide written notice to the Seller to either: (i) defer the Target COD to the date specified in the notice, provided that date is not more than 365 days after the Target COD then in effect under this EPA, or (ii) maintain the Target COD then in effect under this EPA without deferral under this section. If the Buyer does not deliver a notice as required under this section, the Buyer will be deemed to have elected to maintain the Target COD then in effect under this EPA without deferral. If the Buyer delivers a notice to defer the Target COD in accordance with this section, the Target COD shall be postponed to the date specified in the deferral notice. If the Target COD is postponed under this

section, the Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller solely as a result of the postponement of the Target COD under this section, after taking all reasonable mitigation measures to limit or avoid those costs. Any payment by the Buyer to the Seller under this section shall be due within 30 days after delivery by the Seller to the Buyer of an invoice setting out the details of such costs in reasonable detail together with all supporting information and documents required to verify the amounts in the invoice.

### 3.12 First Nations Consultation

3.12.1 For the purposes of this EPA, the following terms shall have the following meanings, respectively:

- (a) "First Nations" means:
- (i) for the purposes of this EPA (other than subsection 3.12.3), any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, that is identified by the Crown, before or after the Effective Date, as a band, band council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body with which consultation regarding any of the Potential Impacts is required in accordance with applicable Laws as a result of an application or request by the Seller or any Affiliate of the Seller for any Permit or tenure related directly to the Seller's Plant or any amendment, renewal, replacement, assignment or any other decision whatsoever by the Crown with respect to any Permit or tenure related directly to the Seller's Plant, and
  - (ii) for the purposes of subsection 3.12.3, any band, band council, tribal council, aboriginal treaty nation and/or other aboriginal group or aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia, whether or not identified by the Crown pursuant to the foregoing subsection (i) of this subsection 3.12.1(a),
- (b) "Order or Decision" means:
- (i) any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC; and
  - (ii) a writ or any other document commencing legal proceedings with respect to the Buyer or any written communication threatening to issue a writ or otherwise commence legal proceedings with respect to the Buyer, alleging that there has been a failure to consult with First Nations in relation to Potential Impacts, and which has received a Verification;
- (c) "Potential Impacts" means any adverse impact or potential adverse impact on the established or potential aboriginal rights (including title) of a First Nation as a result of the following matters (and which, for greater certainty, does not in any circumstance include any matters arising on the Buyer's side of the Point of Interconnection or on the Transmission System):
- (i) this EPA;

- (ii) the Project;
  - (iii) the interconnection of the Seller's Plant to the Transmission System; or
  - (iv) any activities carried out by the Seller, any Affiliate, consultant or contractor of the Seller, or any other Person for whom the Seller is responsible at law directly related to the Seller's Plant to enable the Seller to comply with its obligations under the EPA; and
- (d) "Verification" means that a lawyer, qualified to practice in British Columbia and acceptable to both the Buyer and Seller, has reviewed the writ or other document commencing legal proceedings or the written communication threatening to issue a writ or otherwise commencing legal proceedings, and verified in writing to both parties that there is a reasonable prospect of an order or decision of a court of competent jurisdiction or regulatory authority, including the BCUC, in favour of the party who has commenced or threatened the writ or other legal proceedings. The Buyer and the Seller shall each provide to the lawyer conducting such review such information and other assistance as may be requested by that lawyer to assist them in completing the review. If the Buyer and the Seller are unable to agree on an acceptable lawyer to provide the Verification within 15 days after the Buyer has provided the name of a proposed lawyer to the Seller, either Party may refer the matter to arbitration under section 7.5 and each of the Buyer and the Seller shall, within 7 days after the dispute is referred by either Party to arbitration, submit a list of lawyers that would be acceptable to that Party and the Parties shall ask the arbitrator to select the lawyer from the proposed lists that is, in the arbitrator's opinion, after receiving any submissions from the Parties the arbitrator may request, the most qualified lawyer to provide the Verification. The Buyer and the Seller shall each pay 50% of the costs of obtaining the Verification. Each Party acknowledges and agrees that any lawyer providing a Verification is jointly retained by the Parties and any communications between the Parties and the lawyer and any work product of the lawyer in subject to solicitor client privilege.

3.12.2 If, prior to the second anniversary of COD, the Buyer is or may be required by an Order or Decision to consult with and/or accommodate any First Nations in relation to Potential Impacts, then the Seller, if requested to do so by the Buyer, by notice sent to the Seller as soon as practicable after the Buyer receives notice of the Order or Decision, shall:

- (a) carry out that consultation to the extent the Seller is legally capable of doing so and in accordance with applicable Laws, or assist the Buyer if and to the extent requested by the Buyer in the consultation process;
- (b) take measures, to the extent (if any) required under the Order or Decision, or under applicable Laws, to address, prevent, mitigate, compensate or otherwise accommodate any Potential Impacts; and
- (c) provide regular written reports to the Buyer concerning the Seller's compliance with this subsection, or such other information and communications as may be reasonably requested by the Buyer.

3.12.3 Notwithstanding subsection 3.12.2, the Buyer hereby confirms that the responsibilities of the Seller in subsection 3.12.2 do not in any way whatsoever encompass or apply to the following matters, whether arising prior to or after the second anniversary of COD:

- (a) any duty to consult or accommodate applicable to any Crown decision-maker or regulatory authority, which for greater certainty does not include the Buyer, that is considering or dealing with the Project in any way, including in connection with the consideration of the issuance of any of the Permits;
- (b) any measure of reconciliation or accommodation that the Buyer may offer or be required to provide to a First Nation related to land or resource use that is not associated with the Potential Impacts, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export; and
- (c) any measure of reconciliation or accommodation that the Crown may offer or be required to provide to a First Nation related to land or resource use, including resource revenue sharing, or that is related to electricity policy, planning, regulation or export.

3.12.4 The Buyer will as soon as practicable notify the Seller of any written communication received by the Buyer that commences a legal proceeding with respect to the Buyer or that threatens to issue a writ or any other document commencing a legal proceeding with respect to the Buyer, with respect to which the Buyer intends to request the Seller to carry out its obligations under subsection 3.12.2. Any failure by the Buyer to notify the Seller as required under subsection 3.12.2 or subsection 3.12.4 shall not limit or otherwise affect the Seller's obligations under subsection 3.12.2 except to the extent the Buyer's failure to notify the Seller has a materially adverse effect on the Seller. For greater certainty, the covenant of the Buyer in section 10.9 applies to the obligations of the Seller in subsections 3.12.2 and 3.13, and the Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in providing assistance to the Seller at the request of the Seller as contemplated under that section to assist the Seller to perform its obligations under subsections 3.12.2 and 3.13. Without limiting the generality of but subject to the foregoing (including the obligation to reimburse the Buyer for all costs reasonably incurred by the Buyer), for greater certainty, the Buyer will at the request of the Seller provide reasonable assistance to the Seller in the performance by the Seller of its obligations under subsections 3.12.2 and 3.13; including agreeing to reasonable amendments of the EPA as contemplated by section 3.13; provided however, that any proposed amendment of the EPA must be in the public interest.

3.12.5 At any time prior to the second anniversary of COD, the Buyer will not have any discussions with any First Nation with respect to the consultation or accommodation regarding the Project without first notifying the Seller of its intention to have such discussions and seeking the consent of the relevant First Nation for the Seller to participate in such discussions. The foregoing obligation does not extend to any properties or infrastructure owned by the Buyer.

3.13 **Right to Terminate** - If a measure or measures required to be undertaken by the Seller in order to comply with its obligations under section 3.12 of this EPA would impose a commercially unreasonable cost or other obligation on the Seller, or would require the consent of the Buyer under any provision of this EPA or would require agreement by the Buyer to an amendment of the EPA in order to address any such adverse impacts on established and potentially existing aboriginal rights (including title) and if such consent or agreement to amend is not provided within 60 days after the Seller's request to the Buyer, then the Seller may terminate this EPA on notice to the Buyer, and such termination will be effective on the date that is 60 days after the date of delivery of such notice of termination unless, prior to that date, the Seller, by notice from the Buyer or otherwise, has been relieved of its obligation to take the measure or measures that would impose the unreasonable cost or obligation on the Seller or the consent or agreement to an amendment of the EPA has been provided, as applicable. A termination by the Seller under this

section shall, for all purposes of this EPA, be treated in the same manner as a termination by the Seller under subsection 8.3(d) of this EPA. If the Seller terminates the EPA pursuant to this section, the Seller shall not be, or be deemed to be or have been, in breach of section 3.12 of this EPA for failure to implement the measure or measures that gave rise to the Seller's right to terminate the EPA under this section. For purposes of this section 3.13, "a commercially unreasonable cost or other obligation on the Seller" means a cost or obligation (i) to be borne by the Seller, (ii) that results, or can reasonably be expected to result, from the implementation of a measure or measures required under section 3.12, and (iii) that would impose upon the Seller a commercially unreasonable burden, having regard to all other financial benefits and burdens of the EPA to the Seller over the entire Term.

**3.14 Planned Outages - The Seller shall:**

- (a) give the Buyer not less than 90 days' prior notice of any Planned Outage, or such shorter period to which the Buyer may consent, such consent not to be unreasonably withheld, delayed or conditioned, and such notice shall state the start date and hour and the end date and hour for the Planned Outage. Notwithstanding the foregoing, at any time prior to 48 hours before the start of a Planned Outage that will be more than 7 days long, the Seller may change the proposed start time for the Planned Outage by not more than 24 hours and at any time prior to 48 hours before the end of the Planned Outage, the Seller may change the proposed end time of the Planned Outage on notice to, and without the consent of, the Buyer, provided that if as a result of such notice from the Seller the Planned Outage starts later or ends earlier than originally scheduled, there will be no deemed Delivered Energy under section 4.7 during the period between the originally scheduled start time and the revised start time and/or between the originally scheduled end time and the revised end time of the Planned Outage;
- (b) in accordance with the Buyer's written instructions, use the Buyer's web-based application or other system for communicating Planned Outages to the Buyer;
- (c) make commercially reasonable efforts to coordinate all Planned Outages with the Buyer's requirements as notified to the Seller; and
- (d) make commercially reasonable efforts to coordinate all Planned Outages with the Transmission Authority's maintenance schedule where such schedule is publicly available or otherwise notified to the Seller.

Not less than 30 days before a Planned Outage is scheduled to commence, the Buyer may request the Seller to reschedule that Planned Outage. Within 14 days after receipt of such a request, the Seller shall provide the Buyer with an estimate, together with reasonable supporting detail, including a reasonable contingency allowance, of the costs, if any, the Seller expects to incur, acting reasonably, as a result of rescheduling the Planned Outage in accordance with the Buyer's request. Within 7 days after receipt of such cost estimate, the Buyer shall notify the Seller if the Buyer requires the Seller to reschedule the Planned Outage, and upon receipt of such notice from the Buyer, the Seller shall adjust the schedule for the Planned Outage as required by the Buyer, provided that the rescheduling is consistent with Good Utility Practice and does not have a materially adverse effect on the operation of the Seller's Plant or on any facility that is a thermal host for the Seller's Plant. The Buyer shall reimburse the Seller for all costs reasonably incurred by the Seller as a result of such rescheduling, but not exceeding the estimate delivered by the Seller to the Buyer under this section 3.14.

**3.15 Notice of Outages** - Other than for a Planned Outage for which notice has been given pursuant to section 3.14, the Seller shall promptly notify the Buyer of any outage, or any anticipated outage of the Seller's Plant.

#### **4. PURCHASE AND SALE OBLIGATIONS**

**4.1 Pre-COD Energy** - The Buyer shall make commercially reasonable efforts to accept delivery of Energy at the POI prior to COD, provided that the Buyer shall not be required to take any steps or to incur any incremental expense or other liability of any kind to enable delivery of Energy to the POI prior to 90 days before the Target COD.

**4.2 Post-COD Sale and Purchase of Energy** - From and after COD for the remainder of the Term, the Seller shall sell and deliver all Energy to the Buyer at the POI and the Buyer shall purchase and accept delivery of all Delivered Energy. The Buyer shall pay for all Delivered Energy after COD in accordance with section 5.2. Notwithstanding the foregoing, the Buyer shall have no obligation to take or pay for any Energy that is generated as a result of an increase in the Plant Capacity made without the consent of the Buyer in accordance with section 3.3. When the Seller is delivering Energy to the Buyer, the Seller shall make commercially reasonable efforts to operate the Seller's Plant in a manner that ensures delivery of Energy at the POI at a uniform rate within each hour during which Energy is delivered.

**4.3 Transmission Outages** - The Buyer will not be in breach or default of its obligations under section 4.1, section 4.2 or section 5.2 if the Buyer is not able to accept delivery of Energy at the POI as a result of a Distribution/Transmission Constraint or Disconnection. The Buyer shall have no liability with respect to a Distribution/Transmission Constraint or Disconnection, except as set out in section 4.7, if applicable.

**4.4 Environmental Attributes** - The Seller hereby transfers, assigns and sets over to the Buyer all right, title and interest in and to the Environmental Attributes.

**4.5 Exclusivity** - The Seller shall not at any time during the Term commit, sell or deliver any Energy or any Environmental Attributes to any Person, other than the Buyer under this EPA. The Seller shall not use any Energy or use, apply, claim or retire Environmental Attributes for any purpose whatsoever except for sale to the Buyer under this EPA. These prohibitions do not apply when the Buyer is in breach of its obligations under section 4.2. The Seller acknowledges and agrees that the exclusive rights conferred by this section are of fundamental importance, and that, without prejudice to any right to claim damages, compensation or an accounting of profits, the granting of an interim, interlocutory and permanent injunction is an appropriate remedy to restrain any breach or threatened breach by the Seller of the obligation set out in this section.

**4.6 Custody, Control, Risk of and Title To Energy** - Custody, control, risk of, and title to, all Energy passes from the Seller to the Buyer at the POI. The Seller shall ensure that all Energy delivered to the Buyer under this EPA and all Environmental Attributes transferred to the Buyer under this EPA are free and clear of all liens, claims, charges and encumbrances. The Seller is responsible for all transmission losses and costs relating to the transmission of Energy from the Seller's Plant to the POI.

**4.7 Distribution/Transmission System Constraint or Disconnection** - If in any month after COD the Seller is unable to deliver Energy at the POI solely as a result of a Distribution/Transmission Constraint or Disconnection that exceeds 30 continuous minutes in duration and such Distribution/Transmission Constraint or Disconnection:

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- (a) is not caused by an event beyond the control of the Buyer or the Transmission Authority;
- (b) is not caused by the Seller or the Seller's Plant; and
- (c) occurs after Distribution/Transmission Constraints or Disconnections have been in effect for more than 24 hours in the aggregate, whether or not continuous, in that month;

then, notwithstanding that the Buyer is excused under section 4.3 from its obligations under section 4.2, the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by the amount of Energy, not exceeding ■ MWh, that could have been generated and delivered at the POI in each hour after the 24 hours has elapsed but for the occurrence of the Distribution/Transmission Constraint or Disconnection less any costs the Seller avoided or, acting reasonably, could have avoided during the Distribution/Transmission Constraint or Disconnection. The Seller shall maintain accurate and complete records of all avoided or avoidable costs and shall report all such costs to the Buyer and provide the Buyer with all information required to calculate such costs. The Buyer or its designated representative may audit such costs and in that event the provisions of section 7.2 apply. The Buyer will not be required to pay for any Energy under this section during any period specified as a maintenance period in an Energy schedule delivered pursuant to section 7.7 or during any other period where the Seller's Plant would otherwise not have been operating. For greater certainty, the provisions of this section will not apply during any period when the Buyer is or would be excused, in accordance with section 7.9, from its obligation to accept delivery of Energy as a result of Force Majeure.

4.8 Buyer Dispatch/Turn-Down Right -

- (a) The Buyer may at any time during the Term deliver notice to the Seller requiring the Seller to turn down or shut off the Seller's Plant (a "Dispatch/Turn-Down") and the Seller shall forthwith comply with any such direction except to the extent that any operational, technical, regulatory or fuel storage constraint prevents or limits the Seller's ability to comply with such direction.
- (b) Energy, not exceeding ■ MWh, that could have been generated and delivered to the POI in each hour as Delivered Energy but for a direction from the Buyer pursuant to subsection 4.8(a) shall be deemed to be Delivered Energy and the Buyer shall pay to the Seller an amount equal to the price payable for post-COD Delivered Energy under section 5.2 multiplied by that amount of Energy less any costs the Seller avoided or, acting reasonably, could have avoided during the period of the Dispatch/Turn-Down.
- (c) There shall be no deemed Delivered Energy pursuant to this section in any hour specified as a maintenance period in any Energy schedule delivered pursuant to section 7.7 or during any other hour when the Seller's Plant would otherwise not have been operating if there had been no Dispatch/Turn-Down notice or in any period when the Buyer is excused under section 7.9 from its obligations under section 4.2 and 5.2.

5. PRICE AND PAYMENT TERMS

- 5.1 Pre-COD Energy - No price is payable by the Buyer for Energy delivered to the POI prior to COD.

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5.2 Post-COD Energy Price - Subject to section 4.2, the price payable by the Buyer for each MWh of Delivered Energy after COD and prior to expiry of the Term is [redacted] /MWh, adjusted as follows:

(a) effective as of January 1 in each year after the Effective Date in accordance with the following formula:

Payment Price<sub>n</sub> = (.5 \* [redacted] /MWh \* CPI<sub>January 1, n</sub> / CPI<sub>January 1, 2015</sub>) + (.5 \* [redacted] /MWh)

Where:

n = the year for which the relevant calculation is being conducted

CPI<sub>January 1, n</sub> = the CPI for December in the year immediately prior to the year for which the relevant calculation is being conducted; and

(b) for each hour, the price determined pursuant to subsection (a) for Delivered Energy during that hour will be adjusted to an amount (expressed in \$/MWh) equal to the percentage of that price applicable for that hour as set out in the table in Appendix 4.

5.3 No Further Payment - The amount payable by the Buyer as specified in section 5.2 is the full and complete payment and consideration payable by the Buyer for Energy delivered by the Seller to the Buyer under this EPA and for the Environmental Attributes transferred by the Seller to the Buyer under this EPA.

5.4 Statements and Payment -

5.4.1 Statements:

(a) The Seller shall, by the 15th day of each month after COD, deliver to the Buyer a statement for the preceding month. The statement must indicate, among other things, the amount of Delivered Energy for that month (including any deemed Delivered Energy and any associated avoided or avoidable costs pursuant to section 4.7), the price payable for the Delivered Energy, and any Final Amounts owing by either Party to the other Party. The statement must set out in reasonable detail the manner by which the statement and the amounts shown thereon were computed and be accompanied by sufficient data to enable the Buyer, acting reasonably, to satisfy itself as to the accuracy of the statement.

(b) Either Party may give notice to the other Party of an error, omission or disputed amount on a statement within 36 months after the statement was first issued together with reasonable detail to support its claim. After expiry of that 36 month period, except in the case of willful misstatement, fraud or concealment, amounts on a previously issued statement will be considered accurate and amounts which were omitted will be considered to be nil, other than amounts disputed in accordance with this subsection within the 36 month period, which will be resolved in accordance with this EPA.



**5.4.2 Payment:**

- (a) Within 30 days after receipt of a statement delivered under subsection 5.4.1, and subject to section 5.6, the Buyer shall pay to the Seller the amount set out in the statement, except to the extent the Buyer in good faith disputes all or part of the statement by notice to the Seller in compliance with subsection 5.4.1(b). If the Buyer disputes any portion of a statement, the Buyer must nevertheless pay the undisputed net amount payable by the Buyer pursuant to the statement.
- (b) Any amount required to be paid in accordance with this EPA, but not paid by either Party when due, will accrue interest at an annual rate equal to the Prime Rate plus 2%, compounded monthly. Any disputed amount that is found to be payable will be deemed to have been due within 30 days after the date of receipt of the statement which included or should have included the disputed amount.

**5.5 Taxes** - All dollar amounts in this EPA do not include any value added, consumption, commodity or similar taxes applicable to the purchase by the Buyer of Delivered Energy and Environmental Attributes, including GST, PST and any successor thereto, which, if applicable, will be added to each statement and paid by the Buyer.

**5.6 Set-off** - If the Buyer and the Seller each owe the other an amount under this EPA in the same month, then such amounts with respect to each Party shall be aggregated and the Parties may discharge their obligations to pay through netting; in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed, provided that:

- (a) this section applies only to any purchase price for Delivered Energy owing by the Buyer to the Seller, any Final Amount owing by either Party to the other Party, and any amount owing by the Seller to the Buyer under Appendix 3 of this EPA; and
- (b) no Final Amount or amount owing by the Seller to the Buyer under Appendix 3 of this EPA shall be added to or deducted from the price owing by the Buyer to the Seller for Delivered Energy unless that amount remains unpaid 30 days after the Buyer gives notice to the Seller of the amount owing.

Except as otherwise expressly provided herein, each Party reserves all rights, counterclaims and other remedies and defences which such Party has, or may be entitled to, arising from or related to this EPA.

**6. ENVIRONMENTAL ATTRIBUTES - CERTIFICATION AND ADMINISTRATION**

**6.1 EcoLogo<sup>M</sup> Certification** - Without limiting the Seller's obligation to comply with subparagraph (e) of the definition of Project Standards in Appendix 1, if required by the Buyer, the Seller shall use commercially reasonable efforts to obtain EcoLogo<sup>M</sup> Certification for the Seller's Plant and all the Delivered Energy and shall use commercially reasonable efforts to maintain EcoLogo<sup>M</sup> Certification for such period during the remainder of the Term as the Buyer may specify. The Seller shall notify the Buyer forthwith if the Seller fails to obtain EcoLogo<sup>M</sup> Certification as required hereunder or if, at any time during the period of the Term specified by the Buyer, the Seller does not have EcoLogo<sup>M</sup> Certification. If the Buyer requires the Seller to obtain EcoLogo<sup>M</sup> Certification, the Buyer shall be responsible for all certification, audit and licensing fees required to obtain EcoLogo<sup>M</sup> Certification, unless the Seller requires EcoLogo<sup>M</sup>

Certification to comply with subparagraph (e) of the definition of the Project Standards in Appendix 1, or the Seller fails to obtain or maintain EcoLogo<sup>M</sup> Certification, in either of which cases the Seller shall be responsible for all such fees.

- 6.2 **Alternate Certification** - The Seller shall, at the Buyer's request and at the Buyer's cost, use commercially reasonable efforts to apply for, and diligently pursue and maintain, any certification, licensing or approval offered by any Governmental Authority or independent certification agency evidencing that the Seller's Plant and the Delivered Energy has Environmental Attributes as an addition or an alternative to the EcoLogo<sup>M</sup> Certification. Any failure by the Seller to use commercially reasonable efforts pursuant to this section 6.2 is a "material default" for the purposes of this EPA, and the Buyer may terminate this EPA under subsection 8.1(i).

## 7. EPA ADMINISTRATION

- 7.1 **Records** - The Seller shall prepare and maintain all Records, or duplicates of such Records, at the Seller's Plant or following the expiry of the Term or the earlier termination of this EPA, at such other location as may be agreed in writing between the Parties, for a period of not less than 7 years from the date on which each such Record is created. The Audit Parties may take copies of such records for the purposes of an inspection or audit under section 7.2.

- 7.2 **Inspection and Audit Rights** - For the sole purpose of verifying: (a) compliance with this EPA; (b) the accuracy of invoices and other statements or calculations delivered by the Seller to the Buyer under this EPA; (c) the qualification of the Energy as Clean Energy; (d) the qualification of the Seller's Plant and the Energy for the Environmental Certification; or (e) the liability of each of the Parties for Network Upgrade Costs, the Seller shall, on reasonable prior notice from the Buyer, provide the Buyer and its Affiliates, representatives, consultants, advisors and any third party with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes and their Affiliates, representatives, consultants and advisors (the "Audit Parties") with prompt access during normal business hours to the Seller's Plant and all records relating to the Seller's Plant, including any Seller Confidential Information, to enable the Audit Parties to conduct an inspection or audit thereof. The Audit Parties shall exercise any access and audit rights under this section in a manner that minimizes disruption to the operation of the Seller's Plant. Any review, inspection or audit by any of the Audit Parties may not be relied upon by the Seller, or others, as confirming or approving those matters. Where the Buyer requires the Seller to provide access to the Seller's Plant and/or records relating to the Seller's Plant to a third Person with whom the Buyer or any of its Affiliates has entered into a contract for the sale and purchase of Environmental Attributes or any Affiliate, representative, consultant or advisor to any such third Person, the Buyer shall first obtain from the third Person an agreement to maintain the confidentiality of any Seller Confidential Information to which such Person may have access and to limit the use of such Seller Confidential Information as required to verify the Environmental Attributes.

- 7.3 **Seller Consents** - The Seller shall promptly provide any consents required to enable any of the Audit Parties to make enquiries with any Governmental Authority or any Person administering the Environmental Certification concerning any or all of the following: (a) the qualification of the Energy as Clean Energy; (b) the qualification of the Seller's Plant and the Energy for Environmental Certification, the status of the Environmental Certification and copies of any audits, inspections or reports prepared in connection with the Environmental Certification; and (c) compliance by the Seller with Laws and Permits applicable to the Seller's Plant.

#### 7.4 Assignment

- (a) **Requirement for Consent:** The Seller may not Assign this EPA except with the prior consent of the Buyer, which consent may not be unreasonably withheld, conditioned or delayed. Any Assignment (other than an Assignment to a Facility Lender) is subject to the assignee entering into and becoming bound by this EPA, assuming all the obligations and liabilities of the Seller under the EPA arising both before and after the Assignment, providing any Network Upgrade Security as applicable at the time of Assignment, and providing the representations and warranties set out in the Application and in section 9.1 effective as at the time of Assignment, subject in the case of the representation and warranty in subsection 9.1(c) to such exceptions as the Buyer consents to acting reasonably.
- (b) **Time for Request:** Any request by the Seller for the Buyer's consent under subsection 7.4(a) must be delivered to the Buyer not less than 30 days before the date of the proposed Assignment. A request under this section must be accompanied by such information as reasonably required by the Buyer to assess the request for consent including the name, address and ownership structure of the assignee, a list of the directors and officers of the assignee and information concerning the assignee's operations, experience and financial status.
- (c) **Assignment to Facility Lender:** If the Seller seeks consent to Assign this EPA to a Facility Lender, the Buyer may require, as a condition of its consent to the Assignment, that the Seller and the Facility Lender enter into a Lender Consent Agreement with the Buyer.
- (d) **Costs:** The Seller shall reimburse the Buyer for all costs reasonably incurred by the Buyer in connection with any request by the Seller for the Buyer's consent pursuant to subsection 7.4(a).

#### 7.5 Dispute Resolution -

- (a) **Arbitration:** Any dispute under or in relation to this EPA will be referred to and finally resolved by arbitration conducted by a single arbitrator in Vancouver, British Columbia and administered by the British Columbia International Commercial Arbitration Centre ("BCICAC") pursuant to its rules. Except as otherwise expressly provided in this EPA, the arbitrator shall have the jurisdiction to grant equitable remedies, including interim or permanent injunctive relief. It shall not be incompatible with this agreement to arbitrate for a party to seek from the Supreme Court of British Columbia, or for that court to grant, interim measures of protection pending the outcome of arbitral proceedings. The decision of the arbitrator will be final and binding on the Parties.
- (b) **Effect of Arbitration:** All performance and payments required under this EPA will continue during any dispute under this EPA, provided that the Parties may, notwithstanding the foregoing, exercise any right to terminate this EPA in accordance with the terms of this EPA. Any payments or reimbursements required by an arbitration award will be due as of the date determined under subsection 5.4.2(b) or, where that subsection does not apply, as of the date determined in the award. Without duplication with subsection 5.4.2(b), any payments or reimbursements required by an arbitration award will bear interest at an annual rate equal to the Prime Rate plus 2% compounded monthly from the date such payment was due until the amount is paid.

- (c) **Confidentiality:** The Parties shall maintain in confidence the fact that an arbitration has been commenced, all documents and information exchanged during the course of the arbitration proceeding, and the arbitrator's award, provided that each of the Parties shall be entitled to disclose such matters: (i) as required by applicable Law or for regulatory purposes (including pursuant to the rules of any stock exchange on which the shares of the Seller or its Affiliates are traded); (ii) as required to enforce any arbitration award; (iii) to that Party's consultants and professional advisors who have a need to know such information; and (iv) in the case of the Buyer, to representatives of the Government of British Columbia.

**7.6 Notices** - Any notice, consent, waiver, declaration, request for approval or other request, statement or bill that either Party may be required or may desire to give to the other Party under this EPA must be in writing addressed to the other Party at the address for that Party stated in Appendix 1 and:

- (a) notices under section 7.9, section 8.1, section 8.3 and section 4 of Appendix 3 must be delivered by hand or by a courier service during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day;
- (b) all notices other than notices described in subsection 7.6(a) may be delivered by email during normal business hours on a Business Day and a notice so delivered will be deemed to have been delivered on that Business Day; and
- (c) either Party may change its address for notices under this EPA by notice to the other Party.

**7.7 Energy Schedules** - By September 15 of each year, the Seller shall deliver to the Buyer a schedule of the expected total deliveries of Energy to the POI in each month during the 12 month period commencing on October 1 of the year in which the schedule is delivered and a schedule of the maintenance outages expected for the Seller's Plant during that period. The Energy schedules are provided for planning purposes only and do not constitute a guarantee by the Seller that Energy will be delivered in accordance with the schedules and do not limit the amount of Energy the Seller may deliver during the periods covered by the schedules. The Seller shall deliver a revised schedule to the Buyer promptly upon becoming aware of any expected material change in a delivered Energy schedule.

**7.8 Confidentiality**

**7.8.1 Confidentiality and Compliance Agreement** - The Standing Offer Confidentiality and Compliance Agreement continues in full force and effect in accordance with its terms.

**7.8.2 Additional Confidentiality Obligation** - Without limiting the effect of the Standing Offer Confidentiality Agreement, during the Term and for two years thereafter (i) the Buyer shall treat as confidential, and shall not disclose to any third Person, Seller Confidential Information, and (ii) the Seller shall treat as confidential, and shall not disclose to any third Person, Buyer Confidential Information, provided however that nothing in the foregoing obligations, and nothing in this EPA, prevents or restricts:

- (a) disclosures that are expressly authorized under any section of this EPA, or as otherwise set out in this EPA;

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- (b) disclosures that are necessary to enable either Party to fulfill its obligations under this EPA;
- (c) in the case of the Buyer, disclosure of Seller Confidential Information:
  - (i) to any ministers, deputy ministers, servants or employees of the Province of British Columbia; and
  - (ii) to its directors, officers, employees and Affiliates, consultants and advisors;provided that each of the foregoing to whom Seller Confidential Information is disclosed is advised of the confidential nature thereof;
- (d) In the case of the Buyer, disclosure of Seller Confidential Information in any regulatory proceeding, whether in respect of this EPA or in respect of other matters, to the extent that the Buyer considers disclosure necessary or desirable to support its position in any such proceeding, provided that, to the extent reasonably practicable, the Buyer gives reasonable notice to the Seller before making the disclosure, and, to the extent requested by the Seller, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;
- (e) in the case of the Buyer, disclosure to any Person or any Governmental Authority of any Seller Confidential Information with respect to:
  - (i) the Seller's Plant that the Buyer is required to disclose to verify qualification of the output of the Seller's Plant as Clean Energy or to provide confirmation to any such Person or Governmental Authority that the output from the Seller's Plant qualifies as Clean Energy; or
  - (ii) the Energy and/or the Seller's Plant that the Buyer is required to disclose to enable the Buyer to obtain or realize the full benefit to the Buyer of the Environmental Attributes, including sales of Environmental Attributes to third Persons;
- (f) in the case of the Buyer, disclosures to a third Person of any Seller Confidential Information that was known by that third Person before disclosure thereof by the Buyer, including information that originated from that third Person or that the Seller or any other Person has given the third Person, in either case as indicated on the face of any document or as acknowledged by the Seller in any discussions with the Buyer;
- (g) in the case of the Seller, disclosure of the Buyer Confidential Information to its directors, officers, employees, consultants and advisors, provided that each of the foregoing to whom Buyer Confidential Information is disclosed is advised of the confidential nature thereof and undertakes in writing to respect such confidentiality on the terms of the EPA, provided that the Seller shall give to the Buyer, at its request, a copy of each undertaking;
- (h) without limiting the Buyer's disclosure rights under subsection 7.8.2(d) above, disclosures required to be made by a Party by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that (i) to the extent reasonably practicable, the Party making such

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disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law, or regulatory or stock exchange requirement;

- (i) disclosures in any legal proceedings for the enforcement of this EPA; or
- (j) disclosures of the Seller Confidential Information or the Buyer Confidential Information, as the case may be, by written agreement or consent of both Parties.

**7.8.3 Freedom of Information and Protection of Privacy Act** - The Seller acknowledges that the Buyer is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) and agrees that the Buyer's non-disclosure obligations under this EPA are subject to the provisions of that legislation, as amended from time to time.

**7.8.4 Exemption from Disclosure** - The Parties confirm that Seller Confidential Information constitutes commercial and financial information of the Seller, which has been supplied, or may be supplied, in confidence and the disclosure of which could reasonably be expected to harm significantly the competitive position and/or interfere significantly with the negotiating position of the Seller. Accordingly, the Parties confirm their intention that, subject to section 7.8.3, all Seller Confidential Information disclosed by the Seller to the Buyer shall be deemed to be confidential and exempt from disclosure to third Persons in accordance with section 21 of the *Freedom of Information and Protection of Privacy Act* (British Columbia), as amended from time to time.

**7.9 Force Majeure -**

- (a) Neither Party will be in breach or default as to any obligation under this EPA if that Party is unable to perform that obligation due to an event or circumstance of Force Majeure, of which notice is given promptly to the other Party identifying the nature of the Force Majeure, its expected duration and the particular obligations affected by the Force Majeure. Subject to any limitations expressly set out in this EPA, the time for performance of such obligation will be extended by the number of days that Party is unable to perform such obligation as a result of the event or circumstance of Force Majeure. The Party invoking Force Majeure shall promptly respond to any inquiry from the other Party regarding the efforts being undertaken to remove the Force Majeure and shall give prompt notice of the end of the Force Majeure.
- (b) Notwithstanding the definition of Force Majeure in Appendix 1, and without limiting the application of the definition of Force Majeure to any circumstance that is not specifically described in this section 7.9, any order or decision of any court of competent jurisdiction or any regulatory authority, including the BCUC, that is binding on the Buyer and/or the Seller, the compliance with which would prevent the Buyer and/or the Seller from performing all or any of its obligations under this EPA, which is based in whole or in part on any failure or alleged failure of the Buyer to adequately consult with, and/or accommodate, any First Nation, in relation to this EPA, the Project, the Seller's Plant or the interconnection of the Seller's Plant to the Distribution System or the Transmission System, as applicable (which, for greater certainty, does not include any failure to consult with, and/or accommodate any First Nation, with respect to activities occurring after COD on the Buyer's side of the Point of Interconnection, or on the Transmission System), shall be an event of Force Majeure that may be invoked by the Party or Parties so prevented, provided that the Party or Parties so prevented shall use

commercially reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the Force Majeure to the extent that it is within the control of that Party to do so, provided that in the case of the Buyer, this obligation is subject to the Seller complying with, or having complied with, its obligation under section 3.12.2.

- (c) A Party may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a wilful act or omission of a Party, provided that the failure or alleged failure of the Buyer to have adequately consulted with, and/or accommodated, any First Nation may only be considered a wilful act or omission where the underlying event or circumstance giving rise to the duty to consult or accommodate was or is fully within the control of the Buyer and provided further that, for greater certainty, any activities of the Seller will not be considered to be within the control of the Buyer regardless of any consent, waiver, declaration or approval under the EPA, including any further amendment of the EPA that the Buyer may provide in respect of the Seller's activity.
- (d) The Seller may not invoke Force Majeure as a result of such binding order or decision referenced at subsection 7.9(b) if such order or decision results from a failure by the Seller to comply with its obligations under section 3.12 of this EPA.
- (e) The Buyer may not invoke Force Majeure as a result of such order or decision referenced at subsection 7.9(b) if:
  - (i) the Buyer has received notice in writing from the Seller that the Seller is attempting to resolve, cure, fulfill or remedy, as the case may be, at its own initiative and at its own expense, the issues, orders or obligations raised or required by the order or decision;
  - (ii) the Buyer is not incurring additional expense, risk or liability as a result of the Seller taking the steps described in paragraph (a) and the Buyer has received written confirmation from the Seller that the Buyer will not be subject to any liability to the Seller for breach of this EPA as a result of the Buyer's compliance with that portion of the order or decision that prohibits the Buyer from performing its obligations under this EPA while at the same time not being able to invoke Force Majeure as a result of this provision;
  - (iii) the Seller is at all times moving expeditiously and in good faith to resolve, cure, fulfill or remedy the issues, orders or obligations raised in the order or decision; and
  - (iv) the Buyer would not be in breach of the order or decision as a result of the Seller taking the steps described in subsection 7.9(e)(i).

**8. TERMINATION**

**8.1 Termination by Buyer** - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Buyer may have under this EPA or at law or in equity in respect of any of the following events, the Buyer may terminate this EPA by notice to the Seller if:

- (a) COD does not occur by the second anniversary of Target COD for any reason

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whatsoever (including Force Majeure), provided that the Buyer may terminate the EPA under this provision only if the Buyer delivers a termination notice prior to COD; or

- (b) at any time after COD, the Seller does not deliver any Energy to the Buyer for a period of 730 continuous days for any reason whatsoever (including Force Majeure or a Distribution/Transmission Constraint or Disconnection), but excluding a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (c) at any time after COD, the Buyer is unable to accept delivery of Energy at the POI for a period of 730 continuous days due to Force Majeure invoked by the Buyer in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
- (d) the Seller breaches section 4.5; or
- (e) the Seller fails to complete any application, payment, filing, study, document or other step in the process for interconnecting the Seller's Plant to the Transmission System or the Distribution System in accordance with the requirements of, and within the time limits, including any cure periods, specified by the Transmission Authority or Distribution Authority, as applicable, and such failure results in a loss of the interconnection queue position for the Seller's Plant or otherwise could reasonably be expected to have an adverse impact on the Buyer; or
- (f) any one of the Seller or the General Partner is Bankrupt or Insolvent; or
- (g) the Seller or the General Partner, as a result of an act or omission of the Seller or the General Partner, ceases to be exempt from regulation as a "public utility" as defined in the UCA with respect to the Seller's Plant and the sale of Energy to the Buyer under this EPA, and the loss of such exemption could reasonably be expected to have an adverse effect on the benefit to the Buyer of this EPA; or
- (h) an amount due and payable by the Seller to the Buyer under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Buyer has given notice of the default to the Seller; or
- (i) any one of the Seller or the General Partner is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default or, if the default cannot be cured within that 30 day period, the Seller demonstrates to the reasonable satisfaction of the Buyer that the Seller is working diligently and expeditiously to cure the default and the default is cured within a further reasonable period of time. A "material default" includes any purported Assignment of this EPA without the consent of the Buyer and any failure by the Seller to comply with section 3.2 in respect of subsection (e) of the "Project Standards" definition in Appendix 1, section 4.5, section 6.1 or section 6.2.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Seller.



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- 8.2 **Notice of Termination Event** - The Seller shall notify the Buyer promptly if the Seller is Bankrupt or Insolvent or if there is a material risk that the Seller will become Bankrupt or Insolvent or if the Seller has defaulted under any agreement with a Facility Lender or if any Permit or land tenure agreement for the Seller's Plant is terminated or expires.
  
- 8.3 **Termination by the Seller** - In addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Seller may have under this EPA or at law or in equity in respect of any of the following events, the Seller may terminate this EPA by notice to the Buyer if:
  - (a) the Seller has not been able to achieve COD for a period of 180 days after Target COD solely as a result of a delay in completion of Interconnection Network Upgrades where such delay is not attributable directly or indirectly in whole or in part to the Seller or the Seller's Plant; or
  - (b) after COD, the Buyer has not accepted delivery of Energy for a period of 180 continuous days due to an event described in section 4.3 or any event of Force Majeure and the Seller is not entitled to receive any payment pursuant to section 4.7 in respect of that period; or
  - (c) the Seller's Plant has suffered Major Damage;
  - (d) the Seller has been unable to achieve COD for a period of 730 days after Target COD or has been unable to deliver Energy to the POI for a period of 730 continuous days after COD in either case solely as a result of Force Majeure invoked by the Seller in accordance with section 7.9 or a Distribution/Transmission Constraint or Disconnection other than a Distribution/Transmission Constraint or Disconnection for which the Seller is entitled to receive payment under section 4.7; or
  - (e) the Buyer is Bankrupt or Insolvent; or
  - (f) except where an amount has been disputed in the manner specified in subsection 5.4.1(a), an amount due and payable by the Buyer to the Seller under this EPA remains unpaid for 15 days after its due date and such default has not been cured within 15 days after the Seller has given notice of the default to the Buyer; or
  - (g) the Buyer is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), and such default has not been cured within 30 days after the Seller has given notice of the default to the Buyer or, if the default cannot be cured within that 30 day period, the Buyer fails to demonstrate to the reasonable satisfaction of the Seller that the Buyer is working diligently and expeditiously to cure the default or the default is not cured within a further reasonable period of time.

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Buyer.

- 8.4 **Effect of Termination** - Upon expiry of the Term or earlier termination of this EPA in accordance with its terms:
  - (a) the Parties may pursue and enforce any rights and remedies permitted by law or equity

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in respect of any prior breach or breaches of the EPA, and may enforce any liabilities and obligations that have accrued under this EPA prior to the expiry of the Term or the date of termination or that are stated to arise on termination of this EPA (including any claims by the Buyer for amounts payable by the Seller under Appendix 3), subject to any express restrictions on remedies and limitations or exclusions of liability set out in this EPA; and

- (b) both Parties will remain bound by Article 5 and Appendix 3 with respect to the satisfaction of residual obligations for the period prior to termination or that are specified to arise on termination, and sections 7.5 and 7.8 and all provisions of the EPA with respect to Environmental Attributes but only with respect to Environmental Attributes associated with Delivered Energy prior to termination of this EPA; and
- (c) the Seller will remain bound by sections 7.1 and 7.2 for a period of 36 months following expiry or termination of this EPA

and, in all such cases, both Parties will remain bound by any other provisions necessary for the interpretation and enforcement of the foregoing provisions.

**8.5 Buyer Payment on Seller Termination** - If the Seller terminates this EPA under any of subsections 8.3(e), (f) or (g), the Buyer shall pay to the Seller an amount equal to the positive amount if any by which the Seller's Losses and Costs exceed its aggregate Gains. The Seller's Gains, Losses and Costs shall be determined by comparing the reasonably estimated quantities of Delivered Energy for the remaining Term and the price payable for those quantities under this EPA had it not been terminated to the relevant market prices for equivalent quantities of electricity for the remaining Term either quoted by a bona fide arm's length third party or which are reasonably expected to be available in the market under a replacement contract for this EPA. Market prices will be adjusted for differences between the product subject to the market prices and a product, inclusive of Environmental Attributes, equivalent to that specified under this EPA available from a generator meeting the eligibility requirements for the Buyer's Standing Offer Program in effect at the Effective Date, including with respect to quantity, place of delivery, length of term and each element of the eligibility requirements. The Seller shall not be required to enter into a replacement transaction in order to determine the amount payable by the Buyer under this section. The Seller's Gains, Losses and Costs will be discounted to the present value of those Gains, Losses and Costs at the effective date of termination of the EPA (to take into account the time value of money for the period between the effective date of termination of the EPA and the date the Gains, Losses and Costs would have occurred but for the termination of the EPA) using the Present Value Rate. If the Seller's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this EPA, the amount of the payment by the Buyer to the Seller under this section shall be zero. If the termination of this EPA by the Seller occurs prior to COD, the Buyer's liability for any payment under this section will be 115% of the Development Costs less the net realizable value of the assets forming part of the Seller's Plant at the date of termination.

**8.6 Calculation and Payment** - The Seller shall calculate the amount of any payment owed by the Buyer under section 8.5 and shall notify the Buyer of such amount and provide reasonable particulars with respect to its calculation within 120 days after the effective date of termination of this EPA, failing which the Seller will not be entitled to any payment under section 8.5. The Buyer shall pay any amount owing by the Buyer under section 8.5 within 30 Business Days after the date of delivery of an invoice by the Seller to the Buyer. Any amounts owing by the Seller

to the Buyer under this EPA will be netted against any amount owing by the Buyer to the Seller under section 8.5.

- 8.7 **Exclusive Remedies** - Subject to section 8.4, payment by the Buyer of the amount determined under section 8.5 is the exclusive remedy to which the Seller is entitled, and the Buyer's limit of liability, for termination of this EPA by the Seller pursuant to any of subsections 8.3(e), (f) or (g). Subject to section 8.4, termination of this EPA is the exclusive remedy to which the Buyer or the Seller as the case may be is entitled if the Buyer or the Seller elects to exercise its right to terminate this EPA under any of section 8.1, subsection 8.3(a), (b), (c), or (d) or section 4 of Appendix 3 as applicable. For greater certainty, subject to section 8.4, the Seller shall not be required to pay any termination payment on termination by the Buyer of this EPA. Neither Party will have any right to terminate this EPA except as expressly set out herein.

## 9. REPRESENTATIONS AND WARRANTIES AND LIABILITY LIMITATIONS

- 9.1 **Seller's Representations** - The Seller and the General Partner as to itself only represent and warrant to the Buyer, and acknowledges that the Buyer is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Seller and the General Partner enforceable against the Seller and the General Partner in accordance with its terms;
  - (b) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Seller and the General Partner; and
  - (c) **Application** - all information in the Application is true and correct in all material respects and there is no material information omitted from the Application that makes the information in the Application misleading or inaccurate in any material respect. The representations and warranties by the Seller and the General Partner in the Application are true and correct.
- 9.2 **Buyer's Representations** - The Buyer represents and warrants to the Seller, and acknowledges that the Seller is relying on those representations and warranties in entering into this EPA, as follows:
- (a) **Corporate Status** - The Buyer is a corporation continued under the *Hydro and Power Authority Act*, R.S.B.C. 1996, c.212, is validly existing and is in good standing under the laws of British Columbia, is lawfully authorized to carry on business in British Columbia, and has full corporate power, capacity and authority to enter into and to perform its obligations under this EPA;
  - (b) **Binding Obligation** - this EPA constitutes a valid and binding obligation of the Buyer enforceable against the Buyer in accordance with its terms; and
  - (c) **Authorization, Execution and Delivery** - this EPA has been duly authorized, executed and delivered by the Buyer.
- 9.3 **Limit of Liability** - The Buyer's liability for damages for any failure to take or pay for Delivered Energy under this EPA is limited to the price payable by the Buyer for that Delivered Energy under Article 5 and any interest thereon calculated under this EPA less the amount of

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any revenue received by the Seller from any third Person for that Delivered Energy.

- 9.4 **Consequential Damages** - Neither Party shall be liable to the other Party for any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this EPA.

**10. GENERAL PROVISIONS**

- 10.1 **Electric Service to the Seller** - If at any time the Buyer makes electric service available to the Seller's Plant, then that service will be provided under and in accordance with the Buyer's electric tariff applicable at the relevant time, and not under this EPA.

- 10.2 **Independence** - The Parties are independent contractors, and nothing in this EPA or its performance creates a partnership, joint venture or agency relationship between the Parties.

- 10.3 **Enurement** - This EPA enures to the benefit of the Parties, their successors and their permitted assigns.

- 10.4 **Entire Agreement** - This EPA contains the entire agreement between the Parties with respect to the purchase and sale of Energy and Environmental Attributes and supersedes all previous communications, understandings and agreements between the Parties with respect to the subject matter hereof including, without limitation, the documents related to the Standing Offer Program and all questions and answers and any other communications of any kind whatsoever by the Buyer in connection therewith or relating thereto, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA. There are no representations, warranties, terms, conditions, undertakings or collateral agreements express, implied or statutory between the Parties other than as expressly set out in this EPA, except only those representations, warranties and covenants contained in the Application which shall remain in effect notwithstanding this EPA.

- 10.5 **Amendment** - This EPA may not be amended except by an agreement in writing signed by both Parties.

- 10.6 **No Waiver** - Other than in respect of the specific matter or circumstance for which a waiver is given, and except as otherwise specified in this EPA, no failure by a Party to enforce, or require a strict observance and performance of, any of the terms of this EPA will constitute a waiver of those terms or affect or impair those terms or the right of a Party at any time to enforce those terms or to take advantage of any remedy that Party may have in respect of any other matter or circumstance.

- 10.7 **Interconnection Agreement and Distribution and Transmission Authorities** - Nothing in the Interconnection Agreement and no exercise of any right thereunder, restricts or otherwise affects any right, obligation or liability of either Party under this EPA, except to the extent set out expressly herein, and no notice, consent, approval or other communication or decision under or in relation to the Interconnection Agreement shall constitute or be relied upon as a notice, consent, approval or communication or decision under this EPA. For the purposes of the interpretation and application of this EPA, the Distribution Authority and the Transmission Authority shall be treated in all instances as though they are entirely separate legal entities from the Buyer.

- 10.8 **Commodity Contract/Forward Contract** - The Parties agree and intend that this EPA

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constitutes an "eligible financial contract" under the *Bankruptcy and Insolvency Act* (Canada) and *Companies' Creditors Arrangement Act* (Canada) and that this EPA and the transactions contemplated under this EPA constitute a "forward contract" within the meaning of section 556 of the United States Bankruptcy Code and that the Parties are "forward contract merchants" within the meaning of the United States Bankruptcy Code.

- 10.9 Further Assurances** - Each Party shall, upon the reasonable request of the other Party, do, sign or cause to be done or signed all further acts, deeds, things, documents and assurances required for the performance of this EPA including, in the case of the Seller, completing any registration process required in respect of Environmental Attributes as requested by the Buyer.
- 10.10 Severability** - Any provision of this EPA which is illegal or unenforceable will be ineffective to the extent of the illegality or unenforceability without invalidating the remaining provisions of this EPA.
- 10.11 Counterparts** - This EPA may be executed in counterparts, each of which is deemed to be an original document and all of which are deemed one and the same document.

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IN WITNESS WHEREOF each Party by its duly authorized representative(s) has signed this EPA effective as of the date set out on page one of this EPA.

For WEDGEMOUNT POWER LIMITED PARTNERSHIP A LIMITED PARTNERSHIP REPRESENTED BY ITS GENERAL PARTNER WEDGEMOUNT POWER (GP) INC.



Authorized Representative

David Ehrhardt, Director  
Print Name and Office

Jan 29/15  
Date

For BRITISH COLUMBIA HYDRO AND POWER AUTHORITY:



Authorized Representative

Jessica McDonald, President + CEO  
Print Name and Office

March 6/15  
Date

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## APPENDIX 1

### DEFINITIONS AND INTERPRETATION

#### 1. DEFINITIONS

References in an Appendix to a section or subsection mean a section or subsection of the EPA, and not an Appendix, unless otherwise stated. The following words and expressions wherever used in this EPA have the following meaning:

- 1.1 "Affiliate" means, with respect to the Seller or the General Partner or any third party, any Person directly or indirectly Controlled by, Controlling, or under common Control with, the Seller, the General Partner or the third party, and with respect to the Buyer, any Person directly or indirectly Controlled by the Buyer and, if at any time the Buyer is not Controlled, directly or indirectly, by the Province of British Columbia, shall include any Person directly or indirectly Controlling, or under common Control, with the Buyer.
- 1.2 "Application" means the application and all supporting documents and information with respect to the Seller's Plant filed by the Seller with the Buyer in the Standing Offer Program.
- 1.3 "Assign" or "Assignment" means to assign or dispose of this EPA or any direct or indirect interest in this EPA, in whole or in part, for all or part of the Term and, without limiting the foregoing, each of the following is deemed to be an Assignment of this BPA by the Seller:
  - (a) any sale or other disposition of all or a substantial part of the Seller's ownership interest in the Seller's Plant, or of all or any interest of the Seller in this EPA or revenue derived from this EPA;
  - (b) any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant or the Seller's ownership interest therein; and
  - (c) any change of Control, merger, amalgamation or reorganization of the Seller.
- 1.4 "Audit Parties" has the meaning given in section 7.2.
- 1.5 "Bankrupt or Insolvent" means, with respect to a Person (which in the case of the Seller includes either or both of the Seller or the General Partner):
  - (a) the Person has started proceedings to be adjudicated a voluntary bankrupt or consented to the filing of a bankruptcy proceeding against it; or
  - (b) the Person has filed a petition or similar proceeding seeking reorganization, arrangement or similar relief under any bankruptcy or insolvency law; or
  - (c) a receiver, liquidator, trustee or assignee in bankruptcy has been appointed for the Person or the Person has consented to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy; or
  - (d) the Person has voluntarily suspended the transaction of its usual business; or
  - (e) a court of competent jurisdiction has issued an order declaring the Person bankrupt or insolvent.

- 1.6 "BCUC" means the British Columbia Utilities Commission or any successor thereto.
- 1.7 "Business Day" means any calendar day which is not a Saturday, Sunday or British Columbia statutory holiday.
- 1.8 "Buyer" means British Columbia Hydro and Power Authority and its successors and permitted assigns, but for the purposes of the interpretation and application of this EPA it excludes the Distribution Authority and the Transmission Authority.
- 1.9 "Buyer Confidential Information" means technical or commercial information disclosed by the Buyer to the Seller that the Buyer directs, and clearly marks, as confidential, including this EPA whether or not so directed and marked, and any communications by the Buyer with any lawyer providing a Verification and all work product of the lawyer providing a Verification, but excluding information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Seller, or (ii) is known to the Seller before disclosure to it by the Buyer, or becomes known to the Seller, thereafter by way of disclosure to the Seller by any other person who is not under an obligation of confidentiality with respect thereto.
- 1.10 "Clean Energy" means Energy that qualifies as energy generated by a clean or renewable resource under British Columbia's *Clean Energy Act*, SBC 2010, c.22, as amended from time to time.
- 1.11 "COD" or "Commercial Operation Date" means the date that is the later of:
- (a) 90 days prior to Target COD, unless the Buyer has consented to an earlier date pursuant to section 3.8; and
  - (b) the date on which all of the following conditions have been satisfied in respect of the Seller's Plant:
    - (i) the Seller has obtained all Permits required for the construction, commissioning, and operation of the Seller's Plant and all such Permits are in full force and effect;
    - (ii) the Seller is not: (A) Bankrupt or Insolvent; (B) in default of any payment obligation or requirement to post security under this EPA; (C) in material default of any of its other covenants, representations, warranties or obligations under this EPA; or (D) in material default under any Permit or Law applicable to the construction, commissioning or operation of the Seller's Plant or under any land tenure agreement for the site on which the Seller's Plant is located or under the Interconnection Agreement;
    - (iii) a Revenue Meter has been installed in accordance with section 3.6;
    - (iv) the Seller has delivered to the Buyer:
      - (A) a Declaration of Compatibility-Generator (Operating), or such other document(s) of similar effect as may be substituted therefor, in respect of the Plant Capacity issued by the Distribution Authority/Transmission Authority to the Seller under the Interconnection Agreement;



- (B) proof of registration by the Seller with Measurements Canada as an energy seller with respect to the Seller's Plant, and
- (C) a COD Certificate;

and for purposes of this EPA, COD will be deemed to have occurred at 24:00 PPT on the later of the dates set out above.

- 1.12 "COD Certificate" means a certificate in the form attached as Appendix 5.
- 1.13 "Control" of any Person means:
  - (a) with respect to any corporation or other Person having voting shares or the equivalent, the ownership or power to vote, directly or indirectly, shares, or the equivalent, representing 50% or more of the power to vote in the election of directors, managers or persons performing similar functions;
  - (b) ownership of 50% or more of the equity or beneficial interest in that Person; or
  - (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.
- 1.14 "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or that would reasonably be expected to be incurred by the Seller in entering into new arrangements which replace this EPA and legal fees, if any, incurred in connection with enforcing the Seller's rights under this EPA.
- 1.15 "CPI" means the British Columbia Consumer Price Index, All Items (Not Seasonally Adjusted) as published by Statistics Canada or any successor agency thereto, adjusted or replaced in accordance with subsection 2.9(c) of this Appendix.
- 1.16 "Crown" means Her Majesty in the Right of the Province of British Columbia or Her Majesty in Right of the Government of Canada.
- 1.17 "Delivered Energy" means in each month after COD the amount of Energy delivered by the Seller at the POI in that month as recorded by the Seller's metering equipment described in section 3.6, or where that equipment is not functioning correctly, the duplicate revenue meter installed by the Buyer under section 3.6, if any.
- 1.18 "Development Costs" means all costs reasonably incurred or committed by the Seller after the Effective Date for the development of the Seller's Plant and all costs reasonably incurred, or that are reasonably likely to be incurred by the Seller, after taking reasonable mitigation measures, to terminate all contractual commitments with respect to the development of the Seller's Plant and to otherwise cease development of the Seller's Plant, but excluding any lost profits, loss of opportunity costs or damages and all other special, incidental, indirect or consequential losses.
- 1.19 "Development Report" means a report in the form attached as Appendix 8, describing the progress of the financing, design, engineering, construction, interconnection, and commissioning of the Seller's Plant.
- 1.20 "Dispatch/Turn-Down" has the meaning given in subsection 4.8(a).

- 1.21 "Distribution Authority" means the Person or Persons who is or are responsible for the planning, asset management and operation of the Distribution System, in whole or in part, including an independent system operator.
- 1.22 "Distribution System" means the distribution, protection, control and communication facilities in British Columbia that are or may be used in connection with, or that otherwise relate to, the transmission of electrical energy at 35 kilovolts or less, and includes all additions and modifications thereto and repairs or replacements thereof.
- 1.23 "Distribution/Transmission Constraint or Disconnection" means any disconnection of the Seller's Plant from the Distribution System or the Transmission System, as applicable, or any outage, suspension, constraint or curtailment in the operation of the Distribution System or the Transmission System preventing or limiting deliveries of Energy at the POI or any direction from the Distribution Authority or the Transmission Authority to reduce generation of the Seller's Plant as a result of any outage, suspension, constraint or curtailment in the operation of the Transmission System or Distribution System.
- 1.24 "EcoLogo<sup>™</sup> Certification" means certification pursuant to Environment Canada's Environmental Choice<sup>™</sup> program confirming that the Seller's Plant and all or part of the Energy complies with the "Guideline on Renewable Low-Impact Electricity" as amended from time to time and is therefore entitled to the EcoLogo<sup>™</sup> designation.
- 1.25 "Effective Date" means the date set out on page one hereof.
- 1.26 "Energy" means all electric energy expressed in MWh generated by the Seller's Plant, excluding electricity required to service the Seller's Plant.
- 1.27 "Environmental Attributes" means the following as attributable to Energy delivered to the Buyer under this EPA:
- (a) all attributes directly associated with, or that may be derived from, the Energy delivered to the Buyer under this EPA having decreased environmental impacts relative to certain other generation facilities or technologies including any existing or future credit, allowance, "green" tag, ticket, certificate or other "green" marketing attribute or proprietary or contractual right, whether or not tradeable;
  - (b) any credit, reduction right, offset, allowance, allocated pollution right, certificate or other unit of any kind whatsoever, whether or not tradeable and any other proprietary or contractual right, whether or not tradeable, resulting from, or otherwise related to the actual or assumed reduction, displacement or offset of emissions at any location other than the Seller's Plant as a result of the generation, purchase or sale of the Energy delivered to the Buyer under this EPA;
  - (c) On-Site Emission Reduction Rights; and
  - (d) all revenues, entitlements, benefits and other proceeds arising from or related to the foregoing, but for certainty not including:
    - (i) benefits or proceeds from environmental incentive programs offered by Governmental Authorities that do not require a transfer of the attributes in (a) to (c) above; and

- (ii) benefits or proceeds from social programs, including programs relating to northern or rural development, employment or skills training, or First Nations, that do not require a transfer of the attributes in subsections (a) to (c) above.
- 1.28 **"Environmental Certification"** means either or both of the following:
- (a) EcoLogo<sup>M</sup> Certification; or
  - (b) any alternate certification the Buyer requires the Seller to obtain under section 6.2.
- 1.29 **"Estimated Interconnection Facilities Completion Date"** means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.
- 1.30 **"Facility Lender"** means any lender(s) providing any debt financing or debt hedging facilities for the design, engineering, construction and/or operation of the Seller's Plant and any successors or assigns thereto and any Person taking any mortgage, pledge, charge or grant of a security interest in all or any part of the Seller's Plant.
- 1.31 **"Final Amount"** means an amount owing by either Party to the other Party under this EPA, including as a result of a breach of this EPA, where such amount is: (a) undisputed by the Party owing such amount; or (b) has been finally determined by an arbitration award under section 7.5 or by a court order and all rights of appeal in respect of such award or order have been exhausted or have expired.
- 1.32 **"Final Interconnection Study Report"** means the final report issued to the Seller by the Distribution Authority or the Transmission Authority, as applicable, in respect of the interconnection of the Seller's Plant, consisting of a system impact study report and a facilities study report.
- 1.33 **"First Nations"** has the meaning given in subsection 3.12.1.
- 1.34 **"Force Majeure"** means any event or circumstance not within the control of the Party, or any of its Affiliates, claiming Force Majeure, but does not include:
- (a) any economic hardship or lack of money, credit or markets;
  - (b) an event or circumstance that is the result of a breach by the Party seeking to invoke Force Majeure of a Permit or of any applicable Laws;
  - (c) a mechanical breakdown or control system hardware or software failure, unless the Party seeking to invoke Force Majeure can demonstrate by clear and convincing evidence that the breakdown or failure was caused by a latent defect in the design or manufacture of the equipment, hardware or software, which could not reasonably have been identified by normal inspection or testing of the equipment, hardware or software;
  - (d) an event or circumstance caused by a breach of, or default under, this EPA or a wilful or negligent act or omission by the Party seeking to invoke Force Majeure;
  - (e) any Distribution/Transmission Constraint or Disconnection; or

- (f) any acts or omissions of: (i) any Affiliate, employee, director, officer, agent or other representative of the Party invoking Force Majeure; (ii) any vendor, supplier, contractor, subcontractor, consultant or customer of or to the Party invoking Force Majeure; or (iii) any other Person for whom the Party invoking Force Majeure is responsible at law, unless the act or omission is caused by an event or circumstance that would constitute Force Majeure if the person described above was a party to this EPA in place of a Party invoking Force Majeure.
- 1.35 "Gains" means an amount equal to the present value of the economic benefit (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.
- 1.36 "General Partner" means the party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.37 "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the Western Electricity Coordinating Council region.
- 1.38 "Governmental Authority" means any federal, provincial, local or foreign government or any of their boards or agencies, or any regulatory authority other than the Buyer and the Seller and entities controlled by the Buyer or the Seller.
- 1.39 "GST" means the goods and services tax imposed under the *Excise Tax Act* (Canada) as that Act may be amended or replaced from time to time.
- 1.40 "Interconnection" means the facilities and procedures that enable the flow of electric power from the Seller's Plant to the Transmission System or the Distribution System and vice versa.
- 1.41 "Interconnection Agreement" means the agreement between the Seller and the Distribution or Transmission Authority, the Standard Generator Interconnection Agreement, as applicable, which enables the flow of electric power from the Seller's Plant to the Distribution System or the Transmission System, as applicable, and vice versa, as amended or replaced from time to time.
- 1.42 "Interconnection Network Upgrades" has the meaning given in Appendix 3.
- 1.43 "Laws" means any and all statutes, laws (including common law), ordinances, rules, regulations, codes, orders, bylaws, policies, directions, standards, guidelines, protocols and other lawful requirements of any Governmental Authority in effect from time to time.
- 1.44 "Lender Consent Agreement" means a lender consent agreement in the form attached as Appendix 7.
- 1.45 "Losses" means an amount equal to the present value of the economic loss (exclusive of Costs), if any, to the Seller resulting from the termination of this EPA, determined in a commercially reasonable manner and in the manner set out in section 8.5.

- 1.46 "Major Damage" means damage to the Seller's Plant caused by Force Majeure where the cost to repair the damage exceeds the net present value (using the Present Value Rate) of the expected revenues under the EPA for the remainder of the Term less the net present value (using the Present Value Rate) of the estimated operating and maintenance costs for the Seller's Plant for the remainder of the Term.
- 1.47 "MW" means megawatt.
- 1.48 "MWh" means megawatt-hour.
- 1.49 "Network Upgrades" has the meaning given in Appendix 3.
- 1.50 "Network Upgrade Costs" has the meaning given in Appendix 3.
- 1.51 "Network Upgrade Security" has the meaning given in Appendix 3.
- 1.52 "On-Site Emission Reduction Rights" means any credit, reduction right, off-set, allowance, allocated pollution right, certificate or other unit of any kind whatsoever whether or not tradeable resulting from or otherwise related to the reduction, removal, or sequestration of emissions at or from the Seller's Plant.
- 1.53 "Order or Decision" has the meaning given in subsection 3.12.1.
- 1.54 "Party" means: (a) the Buyer and its successors and permitted assigns; or (b) the Seller and its successors and permitted assigns, and "Parties" means both the Buyer and the Seller and their respective successors and permitted assigns, provided that the Distribution Authority and the Transmission Authority shall be deemed not to be a "Party", whether or not owned or operated by the Buyer.
- 1.55 "Permits" means permits, certificates, licences, and other approvals required for the design, construction, ownership, operation, maintenance and decommissioning of the Seller's Plant and the delivery of Energy to the POI.
- 1.56 "Person" means an individual, body corporate, firm, partnership, joint venture, trust, legal representative or other legal entity.
- 1.57 "Planned Outage" means an outage for purposes of scheduled inspections, repair and/or maintenance in the Seller's Plant.
- 1.58 "Plant Capacity" means the electrical capacity of the Seller's Plant as set out in Appendix 2.
- 1.59 "POI" or "Point of Interconnection" means the point at which the Seller's Plant interconnects with the Distribution System or the Transmission System, as applicable, as described in Appendix 2.
- 1.60 "PPT" means Pacific Prevailing Time, which means Pacific Daylight Time or Pacific Standard Time as applicable.
- 1.61 "Present Value Rate" means the annual yield on a Government of Canada bond having a term and maturity date that most closely matches the remaining Term (as at the date of the applicable calculation) and expiry date of the EPA, plus 3%.

- 1.62 "Prime Rate" means the floating prime interest rate announced from time to time by the main branch of Bank of Montreal in Vancouver, or any successor thereto, expressed as an annual rate, as the reference rate it will use to determine rates of interest payable on Canadian dollar commercial loans made in Canada.
- 1.63 "Project" means the financing, design, engineering, procurement, construction, commissioning, operation and maintenance of the Seller's Plant.
- 1.64 "Project Standards" means:
- (a) all applicable Laws;
  - (b) the terms and conditions of all Permits, including land tenure agreements, issued in connection with the Seller's Plant;
  - (c) Good Utility Practice;
  - (d) the description of the Seller's Plant in Appendix 2;
  - (e) the requirement that Energy must qualify as Clean Energy;
  - (f) the terms and conditions of this EPA and the Interconnection Agreement; and
  - (g) the Code of Conduct Guidelines Applicable to the Buyer Contracts attached as Appendix 10.
- 1.65 "PST" means British Columbia provincial social service or sales taxes and similar or replacement assessments, if any.
- 1.66 "Records" means all records and logs required to properly administer this EPA, including:
- (a) Energy generation records and operating logs;
  - (b) a log of all outages of the Seller's Plant and other reductions in Energy output (specifying the date, time, duration and reasons for each such outage and each reduction in Energy output);
  - (c) meter readings;
  - (d) maintenance reports;
  - (e) invoice support records;
  - (f) documents concerning compliance with Permits and applicable Laws, but excluding any such documents that are protected by solicitor-client privilege;
  - (g) records related to Development Costs;
  - (h) all information the Buyer requires to verify qualification of the output from the Seller's Plant as Clean Energy; and

- (i) information relating to the Environmental Certification, information relating to the existence, nature and quality of Environmental Attributes, information required for the purposes of any Environmental Attributes or energy certification or tracking system, and any other information the Buyer requires to enable it or any of its Affiliates to obtain and realize the benefit of the Environmental Attributes,

all consistent with Good Utility Practice.

- 1.67 "Revenue Meter" means a revenue meter leased by the Buyer to the Seller that is: (a) capable of being remotely interrogated; and (b) calibrated to measure on an hourly basis the quantity of Energy delivered by the Seller to the POI after adjusting for any line losses associated with the transmission of Energy from the Seller's Plant to the POI.
- 1.68 "Seller" means the Party so identified on page one of this EPA, and its successors and permitted assigns.
- 1.69 "Seller Confidential Information" means any of the Seller's confidential technical or financial information provided by the Seller to the Buyer in confidence with express written notice to the Buyer of the confidential nature of the information and any communications by the Seller with any lawyer providing a Verification and all work product of the lawyer providing the Verification, but excluding:
- (a) this EPA; and
  - (b) information that (i) is or becomes in the public domain, other than as a result of a breach of this EPA by the Buyer, or (ii) is known to the Buyer before disclosure to it by the Seller, or becomes known to the Buyer thereafter by way of disclosure to the Buyer by any other Person who is not under an obligation of confidentiality with respect thereto.
- 1.70 "Seller's Plant" means the Seller's Plant described in Appendix 2 and all rights, property, facilities, assets, equipment, materials, Permits and contracts required to design, engineer, procure, construct, commission, operate and maintain the plant described in Appendix 2 and to interconnect that plant to the Distribution System or the Transmission System, as applicable, whether real or personal and whether tangible or intangible including all land tenure and all books, records and accounts with respect to the Seller's Plant described in Appendix 2.
- 1.71 "Standing Offer Confidentiality and Compliance Agreement" means the confidentiality and compliance agreement, a copy of which is attached as Appendix 9 to this EPA.
- 1.72 "Standing Offer Program" means the Buyer's power procurement program described as the Standing Offer Program.
- 1.73 "Target COD" means September 30, 2015, as revised pursuant to either or both of sections 3.9 and 3.11, if applicable.
- 1.74 "Term" has the meaning given in Article 2.
- 1.75 "Transmission Authority" means such Person or division of a Person, which for greater certainty may be a division of the Buyer, that carries out the interconnection and grid operation functions that British Columbia Transmission Corporation carried out prior to July 5, 2010.

- 1.76 "Transmission System" means the transmission, substation, protection, control and communication facilities: (a) owned by the Buyer or by the Transmission Authority; and (b) operated by the Transmission Authority in British Columbia, and includes all additions and modifications *thereto and repairs or replacements thereof*.
- 1.77 "UCA" means the *Utilities Commission Act* (British Columbia).
- 1.78 "Verification" has the meaning given in subsection 3.12.1.

## 2. INTERPRETATION

- 2.1 **Headings** - The division of this EPA into Articles, sections, subsections, paragraphs and Appendices and the insertion of headings are for convenience of reference only and do not affect the interpretation of this EPA.
- 2.2 **Plurality and Gender** - Words in the singular include the plural and vice versa. Words importing gender include the masculine, feminine and neuter genders.
- 2.3 **Governing Law** - This EPA is made under, and will be interpreted in accordance with, the laws of the Province of British Columbia. Subject to section 7.5, any suit, action or proceeding (a "Proceeding") arising out of or relating to this EPA may be brought in the courts of the Province of British Columbia at Vancouver, and those courts have non-exclusive jurisdiction in respect of any Proceeding and the Parties hereby irrevocably attorn to the jurisdiction of such courts in respect of any Proceeding.
- 2.4 **Industry Terms** - Technical or industry specific phrases or words not otherwise defined in this EPA have the well known meaning given to those terms as of the date of this EPA in the industry or trade in which they are applied or used.
- 2.5 **Statutory References** - Reference to a statute means, unless otherwise stated, the statute and regulations, if any, under that statute, in force from time to time, and any statute or regulation passed and in force which has the effect of supplementing or superseding that statute or those regulations.
- 2.6 **Currency** - References to dollars or \$ means Canadian dollars, unless otherwise stated.
- 2.7 **Reference Indices** - If any index, tariff or price quotation referred to in this EPA ceases to be published, or if the basis therefor is changed materially, there will be substituted an available replacement index, tariff or price quotation that most nearly, of those then publicly available, approximates the intent and purpose of the index, tariff or quotation that has so ceased or changed. This EPA shall be amended as necessary to accommodate such replacement index, tariff or price quotation, all as determined by written agreement between the Parties, or failing agreement, by arbitration under section 7.5.
- 2.8 **Conversions** - If a value used in a calculation in this EPA must be converted to another unit of measurement for purposes of consistency or to achieve a meaningful answer, the value will be converted to that different unit for purposes of the calculation.
- 2.9 **Payment Calculations** - All payments under this EPA will be calculated applying the following principles:



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- (a) all payment calculations will be rounded to the nearest cent;
- (b) Energy will be expressed in MWh rounded to two decimal places; and
- (c) if Statistics Canada (or the then recognized statistical branch of the Canadian Government):
  - (i) computes, at any time after the Effective Date, the CPI on a basis different to that employed at the Effective Date, then the CPI will be converted using the appropriate formula recommended by Statistics Canada (or the then recognized statistical branch of the Canadian Government);
  - (ii) at any time ceases to publish or provide the CPI, then the provisions of section 2.7 of Appendix 1 will apply;
  - (iii) has not published the CPI for a relevant period at the time the Seller is required to provide the Buyer with an invoice, the Seller shall prepare the invoice based on the CPI in effect at the time the invoice is issued and when the CPI for the relevant period is published, the Seller shall recalculate the invoice amounts in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation; or
  - (iv) recalculates the CPI within 36 months after an invoice affected by that CPI calculation has been issued, then the Seller shall recalculate the invoice amounts for the relevant period in the next succeeding invoice and shall include a credit or debit, without interest, in the next succeeding invoice based on the results of the recalculation.

**2.10 General Partner** - All references to "Seller" herein include the General Partner, unless the contrary is expressly indicated. Acts or omissions of the General Partner in relation to this EPA are deemed to be acts or omissions of the Seller.

**2.11 Additional Interpretive Rules** - For the purposes of this EPA, except as otherwise expressly stated:

- (a) "this EPA" means this EPA as it may from time to time be supplemented or amended and in effect, and includes the Appendices attached to this EPA;
- (b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this EPA as a whole and not to any particular section, subsection or other subdivision;
- (c) the word "including" or "includes" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto;
- (d) the words "year" and "month" refer to a calendar year and a calendar month;
- (e) any consent, approval or waiver contemplated by this EPA must be in writing and signed by the Party against whom its enforcement is sought, and may be given, withheld or conditioned in the unfettered discretion of the Party of whom it is requested, unless otherwise expressly stated;

- (f) all rights and remedies of either Party under this EPA are cumulative and not exclusive of any other remedies to which either Party may be lawfully entitled, and either Party may pursue any and all of its remedies concurrently, consecutively and alternatively; and
- (g) any notice required to be given, or other thing required to be done, under this EPA on or before a day that is not a Business Day, shall be deemed to be given or done when required hereunder if given or done on or before the next following Business Day.

### 3. ADDRESSES FOR NOTICES

#### 3.1 Notices to Buyer and Insurance - Except as noted below, all notices addressed to the Buyer shall be delivered to the following address:

Business Development & Contract Management, Energy Planning & Economic  
Development  
333 Dunsmuir Street, 17<sup>th</sup> floor  
Vancouver, B.C.  
V6B 5R3  
Attention: Director, Business Development & Contract Management  
Email: [IPP.Contract@bchydro.com](mailto:IPP.Contract@bchydro.com)

#### Invoices and Statements

To: IPP Invoicing  
333 Dunsmuir Street, 14<sup>th</sup> floor  
Vancouver, B.C.  
V6B 5R3  
Attention: Manager, Business Support Services  
Email: [IPP.Invoicing@bchydro.com](mailto:IPP.Invoicing@bchydro.com)

#### Network Upgrade Security

To: BC Hydro Distribution Generator Interconnections  
6911 Southpoint Drive, Edmonds B03  
Burnaby, B.C.  
V3N 4X8  
Attention: Manager, Generator Interconnections  
Email: [distribution.generators@bchydro.com](mailto:distribution.generators@bchydro.com)

#### 3.2 Notices to Seller - All notices addressed to the Seller shall be delivered to the following address:

To: Wedgemount Power Limited Partnership  
5403 Buckingham Avenue  
Burnaby, B.C. V5B 1Z9  
Attention: Mr. David Ehrhardt  
Email: [dehrhardt@telus.net](mailto:dehrhardt@telus.net)

REDACTED – APPENDIX 2

Seller's Plant Description

**REDACTED- APPENDIX 3**

**Network Upgrades**



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REDACTED - APPENDIX 5

COD Certificate

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REDACTED – APPENDIX 6

Sample Form Letter of Credit

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REDACTED – APPENDIX 7

Sample Form Lender Consent Agreement



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REDACTED – APPENDIX 8

Sample Form Development Progress Report

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REDACTED – APPENDIX 9

Standing Offer Confidentiality and Compliance Agreement

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REDACTED – APPENDIX 10

Code of Conduct Guidelines

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REDACTED – APPENDIX 11

Interconnection Study (November 2014)

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Joanna McKenna  
Manager, Distributed Generation  
P 604 623-4162  
E Joanne.McKenna@bchydro.com

This is Exhibit "B" referred to in the  
affidavit of Bruce Chow  
sworn before me at Vancouver  
this 19<sup>th</sup> day of January A.D. 2018.

Adrian Gore  
A Commissioner for taking Affidavits  
within British Columbia

**BY EMAIL**

pachambers@deloitte.ca  
mmckle@deloitte.ca

September 29, 2017

Deloitte Restructuring Inc.  
2800 – 1055 Dunsmuir Street  
Vancouver, BC  
V7X 1P4

Attention: Melinda McKle and Paul Chambers

Dear Sirs/Mesdames:

**Re: Receivership (the "Receivership") of Wedgemount Power Limited Partnership et al ("Wedgemount")**

We are in receipt of your letter dated September 27, 2017 ("Deloitte Letter"). BC Hydro does not agree with certain aspects of the Deloitte Letter; but without going into specifics at this time, we are writing in response to the Deloitte Letter and to follow up on the meeting held on September 25, 2017 (the "September 25 Meeting") between representatives of British Columbia Hydro and Power Authority ("BC Hydro") and Deloitte Restructuring Inc., as court appointed receiver of Wedgemount (the "Receiver") pursuant to the Order of Mr. Justice Steeves pronounced May 12, 2017 in Vancouver Registry Action No. S-174308 (the "Receivership Order").

As you are aware, Wedgemount and BC Hydro are party to an Electricity Purchase Agreement made as of March 6, 2015 (the "EPA"). While BC Hydro has been aware of the Receivership generally, and has had some contact with the Receiver with respect to the project interconnection options and studies, we have not been closely involved in, nor advised of, the Receivership process to date aside from an initial phone call with the Receiver on May 18, 2017 (the "May 2017 Call"), in which BC Hydro confirmed that the Project needed to achieve COD by September 30, 2017. At no time during the May 2017 Call did we waive our termination rights under the EPA.

You advised at the September 25 Meeting that in July, the Receiver commenced a marketing and sale process for certain assets of Wedgemount (the "Sale Process"). We learned from you that the Receiver has set up a data room that includes the EPA and other agreements between BC Hydro and Wedgemount, and that potential bidders who signed non-disclosure agreements ("NDAs") with the Receiver have been granted access to that data room. You further advised that the Receiver expects

binding offers for Wedgemount's assets by October 2, 2017, with the successful bidder then having a week or so to conduct further diligence after having been selected by the Receiver.

We were very surprised to learn about the Sale Process given the obvious importance to us of the sale of the EPA and the need for BC Hydro's involvement throughout the Sale Process (which has not occurred). The EPA is Wedgemount's principal asset and its purchase will be the foundation of any binding offers submitted to the Receiver. You heard some immediate concerns from us at the September 25 Meeting. On further reflection, our concerns have expanded and we believe that the Sale Process as currently constituted has significant flaws that may potentially result in negative outcomes for BC Hydro, the Receiver, and potential bidders. We believe it is important that we set out our concerns for you now, so that there is no misunderstanding as to BC Hydro's position and no surprises for the Receiver or any potential bidders in the Sale Process. This letter is not intended to be technical in any way and is not meant to present an exhaustive list of BC Hydro's concerns, but it is intended to precipitate an urgent discussion to see whether a workable Sale Process can be achieved.

First, we note that the EPA has confidentiality provisions that cannot be addressed by interested bidders signing an NDA with the Receiver. The EPA cannot be disclosed without BC Hydro's consent, which was neither sought nor granted. Populating the data room with the EPA, and giving access to it to bidders, is a breach of the EPA and constitutes a default under the EPA. BC Hydro is a regulated entity; it takes its confidentiality agreements very seriously and insists on them being honoured. We have not seen the form of NDA; we do not know who or how many people have had access to the data room and the EPA, nor what use they might otherwise make of the information found there, notwithstanding whatever restrictions the form of NDA imposes on them.

We have not seen the bid package that was sent to prospective bidders. We do not know what the Receiver is offering to sell, or on what terms, or what is said about BC Hydro's involvement, or what qualifications have been communicated to bidders about what they would be buying. BC Hydro will need to see the complete bid package as soon as possible so that we can assess whether it raises any additional issues for us.

Critically, any assignment of the EPA or any related agreements cannot be achieved without BC Hydro's consent. Any assignment to a successful bidder would have to be on terms acceptable to BC Hydro, taking into account (among other things) the need to cure all existing defaults, and the requirement to address the changing circumstances between the time that the EPA was entered into and the present date. Amendments to the EPA may be required before it can be assigned. It is unknown whether a successful bidder and BC Hydro could agree on the terms of any consent to the assignment. The bids could change, or the identity of the successful bidder could change, if interested parties were aware of all of the circumstances of the EPA and the requirements of BC Hydro in connection with an assignment.

The Receiver has embarked on the Sales Process without sufficient consultation with BC Hydro regarding the EPA. A Sale Process that results in an accepted bid that subsequently results in a complex and material negotiation with BC Hydro, raises the prospect of an unsuccessful Sale Process in which both the successful and unsuccessful bidders view it as a "bait and switch" that results in a non-sale. Furthermore, as discussed in the September 25 Meeting, is it not BC Hydro's practice to negotiate with any party other than the "Seller" under the EPA, which is currently the Receiver. It would be problematic for BC Hydro to negotiate with a prospective bidder who was not yet a party to the EPA. All these issues need to be addressed.

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Perhaps most importantly, as we raised in the September 25 Meeting, BC Hydro has an impending termination right under the EPA as a result of Wedgemount not reaching COD within two years of the September 30, 2015 Target COD under the EPA. By email dated September 11, 2017 (the "September 2017 Email"), the first communication from the Receiver to the undersigned since the May 2017 Call, the Receiver asked BC Hydro to confirm the Receiver's presumption that the termination provision under the EPA is not applicable. By telephone call September 20, 2017, BC Hydro confirmed that its termination right crystallizes on September 30, 2017, and that BC Hydro would not be waiving that right. We are concerned that prospective bidders may not be aware of BC Hydro's impending termination right.

As noted above, there are material, serious and complex issues that need to be addressed before any Sale Process can be completed. To be clear, BC Hydro reserves, has not waived, and will not waive any of its rights or remedies under the EPA or any of its other agreements with Wedgemount, and it has not waived and will not waive any existing or future defaults, other than on terms acceptable to it in its sole discretion. BC Hydro is not in a position to provide any assurance at this time that it will not exercise any termination rights that it has under the EPA. Subject to the terms of the Receivership Order, BC Hydro will insist on strict compliance with the terms of the EPA going forward and in connection with any proposed assignment of the EPA. BC Hydro's intention is that this letter will lead to immediate discussions with the Receiver, and to BC Hydro being informed about the Sale Process as appropriate, assuming a practical path forward can be found.

We look forward to your reply at your earliest convenience.



Joanne McKenna  
Manager, Distributed Generation

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This is Exhibit " C " referred to in the affidavit of Bruce Chan sworn before me at Vancouver this 19<sup>th</sup> day of January, A.D. 2015  
Adam Gao  
A Commissioner for taking Affidavits within British Columbia

LENDER CONSENT AGREEMENT  
WEDGEMOUNT HYDROELECTRIC PROJECT

(See section 7.4 (c) of the Electricity Purchase Agreement)

THIS AGREEMENT is made as of June 12, 2015

AMONG:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a corporation continued under the *Hydro and Power Authority Act*, R.S.BC 1996, c.212, having its head office at 333 Dunsmuir Street, Vancouver, British Columbia, V6B 5R3

(the "Buyer")

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, a limited partnership formed under the laws of the Province of British Columbia and acting and represented by its general partner, WEDGEMOUNT POWER (GP) INC., a corporation incorporated under the laws of the Province of [British Columbia] (the "General Partner") having an address at [5403 Buckingham Avenue, Burnaby, British Columbia V5E 1Z9]

(the "Seller")

AND:

TRAVELERS CAPITAL CORPORATION, having an address at 501 - 4180 Lougheed Highway, Burnaby, British Columbia V5C 6A7

(the "Agent").

WHEREAS:

A. The Buyer and the Seller entered into an Electricity Purchase Agreement made as of March 6, 2015 (as further amended, modified, restated and/or supplemented from time to time; the "EPA");

B. Pursuant to a credit agreement to be entered into among the Seller, as borrower, the lenders from time to time party thereto (the "Lenders") and the Agent, as agent for the Lenders (as amended, modified, restated, renewed and/or supplemented from time to time, the "Credit Agreement"), the Seller will obtain certain credit facilities (the "Credit") from the Lenders for



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the purposes of financing the design, construction, operation and maintenance of the Seller's Plant (as defined in the EPA);

C. To secure the due payment of all principal, interest (including interest on overdue interest), premium (if any) and other amounts payable in respect of the Credit and the due performance of all other obligations, present and future, of the Seller under the Credit Agreement and the other Finance Documents (as defined in the Credit Agreement), the Seller and the General Partner have granted or will grant certain security to and in favour of the Agent, as administrative agent for and on behalf of the Lenders, including, without limitation, assignments by way of security of, and grant of security interest in, all of the right, title and interest of the Seller and the General Partner under the EPA and security on the Seller's Plant (as defined in the EPA) (collectively, the "Agent Security"); and

D. The Agent, for and on behalf of the Lenders, has requested the Buyer to enter into this Agreement confirming certain matters.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$10 and other good and valuable consideration now paid by each of the Seller and the Agent to the Buyer (the receipt and sufficiency of which are hereby acknowledged by the Buyer), the parties covenant and agree that:

1. **Additional Definitions:** In this Agreement, including the recitals:
  - (a) "Assumption Notice" means a notice given by the Agent to the Buyer pursuant to subsection 6.1(a) of this Agreement;
  - (b) "Default or Termination Notice" means a notice given to the Seller by the Buyer under the EPA that, with or without the lapse of time, entitles, or shall entitle, the Buyer to terminate the EPA, subject to rights, if any, of the Seller to cure the default or other circumstance in respect of which the notice is given;
  - (c) "Receiver" means a receiver, manager or receiver-manager appointed or designated by, or on the initiative of, the Agent; and
  - (d) words and phrases defined in the EPA, and not otherwise defined herein, when used herein have the meanings given in the EPA.
2. **EPA Amendments:** The Buyer and the Seller acknowledge and agree that the EPA is in full force and effect, and that the EPA, as originally executed, has not been amended.
3. **Buyer Confirmations Concerning the EPA:** The Buyer confirms to the Agent that:
  - (a) the EPA has been duly authorized, executed and delivered by the Buyer;
  - (b) the Buyer has not received any notice of assignment by the Seller or the General Partner of all or any part of their right, title and interest in and to the EPA, except to the Agent;

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- (c) the Buyer has not given any Default or Termination Notice;
- (d) the Buyer is not aware of any default or other circumstance that would entitle the Buyer to give a Default or Termination Notice, provided however that the Buyer has not undertaken any investigation or due diligence in respect of this confirmation; and
- (e) the Buyer shall not enter into any agreement with the Seller to materially amend or replace the EPA, or enter into any agreement with the Seller to terminate the EPA, without giving the Agent not less than 30 days' prior written notice.

4. **Assignment of EPA to Agent:**

4.1 *Buyer Acknowledgement:* The Buyer acknowledges receipt of notice of, and consents to, the assignment by the Seller and the General Partner to the Agent of all the right, title and interest of the Seller and the General Partner in and to the EPA made pursuant to and in accordance with the Agent Security.

4.2 *Agent Acknowledgement:* The Agent acknowledges that:

- (a) it has received a copy of the EPA; and
- (b) the assignment by the Seller and the General Partner to the Agent of the EPA pursuant to the Agent Security is subject in all respects to the terms and conditions of the EPA and this Agreement.

4.2 *Confidentiality:* The Agent covenants and agrees with the Buyer to be bound by the provisions of section 7.8 of the EPA regarding confidentiality, as if an original signatory thereto.

4.3 *Seller Representation:* Each of the Seller and the General Partner represents and warrants to the Buyer that the Agent is the only person to whom it has granted a security interest in the EPA or the Seller's Plant.

5. **EPA Notices:** The Buyer covenants and agrees with the Agent that, except as hereinafter otherwise permitted, the Buyer:

- (a) shall give the Agent a copy of any Default or Termination Notice concurrently with, or promptly after, any such notice is given to the Seller;
- (b) shall not exercise any right it may have to terminate the EPA until the later of (i) the date that is 45 days after the date on which the Buyer delivered to the Agent a copy of the Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the Buyer is entitled to terminate the EPA;
- (c) shall not, provided that there is no other Buyer termination event under the EPA, terminate the EPA based on either or both of the Seller and the General Partner becoming Bankrupt or Insolvent if the Agent is promptly and diligently prosecuting to completion enforcement proceedings under the Agent Security

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until 30 days after the expiry of any court order period restricting the termination of the EPA; and

- (d) shall not exercise any right it may have under section 5.6 of the EPA to deduct any amounts owing by the Seller to the Buyer under the EPA from amounts owing by the Buyer to the Seller under the EPA until the date that is 15 days after the date the Buyer provides the Agent with a copy of the notice delivered by the Buyer to the Seller under section 5.6 of the EPA.

Nothing in this Agreement prevents or restricts: (i) the exercise by the Buyer of any other right or remedy that it may be entitled to exercise under or in relation to the EPA; or (ii) the right of the Agent, without any obligation to do so, to cure, or cause the cure of, any default of the Seller or the General Partner under the EPA that would be curable by the Seller or the General Partner, whether or not an Assumption Notice is given.

6. Realization by Agent:

6.1 *Assumption Notice and/or Sale:* If the Seller or the General Partner has defaulted under the Credit Agreement or the Agent Security and the Agent has elected to take possession of the Seller's Plant, either by a Receiver or in any other way, pursuant to the Security, the Agent shall either:

- (a) give the Buyer written notice (an "Assumption Notice") stating that the Agent is assuming the EPA, whereupon:
  - (i) the Agent shall be entitled to all the rights and benefits, and shall have assumed, and shall perform and discharge, all the obligations and liabilities, of the Seller or the General Partner under the EPA, and the Agent shall be a party to, and bound by, the EPA as if an original signatory thereto in the place and stead of the Seller;
  - (ii) notwithstanding subparagraph (i), the Agent shall not be liable to the Buyer for defaults of the Seller or the General Partner occurring before the Assumption Notice is given, except to the extent that such defaults continue thereafter; provided however that the Buyer may at any time before or after such notice is given exercise any rights of set-off in respect of any such prior default under or in relation to the EPA which the Buyer would otherwise be entitled to exercise; or
- (b) give written notice to the Buyer that the Agent wishes to cause the Seller or the General Partner to assign all of the Seller's or the General Partner's right, title and interest in and to the EPA and the Seller's Plant to a third person or persons, subject however to the Seller and the assignee complying with all provisions of the EPA relative to such assignment.

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The Buyer agrees that if the Agent enters the Seller's Plant for the purpose of viewing or examining the state of repair, condition or operation thereof such shall not constitute taking possession thereof.

6.2 *Agent Liability and Release:* The Agent assumes no liability to the Buyer under the EPA unless and until the Agent gives an Assumption Notice. Thereafter, if the Agent completes an assignment to a third person or persons pursuant to and in accordance with the applicable provisions of the EPA, the Agent shall be released from all liability and obligations of the Seller or the General Partner to the Buyer under the EPA accruing from and after completion of that assignment.

6.3 *Seller and the General Partner not Released:* Nothing in this Agreement, and neither the giving of an Assumption Notice, nor any assignment pursuant to sub-section 6.1(b) of this Agreement releases the Seller or the General Partner from its obligations and liabilities to the Buyer under and in relation to the EPA.

6.4 *Receiver Included:* References in this section 6 to the Agent include a Receiver.

7. Notices: Any notice required or permitted to be given under this Agreement must be in writing and may be given by personal delivery, or by transmittal by facsimile, addressed to the respective parties as follows:

(a) Buyer at:

British Columbia Hydro and Power Authority  
333 Dunsmuir Street, 17<sup>th</sup> Floor  
Vancouver, British Columbia, V6B 5R3

Attention: Director, Business Development & Contract Management  
Facsimile No.: 604-623-4335  
Email: IPP.Contract@bchydro.com

(b) Seller at:

Wedgemount Power Limited Partnership  
5403 Buckingham Avenue  
Burnaby, British Columbia V5E 1Z9

Attention: Mr. David Ehrhardt  
Email: [dehrhardt@telus.net](mailto:dehrhardt@telus.net)  
Facsimile No.: 604-649-1200

(c) Agent at:

Travelers Capital Corporation  
501 - 4180 Lougheed Highway  
Burnaby, British Columbia V5C 6A7

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Attention: Mark Bohn  
Facsimile No.: (844) 211-8877

Notices given by facsimile shall be deemed to be received on the Business Day next following the date of transmission.

8. **Choice of Law:** This Agreement is governed by British Columbia law, and the laws of Canada applicable therein.

9. **Jurisdiction:** Each party to this Agreement attorns irrevocably and unconditionally to the courts of the Province of British Columbia, and to courts to which appeals therefrom may be taken, in connection with any action, suit or proceeding commenced under or in relation to this Agreement. Notwithstanding the foregoing, the Agent acknowledges that upon an Assumption Notice being given, the Agent shall become party to, and bound by, the agreements to arbitrate contained in section 7.5 of the EPA.

10. **Termination:** This Agreement, and all rights and liabilities among the parties hereunder shall terminate upon the full and final discharge of all of the Agent Security. The Agent shall give the Buyer prompt notice of the full and final discharge of all of the Agent Security.

11. **Amendment:** This Agreement may be amended only by an instrument in writing signed by each of the parties hereto.

12. **Enurement:** This Agreement enures to the benefit of, and is binding upon, the parties hereto, and their respective successors and permitted assigns.


13. **Counterparts:** This Agreement may be executed by facsimile and in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same document.

14. **Effective Date:** This Agreement is not binding upon any party unless and until executed and delivered by all parties, whereupon this Agreement will take effect as of the day first above written.

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IN WITNESS WHEREOF each of the parties has duly executed this Agreement as of the day and year first above written.


**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

By:   
(Signature)

Name: Bruce Chow


Title: Mgr. - Contract Mgt.

**TRAVELERS CAPITAL CORPORATION**

By:   
(Signature)

Name: Mark Bohn  
Managing Partner

Title: \_\_\_\_\_

**WEDGEMOUNT POWER LIMITED PARTNERSHIP** acting and represented by its general partner **WEDGEMOUNT POWER (GP) INC.** 

By: \_\_\_\_\_  
(Signature)

Name: BRENT HARRIS

Title: Director

No. S-174308  
Vancouver Registry

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

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AFFIDAVIT

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BORDEN LADNER GERVAIS LLP  
1200 - 200 Burrard Street  
Vancouver, BC V7X 1T2  
Telephone: (604) 687-5744  
Attn: Magnus Verbrugge/Lisa Hiebert  
544441.001726

THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Yvonne Hain Gibe T. notary (H1133)  
A Notary for taking Affidavits within the Province of Québec





This is the 1<sup>st</sup> Affidavit  
of Frank Lin in this case and  
was made on March 29, 2018

No. S-174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, FRANK LIN, of 6911 Southpoint Drive, Podium B03, in the City of Burnaby, in the Province of British Columbia, SOLEMNLY AFFIRM and say as follows:

1. I am the Director, Interconnections and Shared Assets at British Columbia Hydro and Power Authority ("BCH"), a stakeholder in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true. I have worked at BCH for 18 years in various roles.
2. I have reviewed the Affidavit #1 of Bruce Chow made January 19, 2018 (the "Chow Affidavit"). Capitalized terms used in this Affidavit, but not otherwise defined, have the meaning set out in the Chow Affidavit.

3. All projects in the SOP require reports to assess, among other things, the design, engineering and cost of the project. A report is also required regarding the interconnection of the IPPs plant to the BCH grid. BCH prepares the interconnection report. That report remains in draft until it is accepted by the IPP.
4. In connection with the EPA between BCH and Wedgemount, BCH and Wedgemount entered into a facilities study agreement dated April 27, 2015 (the "Facility Study Agreement"). Attached and marked as Exhibit "A" is a true copy of the Facility Study Agreement.
5. Pursuant to the Facility Study Agreement:
  - (a) BCH would perform interconnection studies to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to connect Wedgemount's project to BCH's distribution system (the "Interconnection Facilities Study"); and,
  - (b) Wedgemount would be responsible for all costs incurred by BCH in connection with the Interconnection Facilities Study.
6. An Interconnection Facilities Study sets the schedule and the costs for completing the project, and allows BCH to enter into an interconnection agreement with the IPP. The final Interconnection Facilities Study is a schedule to the interconnection agreement. A project cannot reach COD without an interconnection agreement.
7. The Wedgemount project cannot be connected to the BCH distribution system (i.e. reach commercial operation) until the Interconnection Facilities Study is finalized and all the necessary capital upgrades are completed, including Wedgemount confirming its route and its commitment to cover its expenses.
8. As far as I am aware, this was the first power project of its kind that Wedgemount (or its principals David Ehrhardt and Brent Hardy) were involved in. In addition to this power project, Wedgemount was also involved in residential subdivision work for a real estate project in the same area.

9. The Wedgemount project involves a complicated scope of work for interconnection because of the project's location and the nature of BCH's infrastructure in that area.
10. The Wedgemount project was delayed by, among other things:
  - (a) in November 2014, a Wedgemount requesting a change to the cable routing through its subdivision;
  - (b) between January 2015 and April 2015 BCH stopped work on the Interconnection Facility Study because Wedgemount failed to make payments required. The BCH work was re-started in April 2015 when partial payment was received; and
  - (c) in December 2015, Wedgemount requested a new routing for cables, with a view to reducing costs. This change in routing necessitated revisions to the study. It took approximately six months for AMEC, the external consultant retained for this portion of the Interconnection Facilities Study work, to complete these revisions.
11. On August 16, 2016, BCH issued the draft Interconnection Facilities Study. Attached and marked as **Exhibit "B"** is a true copy of an email (without attachments) dated August 16, 2016 from BCH to Wedgemount regarding the draft Interconnection Facilities Study.
12. In late August 2016, Wedgemount advised BCH that it likely would not be able to continue to fund its project.
13. In early September 2016, Wedgemount and its lender Industrial Alliance Insurance and Financial Services Inc. ("IA") met members of the BCH interconnections group to discuss a path forward for the project. Among other things, Wedgemount and IA advised us that the schedule and costs identified in the draft Interconnection Facilities Study rendered the project uneconomic. At that time, Wedgemount and IA mentioned that they would require relief under the EPA with respect to the COD date.
14. The BCH interconnections group handles the technical aspects of projects, including completing the reports necessary for the project to connect to the BCH grid and reach

commercial operations. The BCH interconnections group does not address contractual issues regarding EPAs.

15. Based on my experience with similar projects, and BCH's policies and procedures in these matters, whenever contractual issues arise in the course of discussions between the BCH interconnections group and an IPP, interconnections advises the IPP that they would need to speak to someone else within BCH about the terms of the EPA.
16. In this case, we advised Wedgemount that questions regarding its EPA, and any requests for "relief" regarding COD needed to be directed to the procurement group. The interconnections group does not address COD dates, other than working with the IPP on technical aspects necessary to achieve COD.
17. The BCH interconnections group continued to work with Wedgemount to move the project towards implementation and to avoid delays. For example:
  - (a) On September 12, 2016, Ketki Shah advised Wedgemount the vegetation clearing needed to be completed in the fall 2016 in order to avoid delays. Attached and marked as **Exhibit "C"** is a true copy of an email dated September 12, 2016 from Ketki Shah to David Ehrhardt and Brent Hardy.
  - (b) On September 22, 2016, Ketki Shah advised Wedgemount of various issues to be resolved, and that Wedgemount had not provided sufficient funds for BCH to move forward. Attached and marked as **Exhibit "D"** is a true copy of an email dated September 22, 2016 from Ketki Shah to David Ehrhardt and Brent Hardy.
18. In February 2017, Wedgemount advised BCH that Wedgemount and IA required protection against revenue loss if COD went beyond July 31, 2017 and requested, among other things cost certainty regarding the remaining interconnections scope and work and cost sharing between BCH and Wedgemount. Attached and marked as **Exhibit "E"** is an email dated February 15, 2017 that I sent to Peter Zell.
19. The request for protection against revenue loss is an extraordinary request.

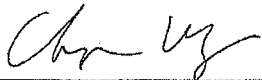
20. BCH considered the request in good faith, but in order to properly assess and consider the request, we had to confirm the scope of work and the resulting cost and schedule. This was not possible until Wedgemount completed its deliverables.
21. On February 23, 2017, I attended a meeting with Wedgemount where they presented a schedule for construction that estimated COD in July 2017. At that meeting, BCH advised Wedgemount that their proposed schedule was problematic because, among other things, the project did not have all necessary permits and the design for construction hadn't been approved. From an interconnection standpoint, their proposed connection date was unreasonable. Attached and marked as **Exhibit "F"** is a true copy of an email dated February 24, 2017 from Russell Dobie of BCH to Peter Zell and David Ehrhardt summarizing the February 23, 2017 meeting and BCH's concerns regarding their proposed COD of July 2017.
22. On March 12, 2017, I attended a meeting with Wedgemount and others regarding the project. At this meeting, the parties agreed to work to bring the project to COD as quickly as possible, but BCH noted that the date ought to be realistic. Wedgemount requested that BCH extend the existing termination of the EPA from September 2017 "until such time that COD is reached". I agreed to discuss this request with the BCH energy procurement group. As noted above, the interconnections group does not address contractual issues, such as extensions of dates under an EPA. Attached and marked as **Exhibit "G"** is a true copy of an email dated March 20, 2017 from Brett Robinson attaching the meeting minutes for the March 10, 2017 meeting.
23. On March 31, 2017, I advised Brett Robinson that as long as the parties were working towards a solution, BCH would not terminate the EPA. BCH did not amend the EPA or extend the termination date from September 2017. Attached and marked as **Exhibit "H"** is a true copy of an email dated April 1, 2017 from Brett Robinson to me and others responding to my March 31, 2017 email.
24. In early May 2017, Wedgemount proposed a meeting agenda that included an alternate route and the process for extending COD to May 2018. Wedgemount cancelled the

meeting because it was continuing to work through issues with IA. Attached and marked as **Exhibit "I"** is a true copy of the email string regarding the May 2017 meeting.

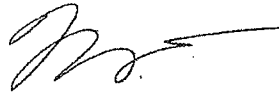
25. On May 9, 2017, IA contacted me to advise that they would be putting the project into receivership.
26. At the time the Receiver was appointed, the draft Interconnection Study Report would require updates and revisions in order for it to be finalized. Among other things, there had been significant changes to the scope of the project, the route had changed and the report was out of date since it had been prepared 9 months earlier.
27. In May 24, 2017, BCH had discussions with Michael Potyok, a consultant retained by IA. Attached and marked as **Exhibit "J"** is a true copy of an email dated May 24, 2017 from Vic Rempel to Mr. Potyok outlining BCH's requirements in order to update and revise the August 2016 Interconnection Study Report.
28. I am advised by Vic Rempel, and verily believe, that Mr. Rempel and Ryan Hefflick met with the Receiver and Michael Potyok on June 6, 2017 to discuss technical issues towards updating the draft Interconnection Report. Based on an email dated June 6, 2017 from Mr. Potyok, I verily believe that at that meeting Mr. Rempel advised the Receiver and Mr. Potyok that BCH would advance completion of the Interconnection Study Report, but would require the work to be fully defined before it could do so, including details of the final route. Based on the email, I further believe that Mr. Potyok agreed to work to advance those designs. Attached and marked as **Exhibit "K"** is a true copy of an email dated June 6, 2017 from Michael Potyok to Vic Rempel and Ryan Hefflick.
29. It is not possible for BCH to complete the Interconnection Facilities Study because, among other things, Wedgemount and the Receiver have yet to finalize the distribution line routing and point of interconnection to the BCH system. BCH works with the IPP to finalize the distribution line routing and point of interconnection, but the IPP, in this case Wedgemount, has the ultimate responsibility for finalizing the route and interconnection point.

- 30. Other than the March 31, 2017 email attached as Exhibit H, responding to a specific question asked at the March 12, 2018 meeting, all of the discussions that I had with Wedgemount, IA and the Receiver were limited to technical aspects of the project. Other than my March 31, 2017 email, all questions and issues with respect to the EPA were referred to Joanne McKenna.
- 31. Based on my discussions with the BCH interconnections group, including Ryan Hefflick and Vic Rempel, I verily believe that their discussions with Wedgemount, IA and the Receiver were limited to technical aspects of the project and that all questions and issues with respect to the EPA were referred to Joanne McKenna.
- 32. Based on my involvement in this project, I believe that at all times, BCH reserved its termination rights under the EPA and maintained that its termination rights had not been waived.

AFFIRMED BEFORE ME at the City of  
 Vancouver, in the Province of British Columbia, this 29th day of March 2018




\_\_\_\_\_  
 A Commissioner for taking oaths in and for  
 the Province of British Columbia



\_\_\_\_\_  
 FRANK LIN

**CHAPMANN WONG**  
*Articling Student*  
**BORDEN LADNER GERVAIS LLP**  
 1200 Waterfront Centre, 200 Burrard Street  
 P.O. Box 48800, Vancouver, Canada V7X 1T2  
 604-640-4116

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018



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A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA



FACILITIES STUDY AGREEMENT

THIS AGREEMENT is dated for reference April 27, 2015.

**BETWEEN:**

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,  
a crown corporation having its head office at 333 Dunsmuir Street,  
Vancouver, British Columbia

("BC Hydro")

AND: WEDGEMOUNT POWER LIMITED PARTNERSHIP, a Limited Partnership by its  
General Partner Wedgemount Power (GP) Inc.  
5439 Buckingham Ave.  
Burnaby, B.C. V5E 1Z9

(the "Generator")

**WHEREAS:**

- (A) The Interconnections and Shared Assets office of BC Hydro is responsible for distribution voltage interconnections of power generation and interconnection facilities to the BC Hydro distribution system (the "Distribution System"); and
- (B) The Generator has completed and submitted to BC Hydro a Generator Interconnection Equipment Statement (the "Application") for the potential interconnection of certain electrical generation and distribution facilities (the "Generating Facilities") at RBW substation near Whistler, British Columbia to the Distribution System;
- (C) BC Hydro has completed an Interconnection System Impact Study, R1 (the "SIS Study") and provided the results of said study to the Generator on November 28, 2014; and
- (D) The Generator has requested BC Hydro to perform the additional interconnection studies to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the interconnection SIS Study in accordance with Good Utility Practice to physically and electrically connect the Generating Facilities to the Distribution System (the "Interconnection Facilities Study"); and
- (D) BC Hydro will perform the Interconnection Facilities Study as provided in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual agreements between the Parties and for other good and valuable consideration, BC Hydro and the Generator agree as follows:

1. Scope: The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in the SIS Study and the Interconnection Facilities Study will be based upon the results of the SIS Study and the technical information provided by the Generator in the Application.

2. **Interconnection Facilities Study Report:** The results of the Interconnection Facilities Study will be provided to the Generator in the form of a report which will include design cost estimates, an assessment of the project interconnection requirements for the Generating Facilities, a cost estimate for required facilities to interconnect the Generating Facilities (with a design level estimate of +/-20%) and a schedule for such interconnection. The Interconnection Facilities Study Report estimated completion date will be provided to the customer once the project scope, available resources and timeline has been reviewed.

3. **Cost of the Interconnection Facilities Study:** The Generator has provided a deposit of \$195,100.00 and will provide a further deposit of \$196,350 (\$187,000 + tax) by May 29, 2013, for the performance of the Interconnection Facilities Study. The Generator is responsible for all actual costs incurred by BC Hydro, plus any applicable taxes, in completing the Interconnection Facilities Study Report. BC Hydro shall invoice the Generator for all actual costs, plus any applicable taxes. Any difference between the deposit and the invoiced amount shall be paid by or refunded to the Generator, as appropriate.

4. **Scope of Services Not Provided:** The Interconnection Facilities Study to be provided under this Agreement is limited only to the assessment of technical interconnection issues, as noted above, and such study does not include any non-technical interconnection-related issues, such as environmental and regulatory requirements, public consultation, First Nations issues and any other property-related issues arising from construction and/or operation of the Generating Facilities.

5. **No Representation As To Estimates:** All estimates and assessments provided by BC Hydro pursuant to this Agreement are non-binding. BC Hydro makes no representations as to the accuracy, usefulness or completeness of any estimate or assessment provided in the Interconnection Facilities Study or pursuant to this Agreement, and the provision of any such estimates or assessments shall not in any way limit the Generator's responsibility for the payment of actual interconnection costs.

6. **Additional Technical Information:** If, after the submission of the Application, the Generator modifies its point of interconnection, interconnection request or the technical information provided in the Application, the Generator will notify BC Hydro of such change(s) and acknowledges that this may impact the estimated costs and completion date of the Interconnection Facilities Study being conducted and may impact the System Impact Study results. BC Hydro reserves the right to request additional technical information from the Generator, as may reasonably become necessary consistent with Good Utility Practice, during the course of performing the Interconnection Facilities Study.

8. **Limitation of Liability:** Neither BC Hydro, nor its employees, officers, directors or agents, or shareholders will be liable to the Generator, or its employees, officers, directors or agents, under or in relation to this Agreement, for any indirect or consequential damages, injury or loss suffered by the Generator or its employees, officers or directors or agents, howsoever and whensoever caused, and whether arising in contract or in tort in respect of the services provided under this Agreement.

7. **Termination:** Generator may terminate this Agreement for any reason by giving BC Hydro written notice of not less than 3 (three) business days. All costs incurred by BC Hydro up to the date of termination will be due and owing by the Generator. Clauses 3 and 5 of this Agreement shall survive termination, as will any other provisions that would reasonably be expected to survive such termination.

8. Assignment: Generator shall not assign this Agreement without the prior written consent of BC Hydro.

10. Entire Agreement and Governing Law: This Agreement will supersede any prior agreements, arrangements, discussions or understandings between BC Hydro and the Generator regarding the subject matter of this Agreement. This Agreement will be governed by and construed in accordance with the laws of British Columbia and the laws of Canada applicable therein without regard to conflicts of law principles.

11. Counterpart/Electronic Transmission: This Agreement may be executed in one or more counterparts and delivered by facsimile or electronic transmission, each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, each signatory having been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign, the Parties have caused this Agreement to be executed by their respective duly authorized representatives, as of the date first written above.

BRITISH COLUMBIA HYDRO  
AND POWER AUTHORITY

Per: \_\_\_\_\_

Title: Director,  
Interconnections

Date: \_\_\_\_\_

WEDGEMONT POWER LIMITED  
PARTNERSHIP

Per: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
**29** DAY OF MARCH 2018



\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

---

**From:** Shah, Ketki  
**Sent:** August-16-16 3:25 PM  
**To:** Brent Hardy; David Ehrhardt  
**Cc:** Hefflick, Ryan; Kevin Healy (khealy@creus.ca)  
**Subject:** Wedgemount Creek Draft Facilities Study - Part 1/4  
**Attachments:** WGM-Draft-Facilities-study-08-16-2016-(1-99).zip

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Brent and David,

Attached is the draft Facilities study. All documents are in draft form. We will issue them as final following your review and acceptance. The Facilities study will then be an attachment to the tendered Interconnection Agreement for your project.

Please review.

- 1) The forecasted Network Upgrades are \$ 6,281,409.
- 2) The Revenue Metering costs are \$ 54,756.

AMEC can provide further context of the increase from the conceptual level estimate in the SIS if requested. At a high level, the original scope did not anticipate how challenging the routing would be (although it was identified as a risk), it did not include undergrounding any sections, and also the changed routing has significant cost for the environmental mitigation plans.

The project plan assumes that funding is in place for the end of September. This would mean receiving the security (LoC) and also completing the internal approval process within BC Hydro. If we can advance that date, we could try to advance the work. One piece that we could do as soon as possible is the vegetation clearing. That would mean a Partial Implementation funding of \$ 120,000 would be required, depending on your schedule for providing the full LoC.

The project plan is based on securing funding by the end of September. The schedule is also adjusted to reflect the risk that the permitting is still not complete. We cannot start construction without the required permits. The delay in getting the Telus review has impacted this timeline. We need the Telus review for MoTI and the private owner's permit/approval, and we are still waiting for response from Transport Canada and the Heliport – and this is all required for Section 1.

The updated Definition study cost estimate is \$ 833,156. Along with the original deposit of \$ 374,000, you have so far provided another \$ 100,000. We will require the additional funds as soon as possible as the work done exceeds the payment on hand. You did provide a cheque in lieu of the LoC previously (for \$ 347,000 for Partial Implementation). Now that we have that LoC, if you like, we could apply that deposit towards the study work.

As the next step, if you could review and accept the draft documents we can finalize the Facilities study and tender an Interconnection Agreement. Ryan and I are available to discuss this tomorrow, just let us know when and I can set up a conference call.

Regards,  
Ketki

---

From: Brent Hardy [mailto:brent@westwardfloors.com]

Sent: 2016, August 15 10:54 AM

To: Musha, Makoto

Cc: Sacayanan, Ferdinand; Chow, Warren; David Ehrhardt; 173981 - Wedgemount IPP - Distribution; Shah, Ketki; Kevin Healy; Wong, Kuok

Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Good morning Makoto - thank you for the update. Can you clarify for me, are we clear to start construction next month on Section 1?

Regards

Brent

On Aug 11, 2016 4:14 PM, "Musha, Makoto" <Makoto.Musha@amecfw.com> wrote:  
Hi Kevin,

Sorry for the late reply. Please see my response below in red.

I think we need to discuss with Lori on Heliport Access Road and Subdivision design.

Telus has not given us any updates yet and I told them that we need to move ahead if they don't give us confirmation by the end of this month.

Regards,

Makoto

From: Kevin Healy [mailto:khealy@creus.ca]

Sent: August-04-16 8:15 PM

To: Musha, Makoto <makoto.musha@amec.com>; David Ehrhardt <dehrhardt@telus.net>

Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>;

Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amec.com>; Sacayanan, Ferdinand

<ferdinand.sacayanan@amec.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>

Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

I was not able to get anything firm from Telus but they are looking at works Wonder if it is worth a quick conference call

- Meeting date with Jim Hegan at MOTI; We need to discuss with Lori first if he is concerned about Heliport Access Road. She has not been available until now.
- Update on submittal to CN; We are still waiting for Telus for Section 2 crossing permit • Process to get CME approved for u/g hydro work: Approved • SLRD, MOF and Nav Canada Approval, process to finalize: We are going through Environmental review before submitting SLRD and Crown. Water Sustainability Act Notification is being submitted.
- Update of Lori's redesign: We should schedule a conference call with Lori once she is back. We don't have any updates.
- Substation update: Still waiting for the funding approval • Review budget basis: Ketki to answer

If you have any questions in this regard, please do not hesitate to contact me.

Kevin Healy, P.Eng.

Creus Engineering Ltd.

Cel: 604-817-0095

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From: Musha, Makoto [mailto:makoto.musha@amecfw.com]  
Sent: July 27, 2016 12:34 PM  
To: Kevin Healy <khealy@creus.ca>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bhydro.com>; Ketki Shah (ketki.shah@bhydro.com) <ketki.shah@bhydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amecfw.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amecfw.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Thanks Kevin.

Yes, we are aware that CN Rail doesn't allow ROW over their ROW. As long as they allow us to install the poles within their ROW, we can go with the overhead proposal. Is she aware of Telus?

Despite multiple attempts to reach out Telus, they are not being responsive and we don't even know if they received a cheque. Please be aware that Telus hasn't agreed to our proposal so there is a risk.

Regards,  
Makoto

From: Kevin Healy [mailto:khealy@creus.ca]  
Sent: July-27-16 11:44 AM  
To: Musha, Makoto <makoto.musha@amec.com>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bhydro.com>; Ketki Shah (ketki.shah@bhydro.com) <ketki.shah@bhydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amec.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amec.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

With overhead, there is a couple of trucks on side of road with temporary lane closure and traffic control, end of the day road is open. With underground work the road is destroyed due to blasting so problematic to open at end of day. Road also needs revising. Will be closed for weeks on a very ugly turn. But as I indicated, I think we have solution on that. MOTI is less worried about pole work. They know there will still be closures. Sara is saying apply for the poles in ROW, indicate rationale of why they cannot cross track at right angles (maintaining clearance from highway, track, creek and Forestry road restrict routing options. First pole has to be between highway barrier and track. It cannot cross at 90 degrees there because of the proximity of the creek on the other side and because there is no way to brace or guy that pole. Etc) The BC hydro tenure for poles and wires in CN ROW is via standard licensing agreement, not a registered Right of Way. IE Land titles does not allow a ROW over a ROW. The form of legal tenure for BC Hydro from CN is a license

If you have any questions in this regard, please do not hesitate to contact me.

Kevin Healy, P.Eng.  
Creus Engineering Ltd.  
Cel: 604-817-0095

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From: Musha, Makoto [mailto:makoto.musha@amecfw.com]  
Sent: July 27, 2016 11:32 AM  
To: Kevin Healy <khealy@creus.ca>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amecfw.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amecfw.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Kevin,

In terms of the road disruption, it will be the same with overhead work and civil work. We still have to shut the single lane because most of the section doesn't have enough space on the shoulder. Overhead work area will shift as the crew move on while civil work area will be closed longer period.

Thank you for talking to CN Rail. We need clarification on her comment below as highlighted as it is conflicting. Is she saying NO to the proposal because the poles will be within the ROW? Or BCH wouldn't have ROW granted, but CN Rail will approve the crossing with poles within their ROW??

Please let me know if we should discuss over the phone.

Regards,  
Makoto

From: Kevin Healy [mailto:khealy@creus.ca]  
Sent: July-26-16 6:22 PM  
To: Musha, Makoto <makoto.musha@amec.com>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amec.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amec.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Jim had no issues with CME, he just had concerns about underground work because that has more of a disruption on highway operations and he wants those limited as much as possible. We should likely request a meeting with Jim and his operations staff to go through the project that way we can address his concerns.

Also talked to Sara Lovegrove at CN Rail. She indicated that "You are correct, we do not allow a utility ROW over the railway ROW, we would issue you a standard license agreement for each crossing." She had concerns over the crossing not being at 90 degrees. I explained the constraints. She indicated "When you mail me your application, please ensure you explain why you are unable to cross at a 90 degree angle in your cover letter."

If you have any questions in this regard, please do not hesitate to contact me.

Kevin Healy, P.Eng.  
Creus Engineering Ltd.  
Cel: 604-817-0095

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From: Musha, Makoto [mailto:makoto.musha@amecfw.com]  
Sent: July 26, 2016 5:48 PM  
To: Kevin Healy <khealy@creus.ca>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amecfw.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amecfw.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Kevin,  
Please see additional comments below:

Regards,  
Makoto

From: Kevin Healy [mailto:khealy@creus.ca]  
Sent: July-26-16 3:21 PM  
To: Musha, Makoto <makoto.musha@amec.com>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Hardy <brent@westwardfloors.com>; Wong, Kuok <kuok.wong@amec.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amec.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Just realized I had wrong Brent in email See clarification below

If you have any questions in this regard, please do not hesitate to contact me.

Kevin Healy, P.Eng.  
Creus Engineering Ltd.  
Tel: 604-817-0095  
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From: Musha, Makoto [mailto:makoto.musha@amecfw.com]  
Sent: July 26, 2016 2:57 PM  
To: Kevin Healy <khealy@creus.ca>; David Ehrhardt <dehrhardt@telus.net>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Beatson (b.beatson@rizealliance.com) <b.beatson@rizealliance.com>; Wong, Kuok <kuok.wong@amecfw.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amecfw.com>; 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Kevin,

Thank you for talking to Jim.  
Could you clarify a few things? Please see my comments below in red.

Regards,

Makoto

From: Kevin Healy [mailto:khealy@creus.ca]  
Sent: July-26-16 10:43 AM  
To: David Ehrhardt <dehrhardt@telus.net>; Musha, Makoto <makoto.musha@amec.com>  
Cc: Chow, Warren <warren.chow@bchydro.com>; Ketki Shah (ketki.shah@bchydro.com) <ketki.shah@bchydro.com>; Brent Beatson (b.beatson@rizealliance.com) <b.beatson@rizealliance.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

I talked to Jim Hegan at length.

His preference is to deal with this all as one.

I reinforced to him that the two sections are being done by different designers and are being driven by different factors and that the heliport has to be done ASAP to fit in with MOTI project.

He has reluctantly agreed with some conditions • He wants a single complete package of the rest of the highway works that design team is comfortable meets highway requirements - We will be submitting Section 2 overhead shortly. Then he will have everything. I think he would like the overhead and the underground together. Civil drawing was provided before. Now he has everything.

- He wants a meeting with his operations staff and he thinks should include some participation from contractors that will be involved. Contractor for which job? Overhead work and Heliport Access pole relocation work or underground civil work? I think we are expecting CME would be doing the underground work, which I think is a bigger concern of Jims. I don't know if Hydro has a contractor chosen for overhead? What is Jim's concern on using CME? Overhead work will be done by Rokstad.
- He is concerned about the underground work going to late. We have already had some conversation in general sense of how we can mitigate that impact We are aiming towards 1 section of underground civil work to be done by end of October. Agreed
- He is concerned with paving in fall. I suggested that we would do full patch this fall but mill and pave from centreline in spring. He said that will be condition of approval Is this referring to Section 3 within the subdivision? No the underground in section 1 on highway above. I think we can solve that and that CME has experience with MOTI on traffic management solutions for work on the highway We are trying to engage CME for the Civil work as requested. It has not been approved yet. Since they are not a BCH pre-qualified contractor, we are planning to appoint Rokstad as prime contractor as they are familiar with both MoTI and BCH requirements, so CME would need to comply with Prime's requirements.

I think if we get him the full set of drawings, other than heliport and then set up a meeting ASAP we will have some approvals

If you have any questions in this regard, please do not hesitate to contact me.

Kevin Healy, P.Eng.  
Creus Engineering Ltd.  
Cel: 604-817-0095

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From: David Ehrhardt [mailto:dehrhardt@telus.net]  
Sent: July 25, 2016 7:31 AM  
To: Kevin Healy <khealy@creus.ca>

Subject: FW: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Kevin  
See below

DE

From: Musha, Makoto [mailto:makoto.musha@amecfw.com]  
Sent: July 24, 2016 6:13 PM  
To: David Ehrhardt; Ketki Shah (Ketki.Shah@bchydro.com)  
Cc: 173981 - Wedgemount IPP - Distribution; Warren Chow (warren.chow@bchydro.com); Wong, Kuok  
Subject: FW: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Ketki/David,

Just so you know that MoTI permit application has been submitted.  
Jim has indicated previously that an application should include the whole section and one permit will be granted to that, we need to advance Section 1 and Section 2 UG Civil work.

David, perhaps you could help us with this by talking to Jim to expedite the approval.  
Please note that pole relocations near Heliport Access Road is a separate project which will be designed by BCH Squamish District Office.  
We will be coordinating with Lori to have the same crews do the work for better efficiency.

We are working very hard for Section 1 95% submission. As this package requires all the permits in place, I would appreciate your cooperation. While I understand that it is important to coordinate with all the parties, I need my team to focus on our scope to get the package out as I only have limited resources and tight timeline/budget.

Thank you.

Regards,  
Makoto

From: Wong, Kuok  
Sent: July-22-16 4:27 PM  
To: Hegan, Jim D TRAN:EX <Jim.Hegan@gov.bc.ca>; Aljanaby, Dana TRAN:EX <Dana.Aljanaby@gov.bc.ca>  
Cc: 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>; Musha, Makoto <makoto.musha@amec.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amec.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Jim,

The precast vault is for your information only and it was not included in the online submission. The submitted drawings mentioned in my previous email are included in the MoTI application file #2016-02510.

Since Heliport intersection project falls under another BC Hydro project, our scope is limited to double circuit upgrade and final placement of the poles after Highway grading are completed. I suppose you could review / conditional approve our application.

Please advise if this can be done.

Regards,  
Kuok Wong, P.Eng.  
D +1 604 664 4907

From: Hegan, Jim D TRAN:EX [mailto:Jim.Hegan@gov.bc.ca]

Sent: July-21-16 4:27 PM

To: Wong, Kuok <kuok.wong@amec.com>; Aljanaby, Dana TRAN:EX <Dana.Aljanaby@gov.bc.ca>  
Cc: 173981 - Wedgemount IPP - Distribution <173981\_-\_Wedgemount\_IPP\_-\_Distribution@AMEC.onmicrosoft.com>;  
Musha, Makoto <makoto.musha@amec.com>; Sacayanan, Ferdinand <ferdinand.sacayanan@amec.com>  
Subject: RE: Information Submission Confirmation - File # 2016-02510 Wedgewood IPP

Hi Kuok,

The only attachment in your email was the typical precast vault drawing. Also, you will need to work with Dana Aljanaby, Ministry's Project Manager of the Heliport Hwy Intersection Project for pole placement works within their limits of construction. Once this has been established and I receive confirmation from the Project Mgr., I can process the permit, assuming all other works meet our standards and all else is in order.

Regards,

Jim Hegan  
Area Development & Operations Technician  
Squamish Area Office  
Phone 604 898-4791

MOTI WEB LINKS:

Home Page <http://www.gov.bc.ca/tran/>  
Permits and Development <http://www.th.gov.bc.ca/permits/index.asp>

From: Wong, Kuok [mailto:kuok.wong@amecfw.com]  
Sent: Thursday, July 21, 2016 3:04 PM  
To: Hegan, Jim D TRAN:EX  
Cc: 173981 - Wedgemount IPP - Distribution; Musha, Makoto; Sacayanan, Ferdinand  
Subject: RE: Information Submission Confirmation - File # 2016-02510

Hi Jim,

I have uploaded both revised plans for Heliport expansion and section 2 underground proposal for your review. The revised heliport expansion proposal will satisfied 90km/hr clear zone of 7m. The 220m underground section has proven too long for a straight run, therefore a manhole will be needed on highway shoulder for cable pulling. Manhole specs is included in the attachment. Please let me know if you have any questions/concerns regarding our proposal.

Regards,

Kuok Wong, P.Eng.  
D +1 604 664 4907

-----Original Message-----

From: eDAS@gov.bc.ca [mailto:eDAS@gov.bc.ca]  
Sent: July-21-16 2:31 PM  
To: Wong, Kuok <kuok.wong@amec.com>  
Subject: Information Submission Confirmation - File # 2016-02510

Dear Kuok Wong

We have received information for your application having file number (2016-02510). You can access the file at <https://posse.th.gov.bc.ca/DAP/Default.aspx?PossePresentation=PermitApplication&PosseObjectId=6062448&PosseParent=Tasks>

Sincerely,

Jim Hegan  
Area Development Operations Technician  
(604) 898-4791  
[Jim.Hegan@gov.bc.ca](mailto:Jim.Hegan@gov.bc.ca)

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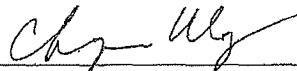
Please click <http://amecfw.com/email-disclaimer> for notices and company information in relation to emails originating in the UK, Italy or France.

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Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2016.0.7688 / Virus Database: 4627/12676 - Release Date: 07/24/16

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FRANK LIN MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018



\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

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**From:** Shah, Ketki  
**Sent:** September-12-16 11:35 AM  
**To:** Lin, Frank  
**Subject:** FW: WGM - Follow up from our meeting last week

My apologies, You should have been cc'd.

---

**From:** Shah, Ketki  
**Sent:** 2016, September 12 11:31 AM  
**To:** David Ehrhardt ([dehrhardt@telus.net](mailto:dehrhardt@telus.net)); Brent Hardy  
**Cc:** Hefflick, Ryan  
**Subject:** WGM - Follow up from our meeting last week

David and Brent,

Following our meeting with you and your Lenders last week, we have met with our project delivery group in an effort to address your primary concerns that were raised.

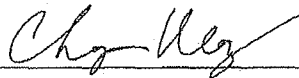
We have asked our project delivery team to do the following:

- Request AMEC for a senior PM and/or provide more senior level oversight on the project management requirements of this project given the complexities that are being faced.
- Provide an accounting of expenditures to date on the Facilities Study. We have approximately \$50k left on hand for this work.
- Provide additional detail behind the cost estimate in the Facilities Study.
- Prepare a tender document for the Section 1 work. It was agreed that this work can go to bid and that the best way to determine the costs of this work is to submit a tender. The tender award would be subject to the project receiving funding. The tender period typically takes 12 weeks from initiation so unfortunately it will take that length of time to determine whether there will be savings realized compared to the unit cost estimate provided. The costs to prepare the tender may exceed the balance of funds on hand. We will receive an estimate of that effort in the next couple of days. These are costs that would be incurred anyway and are already a part of the overall estimate, I only mention them specifically now as funding is running out and we may need additional funds to see this through.

Vegetation Clearing is a critical path item that needs to be completed this Fall or else the schedule will be delayed significantly. If the vegetation clearing is not completed this Fall, it would be pushed back to Spring and we have been informed the bird nesting season starts March 5th and will require the nesting surveys to be done. As we are at the end of our funds to do this work, could you please provide a Letter of Credit for \$155,000 this week otherwise the vegetation clearing, and ultimately the entire project schedule will be delayed? Let me know when you will provide this and I can start the paperwork to avoid any delays.

Regards,  
Ketki

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
29<sup>th</sup> DAY OF MARCH 2018



\_\_\_\_\_  
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**From:** Shah, Ketki  
**Sent:** September-22-16 10:38 AM  
**To:** David Ehrhardt (dehrhardt@telus.net); Brent Hardy  
**Cc:** Hefflick, Ryan  
**Subject:** WGM project update

David and Brent,

The Project Delivery Team has provided the report below for WGM:

**ISSUES AND ASSOCIATED ACTIONS TO RESOLVE**

1. Vegetation Clearing

- A) Obtain agreement from BC HYDRO Vegetation coordinator for the section 1 vegetation clearing.
- B) Finalize and submit section 1 drawings to MoTI for approval of vegetation clearing.
- C) Conduct due diligence by obtaining confirmation from BC HYDRO Properties to ensure required permits, if any, from crown or private owners in section 1 are in place with respect to vegetation clearing.
- D) Obtain confirmation from BC HYDRO Aboriginal Relations to confirm there are no first nations implications in section 1. (potential cultural site or village site, ungulate zone). This is a low probability as section 1 is in the existing ROW.

2. First Nations

Engaging the BC HYDRO Aboriginal Consultation team to resolve the cross country section of the project (potentially this might include WGM as part of the consultation process).

Note: This resolution is required to manage the optics and sensitivities of the First Nations for vegetation clearing in section 1.

3. Section 1 Labour Estimate Validation

Perform the necessary procurement steps/strategy to validate (only) the construction labour estimate.

Resolving these issues promptly might allow us to complete the vegetation clearing for Section 1 this Fall (and before the bird nesting season) and work towards a construction start in 2017 as soon as possible, and also allow us to validate the construction labour costs.

**IMMEDIATE ACTION ITEM:**

As there is only \$ 9 k remaining for the Facilities study, we have insufficient funding to move forward. Until additional project funds are in place we cannot expend the effort to provide an estimate of cost/time in order to execute on the above strategy. Therefore, in order to move forward we require an immediate response to the following:

- 1. Please advise us if the available funding for the Transmission portion of the project (the Letter of Credit for the Early Engineering and Procurement) can be allocated to the Distribution project. A response is required **no later than Monday Sept 26<sup>th</sup>**.
- 2. Additional funding will be required to replace the funds allocated to the Distribution work from the Transmission funds as per above, and to proceed further with the project.

Thanks,  
Ketki

THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018

*Chap Uly*

\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
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**From:** Lin, Frank  
**Sent:** February-15-17 9:32 AM  
**To:** 'Peter Zell'; Hefflick, Ryan  
**Cc:** Brett Robinson; David Ehrhardt; Rempel, Vic  
**Subject:** RE: Follow-up from meeting 170207

Peter, I have no further update for you. As both Ryan and I indicated to you last week, I don't believe fixed price contract and schedule for section 1 of the project will stand in the way of a solution. We need to think a bit more about the same for station work. There is no point talking about final solution until we know what the gap is that is standing in the way of a viable project. For that to happen, we all need to know the cost of section 1 (BCH responsibility) and cost of section 2+3 (Eco-flow). With that information in hand, we will get together and hammer out a solution and I will then escalate to Greg and get his guidance/approval with very specific asks as opposed to generalities.

I hope this helps. If not, please feel free to call.

**From:** Peter Zell [mailto:pzell@ecoflowenergy.com]  
**Sent:** 2017, February 15 8:43 AM  
**To:** Hefflick, Ryan  
**Cc:** Lin, Frank; Brett Robinson; David Ehrhardt  
**Subject:** Re: Follow-up from meeting 170207

Frank,

Late last week Ryan indicated that you were to be meeting with Greg Reimer yesterday (Ryan was going to be away) This is just a quick follow up note to check to see how your meeting went and if there is anything that we can do to help the advancement toward a final resolution?

Best Regards,  
Peter Zell, P.Eng  
Cell: 250-981-1250

On Feb 9, 2017, at 08:43, Peter Zell <pzell@ecoflowenergy.com> wrote:

Ryan, Frank,

Thank you both for meeting yesterday regarding the remaining go-forward items that will allow Wedgemount to succeed. The following provides a summary of our discussion in note form, as well as a more detailed and transparent breakdown of the costs that we were discussing, and that WPLP is looking to BC Hydro to absorb. I provided additional information in the table around the breakdown of the costs that WPLP will be absorbing, that we did not discuss in detail yesterday.

1. **Schedule risk:** WPLP and the bank need protection against revenue loss for further COD delays beyond July 31, 2017 that would be directly due to permitting delays or BCH interconnection scope delays. We have built out a schedule that I have attached that indicates the permitting and Section 1 construction as being on the critical path. We have also been in discussion with contractors who feel the Section 1 construction could very easily be accelerated by using two crews starting from each end of the line. This would provide additional schedule contingency over and above the approximately 14 days currently indicated. You said that you would need to review the substation timeline to see if this could work. This is also a critical path with the 12 week duration that I have indicated.

2. **Cost certainty for Section 1 and substation work:** WPLP and the bank need cost certainty around the remaining BCH interconnection scope. The table below provides a breakdown of remaining interconnection and other costs that are directly related to the Facilities Study estimate and COD delay, using July, 31, 2017 as the new COD. The figures below are based on the revised estimate provided by Amec that totaled \$6,298,000. I have reallocated the contingency figures to the respective major construction categories and credited any unallocated contingency to BCH.
3. **IDC and overhead cost sharing:** The table below also provides a breakdown of the IDC costs as well as the "friction costs" (bank, legal, Independent Engineer, etc.) that have been incurred to date as a direct result of the delay and the bank moving toward foreclosure. We have moved these costs to be to BCH's account as we discussed. Further down in the table I have indicated the costs that WPLP will be absorbing that are directly related to shutting down the work, winterizing, demob and remob, temporary heat, security, taxes, insurance, water rental fees, etc. We had not discussed these.
4. **Other options:** We did not talk about this yesterday, but in hindsight Brett said that I should have brought it up again just in case there may be advantages to BCH through an alternate approach. WPLP would be amenable to absorbing a greater split of the above mentioned costs if there were a way to adjust other EPA terms (such as CPI escalation for the duration of the contract or for just a limited period) to preserve the NPV of the project. This is beyond our knowledge of the limitations of the EPA so we will just throw this suggestion out if it is something that could work for BC Hydro.

The bottom line is that WPLP will still be absorbing well in excess of 577 k\$ on cash and is suffering a significant impact to the project NPV as a result of the delay in revenues. We have made very good progress to date with the concept of WPLP taking over sections 2 and 3 and relocating the POI. The project requires the adjustments discussed above to allow it to be saved financially. As mentioned yesterday, we have discussed an extension with the bank and we have so far gained another week's grace. Even though this is only a verbal commitment we are confident that this will hold given the progress that has been made with your much appreciated efforts and direction.

I will call early this afternoon to follow up. If you have any questions in the meantime, please do not hesitate to call. I am in meetings but will take your call given the importance and urgency around this.

<image005.jpg>

Best Regards

**Peter Zell, P. Eng.**

<image006.png>

206-4840 Delta Street  
Delta, BC, V4K 2T6  
250-981-1250

<Sch Final Interconnection implementation 170208 subst add issue to RH.PDF>

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FRANK LIN MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018

*Chy Wly*

\_\_\_\_\_  
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From: Dobie, Russell  
Sent: February-24-17 11:52 AM  
To: Peter Zell; 'David Ehrhardt'  
Cc: Lin, Frank; Hefflick, Ryan; Rempel, Vic; Chow, Warren  
Subject: RE: Wedgemount Follow Up Meeting - Meeting Minutes / Schedule Concern  
Attachments: Sch Final Interconnection implementation 170208 subst add issue to RH.PDF;  
Wedgemount Scope Clarification\_Issued\_ 20170223.docx

Importance: High

Hello Peter, David,

Thanks again for setting up yesterday's meeting.

One important agenda item that we did not speak to yesterday was the Schedule. I have attached the schedule you included in your email of 23 Feb 2017 at 11:19am for reference.

This schedule shows Section 1 construction starting / finishing in April / June 2017 respectively with an overall project COD in July 2017. From where we stand today, this schedule is a serious concern and may be completely unrealistic. Two simple reasons: 1) We do not have an approved IFC design and all permit approvals to construct. 2) we do not have approved Implementation funding to construct. To secure implementation approval we need the customer payment. As a result, we cannot secure materials or schedule our contractors (both for the Distribution and Transmission work). Funding approval and contractor mobilization alone typically takes 2 to 3 months depending on when we receive the customer payment. In order to finalize a realistic construction schedule we need the above items to be completed.

*Because BCH has not reviewed or agreed to this schedule, I would like the meeting minutes to reflect that "BCH has not agreed to the draft schedule submitted on Feb 23<sup>rd</sup>."*

Also, attached for your reference, is our understanding of the scope accountabilities and ownership of the various sections of the distribution line. I hope this may help you with drafting your meeting minutes to ensure clarity and agreement.

Any questions, please do not hesitate to let me know.

Regards,  
Russ

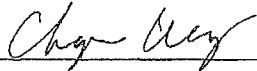
-----Original Appointment-----

**From:** Hefflick, Ryan  
**Sent:** 2017, February 20 5:05 PM  
**To:** Hefflick, Ryan; Peter Zell; Lin, Frank; Chow, Warren; Dobie, Russell; Rempel, Vic  
**Cc:** 'David Ehrhardt'; Hefflick, Ryan  
**Subject:** Wedgemount Follow Up Meeting  
**When:** 2017, February 23 1:30 PM-2:30 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** EDME09, Mtg Rm 4





THIS IS EXHIBIT "G" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
29 DAY OF MARCH 2018



\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
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**From:** Brett Robinson <brxlr8@gmail.com>  
**Sent:** March-20-17 3:02 PM  
**To:** Hefflick, Ryan; Lin, Frank; David Ehrhardt; Peter Zell; Brett R. Robinson; Rempel, Vic  
**Subject:** Final: Wedgemount Interconnectoin Meeting March 10, 2017  
**Attachments:** BCH Discussion Points\_Brett\_Mtg Summary FL comments.docx

Please find final minutes attached for March 10, 2017 meeting with Greg Reimer.

Both Wedgemount and BC Hydro edits have been included. If I missed anything please just let me know.

Thanks for everyone's continuing support to drive efficiencies.

All the best, Brett



## Meeting Summary (March 10, 2017)

Date:	2017/03/12
Subject:	Wedgemount Creek Power Interconnection
Prepared By:	Brett Robinson, Eco Flow Energy
Prepared For:	BC Hydro, Industrial Alliance and Wedgemount Power Limited Partnership (WPLP)
Attendees:	BCH: Greg Reimer, Frank Lin and Ryan Hefflick EFE: Brett Robinson, on behalf of Peter Zell Industrial Alliance: Michael Potyok, Independent Engineer WPLP: David Ehrhardt, and Dave Delainey (Conference Call)

### Opening Remarks:

Discussions with the lender continue and require clarity on scope, schedule and cost for various components of the interconnection work to be completed prior to COD. Greg Reimer offered this meeting to WPLP as an opportunity to discuss the state of this project and to provide clarity around what BCH is capable of in terms of support towards all parties to moving forward on an expedited and efficient path to COD.

### Discussion Points Raised:

- 1) AMEC will finish their design work for a total fixed cost of \$650,000.00 inclusive of \$547,586.00 already spent thus an incremental cost of \$102,404.00. To be provided in original format. (Not PDF)
  - a. BCH and WPLP agreed on this term but at a cost of \$675,000.00 not total \$650,000.00.
  - b. BCH to confirm the delivery of the drawings and documentation in original format.
- 2) Section #1: BCH will be responsible for Section #1 with work to be completed ahead of the July 1, 2017 COD. With several third party estimates at \$1.7M and no schedule restrictions noted, can WPLP's commitment be fixed at \$1.7M to expedite lender's agreement?
  - a. EFE, WPLP and the Lender pointed out that they all have quotes from ROC contractors which suggest that a price of \$1.7M is reasonable for this scope of work.
  - b. BCH questioned the basis of these estimates given that these ROC Contractors would not have had the benefit of the final IFC drawings. BCH has engaged Rokstad, BCH's ROC Contractor for this area to provide a cost estimate on this scope (excluding permitting). BCH is taking under consideration the option of this Rokstad estimate becoming the basis of a total fixed price for this scope of work to be completed by BCH. BCH presented an estimate of \$1.916M in the Facilities Study and cautioned that the detailed design may be

the basis for cost discrepancies for this scope. BCH gave assurances that they had instructed Rokstsd to "sharpen their pencil" on this quote which is expected on or before March 24, 2017.

- 3) WPLP responsible for managing the permitting on Section #1 on BCH's behalf.
  - a. Agreement on this item.
- 4) Section #2 and #3 are WPLP's scope (permitting, design and construction). Need BCH advice here. Do we need an assignment letter or other document to enable such work by WPLP?
  - a. Agreement on this item.
  - b. Any documentation to be managed through a Letter of Agreement as a precursor to the formal Interconnection Agreement (see #13 below).
- 5) BCH completes the substation for a fixed amount of \$500,000.00. To date, \$92,863.00 has already been spent on the definition thus an incremental cost of \$407,137.00.
  - a. Agreement on this item.
- 6) Roles and responsibilities. BCH and EFE/WPLP agree on their requisite team leads and agree upon a work protocol that ensures the efficient and timely completion of the project (such agreement may include minimum response times to each other on joint deliverables including regular status updates). EFE/WPLP suggest stability with current team members. For BCH, Frank Lin's group continuing leadership to interconnection with Mr Reimer as the sponsor. While EFE/WPLP will continue with Peter Zell and David Ehrhardt's leadership.
  - a. Mr. Reimer agreed to be the senior sponsor for the Project. He intimated that his door was open if EFE/WPLP had any concerns. Noted he would be away the last two weeks of June.
  - b. EFE outlined concerns around historical delays and high cost solutions from BCH execution team that is perceived to be related to AMEC shortfalls and while we are trying to focus on the strategy from here to COD, the lender and equity holders are struggling with this as a perceived high risk area going forward. BCH gave assurances that Maureen Daschuk, who is accountable for the execution team is reporting directly to Mr Reimer on progress with this file and she clearly understands the sense of urgency related to cost and schedule.
- 7) BCH and EFE/WPLP agree and acknowledge that July 1, 2017 is the target COD date and that all three organizations prepare and work to that schedule.
  - a. General agreement that all parties would work towards bringing this project to COD as soon as possible.
  - b. BCH suggested that the July 1, 2017 target COD date has not changed despite the project not making any advancement forward over the past few months. BCH commented that all parties need to be working towards a realistic date.
  - c. There was consensus that permitting for section 1 remains the biggest risk affecting the completion date of section 1.
  - d. EFE/WPLP suggests that we draft up a joint schedule. As WPLP is responsible for permitting, WPLP will provide that portion of the schedule as the basis of the joint schedule document. BCH can augment it with their scope assuming the dates are reached by WPLP on permitting.
- 8) While Frank's team will be the initial point of contact, Greg Reimer agrees to be the project's senior sponsor within BCH to expedite the process and help guide WPLP and EFE through to COD.

- a. Agreement on this item. Ryan commented that Vic would be covering over spring break.
- 9) BCH and WPLP need to confirm the following figures as soon as possible: (i) the amount of funds that WPLP has provided to BCH to date and (ii) of that amount how much remains unspent to date?
  - a. BCH has a full accounting that they will send via email.
  - b. WPLP will respond with any differences in their records in order to reconcile any differences prior to the LOA (see #13).
  - c. David E. will work with the BCH Squamish office with regard to ~ \$70K payment to BCH for the original right of way ducting materials. WPLP believes that there should be a credit on those materials. The funding provided to the BCH Squamish Office for this work is not related to any of the interconnection estimates, scope or work coming from the Generator Interconnections department and therefore is not reflected in any of our discussions about costs. Any refunds or amounts owing on this \$70k will need to be handled separately and directly between WPLP and the Squamish office.
- 10) As the interconnection is either, for all intents and purposes, a fixed price offer by BCH or within the scope of WPLP, WPLP would request that the EPA credit (approximately \$834K) be deducted from the amount required to be paid to BCH (as per this agreement) upfront.
  - a. BCH said they will consider but required more information.
  - b. WPLP to describe the proposal in more detail for R. Hefflick.
- 11) BCH agrees to extend the existing termination of the EPA from September 2017 until such time that COD is reached.
  - a. Frank Lin to discuss this request with the BCH Energy Procurement group.
- 12) Any and all other arrangements that Peter Zell had negotiated with Frank Lin as per their discussion of March 1, 2017 that have not been included above. Frank's feedback here.
  - a. No additional items raised.
- 13) How would BCH suggest that we document this agreement? Should a draft Interconnection Agreement be crafted? Other suggested approach?
  - a. BCH suggested a Letter of Agreement (LOA) that would memorialize the broad agreement between BCH and WPLP. This would be the precursor to a final Interconnection Agreement.
  - b. To be drafted by R. Hefflick.
- 14) New Item – D. Ehrhardt had requested the support of BCH to have the new phase 2 ducting, shared by the Wedge subdivision and the IPP and associated with the new DL route, be examined by Lori Grant (who had approved the design and cost associated with the original shared service) to approve the route design and confirm costs for the IPP and the subdivision.
  - a. BCH described this efficiency opportunity as an Expedited Variance request and agreed to investigate how this could work.

Next Steps:

BCH to get back with Rokstad's estimate and schedule for Item 2 above on or before March 24, 2017.

WPLP to lead the expedited permitting work and provide schedule plus regular status updates to BCH.

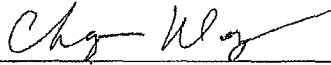
Frank Lin will investigate how Lori Grant can provide the most effective means forward with respect to the expedited variance request.

BCH to provide an email of cost information verbally presented at the meeting.

BCH has already begun formulating a letter of agreement that will be forwarded once Item 2 completed.

BCH to review standing offer credit requirements for opportunity to reduce financial commitments as a result of 95% project completion and firm responsibilities on the interconnection work remaining.

THIS IS EXHIBIT "H" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
29<sup>th</sup> DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
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**From:** Brett Robinson <brxl8@gmail.com>  
**Sent:** April-01-17 3:03 PM  
**To:** Lin, Frank; Peter Zell; David Ehrhardt; David Delainey; Hefflick, Ryan  
**Subject:** Re: Final: Wedgemount Interconnectoin Meeting March 10, 2017

That's great news Frank. Thank you again for your follow up on this critical item.

Dave Delainey, As WPLP's lead on discussions with the lender, may I ask you to reflect on what is required here and share your feedback with Peter in the next week or so. That will que Peter to follow up with Frank and procurement to provide the assurances that are required.

Thank you, Brett

On Fri, Mar 31, 2017 at 11:24 AM, Lin, Frank <[Frank.Lin@bchydro.com](mailto:Frank.Lin@bchydro.com)> wrote:

Brett, I have received feedback re EPA termination and I want to assure you and the lender that as long as we are working towards a solution, we will not terminate the EPA. We can sit down with our energy procurement folks and lender to hammer out the form of assurance you need.

Thanks

**From:** Brett Robinson [mailto:[brxl8@gmail.com](mailto:brxl8@gmail.com)]  
**Sent:** 2017, March 31 8:54 AM  
**To:** Lin, Frank  
**Subject:** Re: Final: Wedgemount Interconnectoin Meeting March 10, 2017

Frank,

I wanted to recognize your leadership and say thank you again for sponsoring the extensive efforts over the last while. From my short involvement over the last three months, I felt like everyone in the meeting earlier this week was looking forward and pulling in the same direction. There have been extensive discussions with the lender the last 36 hours. I remain hopeful that the equity holders and Industrial Alliance will be able to find a path forward.

One question I meant to ask on Wednesday was around the EPA termination date of September 2017 and extending it to COD. This still feels really tight with permitting outstanding. As I recall from our previous



meeting you were going to have a conversation with the procurement group and was wondering if you had received any feedback yet.

Have a great weekend, Brett

On Mon, Mar 20, 2017 at 3:02 PM, Brett Robinson <[brxlr8@gmail.com](mailto:brxlr8@gmail.com)> wrote:

Please find final minutes attached for March 10, 2017 meeting with Greg Reimer.

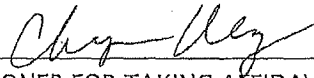
Both Wedgemount and BC Hydro edits have been included. If I missed anything please just let me know.

Thanks for everyone's continuing support to drive efficiencies.

All the best, Brett

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THIS IS EXHIBIT "1" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
29 DAY OF MARCH 2018



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**From:** Mercier, Heather  
**Sent:** May-03-17 4:05 PM  
**To:** Lin, Frank  
**Subject:** RE: Canceled: Wedgemount update

fyi

-----Original Appointment-----

**From:** Peter Zell [<mailto:pzell@ecoflowenergy.com>]  
**Sent:** 2017, May 03 3:59 PM  
**To:** Mercier, Heather  
**Subject:** Canceled: Wedgemount update  
**When:** 2017, May 04 2:00 PM-3:00 PM (UTC-08:00) Pacific Time (US & Canada).  
**Where:** BCH Burnaby EDMB03, Mtg Rm 9  
**Importance:** High

Good Afternoon,

Please be advised that the meeting tomorrow has been cancelled because WPLP and IA are still working through the final details around the mechanics to most efficiently advance the final activities required to complete the project. We were expecting this to have been completed early this week (hence the reason for scheduling the meeting in the first place) but it just did not get done. I now expect this to be finalized by tomorrow sometime. I will reschedule the meeting for early next week, but this time only after I receive full confirmation from IA and WPLP.

I apologize for inconveniencing you and appreciate the effort that you had made to fit tomorrow's meeting time into your schedules.

Good morning,

I am hoping that you are available for an update meeting on Wednesday of this week. If the time proposed does not work then could you propose a different one. I am fairly open on Wednesday and Thursday.

The following are several items that I would like to advance some discussion on now that agreement in principal has been reached with Industrial Alliance:

1. SGIA; what needs to be done to advance this now?
2. Posting of the interconnection security (we are working on having this released by IA ASAP).
3. SLRD route vs the alternate logging road route that has been developed by Wedgemount for the purpose of expediting the SLRD
  - Logging road route preferred for the purpose of being able to obtain long term ROW agreements as part of permitting process
  - Current SLRD route would become alternate backup
  - No cost difference anticipated for sections 1, 1a, 1b and POI.
  - Can we authorize Rokstad to proceed with Section 1 with a hold on Section 1a and 1b?
4. Process for extending the COD to May 2018?
5. Other BCH concerns?

THIS IS EXHIBIT "J" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
29 DAY OF MARCH 2018

*Chyn Heng*

A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

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**From:** Rempel, Vic  
**Sent:** May-24-17 11:08 AM  
**To:** Michael Potyok (mpotyok@midgard-consulting.com)  
**Cc:** Hefflick, Ryan; McKie, Melinda (CA - British Columbia); Chambers, Paul (CA - British Columbia)  
**Subject:** RE: Wedgemount - Interconnection

Good Morning Michael.

The following is required prior to BC Hydro updating/revising the August 2016 Facilities Study/Project Plan and Project Interconnection Requirements (PIR).

Financial

- Full payment is required on outstanding balance/work. An invoice is being prepared for approx \$200K.
- Funding is also required to cover activities up to the execution of the Interconnection Agreement, when full security is provided.

Hwy 99 / POI

1. SLRD
  - Interconnection Customer (IC) to acquire agreement with SLRD with suitable tenure (40 years) or abandon this option
2. Forestry Road
  - IC to submit engineered dwgs to BCH Owner's Engineer for review/acceptance
  - IC to submit IFC dwgs to BCH thereafter
  - IC to submit materials list for BCH portion of this section
  - IC to acquire permits and/or SRW (or License of Occupation) for BCH & IC portions from Jurisdiction(s) having Authority (JHA)
  - BCH to re-estimate the construction costs of this section using IC's IFC dwgs, if this route is the preferred viable alternative

POI to Powerhouse

1. IC to submit overall electrical dwg to BCH from POI to Powerhouse including overhead and underground sections. ie IC private works
2. IC to submit private works civil dwg through subdivision (Riverside Dr) to:
  - a. BCH for technical and safety acceptance
  - b. JHA for permitting and approval

Please let me know if further information is required. Thanks

---

Victor Rempel | Manager, Distribution Generator Interconnections

BC Hydro

P 604 528 2623  
E [vic.rempel@bchydro.com](mailto:vic.rempel@bchydro.com)

**From:** Hefflick, Ryan  
**Sent:** 2017, May 24 5:39 AM

Begin forwarded message:

**From:** Michael Potyok <[mpotyok@midgard-consulting.com](mailto:mpotyok@midgard-consulting.com)>  
**Date:** May 23, 2017 at 7:54:58 PM PDT  
**To:** Ryan Hefflick <[ryan.hefflick@bchydro.com](mailto:ryan.hefflick@bchydro.com)>  
**Subject:** Wedgemount - Interconnection

Hi Ryan;

Thanks for chatting earlier today. I understand that you are unavailable all day tomorrow (with the exception potentially of an early morning call). But, to the extent there are some queries we had with respect to the project, you would be willing to ask your team to take a look and perhaps be able to respond.

As discussed, we have been engaged by Deloitte to assist with the Wedgemount project.

Because of my past role in which I attended some but not all meetings, I have only partial information as it pertains to the current interconnection process.

The last meeting I attended was March 29 during which Russell had indicated an ability for Hydro to complete their required works with a fixed timeline and a fixed cost. This was contingent on timely project commitments and cost recovery. However, there was an issue potentially with the SLRD land use permit for that portion of line passing through SLRD lands.

Although it was suggested that BCH would potentially accept a short term permit (as would be acceptable to the lender) it appears that since that time, the concept has shifted to using an alternate route to a similar POI that would avoid that route.

I am seeking clarification on how that decision arose and if this concept was locked down or if further work is done.

From the perspective of the project, it will be necessary to ensure that land applications contemplate any revised route.

Also, in general, it would be beneficial in general to have a discussion with you and/or your team to fully flesh out:

- 1) any remaining issues that require resolution;
- 2) role and responsibility assignment for any required study / work toward their resolution;
- 3) immediate next steps and process in generation to finalize planning and move toward execution;
- 3) status of discussions on a DGIA or other agreements that are required to finalize project planning.

That is a big list - our motivation is to ramp fully up to speed on all of these issues quickly in order to resolve any matters from the project side as soon as practical.

I am available to discuss further in the morning if needed or perhaps will follow up with Vic after lunch time.

Best regards,

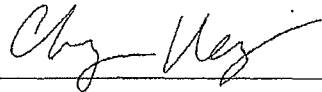
Michael

*Michael Poyok P.Eng.  
Principal*

Midgard Consulting Inc.  
828-1130 West Pender St  
Vancouver, BC, V6E 4A4

cell. 1.604.315 3840

THIS IS EXHIBIT "K" REFERRED TO IN THE AFFIDAVIT OF  
FRANK LIN MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018



\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA



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**From:** Michael Potyok <mpotyok@midgard-consulting.com>  
**Sent:** June-06-17 3:27 PM  
**To:** Hefflick, Ryan; Rempel, Vic  
**Cc:** Chambers, Paul (CA - British Columbia); McKie, Melinda (CA - British Columbia)  
**Subject:** June 6 BCH / Deloitte Meeting Summary - Wedgemount

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Ryan and Vic;

I would like to start by thanking for this morning's meeting.

I tried my best to keep notes from the meeting, but find it tough to participate in conversations and keep notes at the same time. These notes are therefore more of a summary of take aways as opposed to full meeting notes. May I request that you review and comment as needed or appropriate?

The key take aways that I took were:

- 1) Generally, BCH is in a position on your side to advance with a completion of the FS once the IC's works are fully defined. This is substantively the IFC (or near IFC) drawings from CEC detailing the final route, which contemplate a solution that provides for a longer term LOO / ROW in place for BCH owned line.
- 2) We will be working with CEC to advance those designs as soon as we can.
- 3) Additionally, we will begin to press on the Province to advance permitting on those areas over crown land. There may be a requirement to engage with BCH Properties group - to the extent that the application prepared by CMJ on their behalf but submitted directly by BCH, requires amendment. May we rely on you to facilitate an introduction should it be required?
- 4) Once we have a handle on the physical design, and have made any necessary amendments to land tenure applications, and once the Project Delivery Team is re-engaged, we would like to explore establishing a process that enables us to address outstanding items (such as finalizing tenure and CN crossing permits etc.) in parallel to completing and finalizing the FS.
- 5) You will work to issue a formal statement of account as quickly as possible in order to address previous amounts outstanding. Presuming that there is a requirement for payment for future works as we progress to a finalized FS, what accounting can be made available in order to facilitate Deloitte in keeping account current?

Thanks again,

Michael

*Michael Potyok P.Eng. MBA  
Principal*

Malcolm Consulting Inc.  
Suite 828, 1130 West Pender St.  
Vancouver, BC V6E 4A4  
(604) 315-3840

No. S-174308  
Vancouver Registry

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

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AFFIDAVIT

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BORDEN LADNER GERVAIS LLP  
1200 - 200 Burrard Street  
Vancouver, BC V7X 1T2  
Telephone: (604) 687-5744  
Attn: Magnus Verbrugge/Lisa Hiebert  
544441.001726

THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec city, QC, THIS 15 DAY  
OF JUNE, 2018.

Véronique Hainé Notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec



This is the 1<sup>st</sup> Affidavit  
of Joanne McKenna in this case  
and was made on March 28, 2018

No. S-174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP)  
INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST,  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner  
POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY  
HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165  
YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, JOANNE MCKENNA, of 333 Dunsmuir Street, 17<sup>th</sup> Floor, in the City of Vancouver, in the Province of British Columbia, SOLEMNLY AFFIRM as follows:

1. I am a Project Manager, Distributed Generation at British Columbia Hydro and Power Authority ("BCH"), a stakeholder in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true.
2. I have reviewed the Affidavit #1 of Bruce Chow made January 19, 2018 (the "Chow Affidavit"). Capitalized terms used in this Affidavit, but not otherwise defined, have the meaning set out in the Chow Affidavit.
3. In early September 2016, Ryan Hefflick of BCH's interconnections group contacted me to advise that Wedgemount and Industrial Alliance Insurance and Financial Services Inc.

("IA"), Wedgemount's lender, had contacted him with respect to concerns regarding the cost of the project. Mr. Hefflick advised me that Wedgemount would be contacting me with respect to latitude with respect to the COD date.

4. Mr. Hefflick is a member of BCH's interconnections group, the group responsible for technical aspects involving projects, including how the projects will connect to BCH's grid and finalizing studies and reports. The interconnections group does not address Electricity Purchase Agreement (EPA) contract issues and do not have authority to amend EPA contracts or speak to contractual interpretation issues related to EPAs. I am advised by Mr. Hefflick and Vic Rempel, the members of BCH's interconnections team that worked on this project, and verily believe that:
  - (a) they only addressed interconnection issues and technical aspects of the project; and
  - (b) in the course of their discussions with Wedgemount, IA and others in respect of this matter, including Deloitte Restructuring Inc. (the "Receiver"), they did not make any representations with respect to the EPA.
5. Based on my discussions with Mr. Hefflick and Mr. Rempel, and BCH's policies and procedures in these matters, I verily believe that to the extent any party, including Wedgemount, IA or the Receiver had questions or comments regarding the EPA, Mr. Hefflick and Mr. Rempel would refer those questions to me, or other members of my group.
6. In January 2017, Wedgemount requested a delay of the COD date and compensation pursuant to the EPA section 3.11. Attached and marked as **Exhibit "A"** is a true copy of an email dated January 19, 2018 from Peter Zell to me. Peter Zell began working with Wedgemount on this project in early 2017.
7. On January 20, 2017, I had a phone call with Peter Zell and advised him that BCH would neither be extending COD nor compensating Wedgemount for a COD deferral. I also advised him that any extension of COD by BCH would require a commitment that Wedgemount would pay their outstanding invoices owed to BCH. Attached and marked

- as **Exhibit "B"** is a true copy of an email dated January 20, 2017 that I sent to other members of the BCH team summarizing my call that day with Peter Zell.
8. BCH did not make any amendments to the COD date under the EPA, nor did it agree to extend the COD date. At all times, BCH took the position that, pursuant to the terms of the EPA, the Target COD date would only be extended once Wedgemount accepted and finalized the Interconnection Facilities Study. Attached and marked as **Exhibit "C"** is a true copy of an email dated January 23, 2017 from Peter Zell to me (without attachments).
  9. Peter Zell, on behalf of Wedgemount, also requested that BCH confirm that it would not exercise its termination rights in the event Wedgemount went insolvent or bankrupt. BCH did not agree to waive or forbear on those termination rights. Attached and marked as **Exhibit "D"** is a true copy of an email dated January 24, 2017 from me to Peter Zell.
  10. I am advised by Ryan Hefflick with BCH's interconnections group that in early May 2017, Wedgemount advised BCH that it was considering an alternative route and inquired about the process for extending COD to May 2018. However, there was no formal request made by Wedgemount for BCH to extend COD to May 2018 and BCH did not agree to extend COD.
  11. On or about May 9, 2017, BCH learned that IA had cut off Wedgemount's funding for the project and, from that point, Peter Zell, Brent Hardy and David Ehrhardt would not be involved going forward and that IA would be advancing the project. Attached and marked as **Exhibit "E"** is a true copy of my contemporaneous notes from an internal BCH meeting on May 9, 2017.
  12. On May 18, 2017, I attended a meeting with Melinda McKie and Paul Chambers of Deloitte Restructuring Inc. (the "**Receiver**") and Frank Lin, Ryan Hefflick and Olha Lui of BCH. At that meeting, I advised the Receiver that under the EPA, we were awaiting an interconnection solution and that the COD deadline would expire September 29, 2017. Based on my contemporaneous notes of this meeting and my recollection, Mr. Hefflick advised the Receiver that it appeared we were at a workable solution when the

receivership was announced, and that we weren't sure where this was at now that the project was in receivership. The Receiver advised that they were aware of the timing sensitives and would take action as quickly as possible to bring the project towards an interconnection agreement. Attached and marked as **Exhibit "F"** is a true copy of my contemporaneous notes from the May 18, 2017 meeting.

13. Shortly, after the meeting on May 18 2017, I exchanged emails with Mr. Chambers confirming email addresses, but did not have any further contact with the Receiver until September 11, 2017.
14. On June 14, 2017, I attended a meeting between IA (Maximé Durivage, Stefanie Leduc and Luc Fournier) and BCH (Ryan Hefflick, Olha Lui and Vic Rempel). At this meeting:
  - (a) IA advised us that it was committed to the project and that they hoped the project would be ready to be operated by October 2017; and
  - (b) BCH advised that the timing for operation was dependent on the Receiver delivering drawings and obtaining permits, and that we were waiting for options from the Receiver.

Attached and marked as **Exhibit "G"** is a true copy of my contemporaneous notes from the June 14, 2017 meeting.

15. Based on IA's advice at the June 14 meeting that they intended to reach commercial operation by October 2017, I expected that IA and the Receiver would finalize the route and interconnection facility study soon after the meeting.
16. On September 11, 2017, Paul Chambers with the Receiver emailed me to ask that BCH confirm that the 2-year termination provision in the EPA section 8.1(a) did not apply. On September 19, 2017, I advised Mr. Chambers that I was waiting on information that I expected to receive shortly, but couldn't provide the assurances sought at that time. Attached and marked as **Exhibit "H"** is a true copy of an email dated September 19, 2017 that I sent to Mr. Chambers in response to his September 11, 2017 email.



17. On or about September 20, 2017, I specifically advised the Receiver that BCH was not waiving its termination rights. Attached and marked as **Exhibit "I"** is a handwritten note that I made on September 20, 2017. Attached and marked as **Exhibit "J"** is an internal email that I sent to Bruce Chow, Ryan Hefflick and Vic Rempel confirming my call to the Receiver.
18. On September 25, 2017, I attended a meeting with the Receiver (Melinda McKie and Paul Chambers) and other members of BCH (Bruce Chow and Vic Rempel). At that meeting, BCH and the Receiver discussed the sales process that the Receiver had been conducting. This was the first time that BCH received information regarding the sales process.
19. At the September 25 meeting:
  - (a) BCH advised the Receiver that it was concerned about the sales process and that it wanted to review the confidentiality and assignment provisions of the EPA;
  - (b) the Receiver indicated that it believed the Target COD would be reset when the study was completed;
  - (c) the Receiver asked if BCH would provide certainty to potential buyers that it would waive the termination or extend the date;
  - (d) BCH advised the Receiver that it had a termination right and emphasized that it was not waiving any of its rights under the EPA;
  - (e) the Receiver indicated that they expected BCH to waive its termination right, or that it had waived the termination right in May 2017, but BCH confirmed that no such commitments or waivers were made.

Attached and marked as **Exhibit "K"** is a true copy of the meeting summary that I prepared immediately following the September 25, 2017 meeting. A portion of my notes were for the purpose of seeking legal advice, and that section has been redacted. Attached and marked as **Exhibit "L"** is a true copy of my contemporaneous notes with respect to the September 25, 2017 meeting.

20. In a letter dated September 27, 2017, the Receiver advised BCH that it understood that in May 2017, BCH had verbally waived its termination right under the EPA section 8.1. This is not correct. I attended the May 18 meeting and BCH did not waive any rights at that meeting. To the contrary, as noted above, at the May 18 meeting, I advised the Receiver that the COD deadline would expire September 29, 2017. I provided BCH's response to the September 27 letter on September 29, 2017. Attached and marked as **Exhibit "M"** is a true copy of the letter dated September 29, 2017 from BCH to the Receiver.
21. On October 6, 2017, I attended a meeting between BCH and the Receiver (Melinda McKie and Paul Chambers) and BCH (Vic Rempel and Bruce Chow). At that meeting:
- (a) the Receiver provided a summary of its sales process and the interest received;
  - (b) the Receiver advised that it had previously told bidders that the termination date wasn't in force because the interconnection report wasn't finalized, but then retracted this statement and conveyed to the bidders BCH's position and that they were in discussions with BCH to try work out a solution to BCH's termination right;
  - (c) BCH asked how bidders reacted to the news that Target COD had passed, and we were told that the bidders were looking for comfort that BCH was not going to terminate; and
  - (d) close to the end of the meeting, BCH reiterated that it was not waiving its termination rights.

Attached and marked as **Exhibit "N"** is a true copy of my contemporaneous notes from the October 6, 2017 meeting.

22. Pursuant to a letter dated October 17, 2017, BCH asked the Receiver to advise potential purchasers that BCH had termination rights under the EPA and that those rights had not been waived. Attached and marked as **Exhibit "O"** is a true copy of the letter dated October 17, 2017 that I sent to Melinda McKie and Paul Chambers.

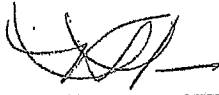
23. On November 20, 2017, I attended a meeting between BCH and the Receiver (Melinda McKie and Paul Chambers). At the meeting:
- (a) Mr. Chambers advised that the sales process was stalled until the EPA issue was resolved;
  - (b) the Receiver provided an update on their project, including the status of their drawings being largely complete and verbal support from the two First Nations with respect to the route, but they had not obtained any Band Council approval for the route;
  - (c) Mr. Chow, on behalf of BCH, advised that amendments would be required to the EPA to resolve the issues around BCH's termination rights and to provide concessions to BCH, and that BCH expected to put a proposal to the Receiver in that regard.

Attached and marked as **Exhibit "P"** is a true copy of my contemporaneous notes from the November 20, 2017 meeting. My meeting notes indicate that the meeting was held on a without prejudice basis. The above summary and my notes are included because a summary of the meeting has been set out in the Affidavit of Ms. McKie.

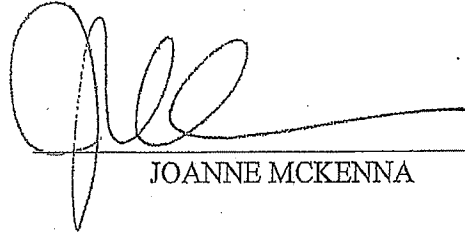
24. Based on an email from Paul Chambers, I believe that the Receiver advised potential purchasers that BCH had termination rights under the EPA and that it had not waived those rights. Attached and marked as **Exhibit "Q"** is a true copy of an email dated November 20, 2017 from Paul Chambers to me and Bruce Chow.
25. As far as I am aware, no one from Wedgemount, the Receiver or IA contacted BCH to request clarification with respect to the correct interpretation of the EPA between the June 14 meeting and the email from Paul Chambers on September 11, 2017. Given the policies and procedures in place at BCH, I believe that if such a request was received, it would have been forwarded to my group, and I would be aware of it.

26. Based on my participation in various discussions with the Receiver and IA, I believe that BCH has, at all times, reserved its termination rights and maintained that its termination rights have not been waived.

AFFIRMED BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 28th day of March 2018 )



\_\_\_\_\_  
A Commissioner for taking oaths in and for the Province of British Columbia )



\_\_\_\_\_  
JOANNE MCKENNA

**Valerie Aberdeen**  
*Barrister & Solicitor*  
**B.C. Hydro**  
333 Dunsmuir Street, 16<sup>th</sup> Floor  
Vancouver, B.C. V6B 5R3  
*A Notary Public in and for the Province Of British Columbia*

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF  
JOANNE MCKENNA MADE BEFORE ME ON THE  
28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

---

**From:** Peter Zell <pzell@ecoflowenergy.com>  
**Sent:** January-19-17 11:45 AM  
**To:** McKenna, Joanne  
**Cc:** Soulsby, Rohan; David Ehrhardt; Brett Robinson  
**Subject:** Follow up  
**Attachments:** Consent Letter - Hydro-Eco Flow.pdf; DY0664 SOO Wedgemount IPP RBW 25F65-25F61 - 409-D08-01007.pdf

Joanne,

Thank you for taking the time to set up the meeting this past Tuesday. I was not able to follow up on the meeting earlier because of other commitments. I apologize for that.

Please find attached the consent letter that Rohan had asked about as well as the drawing set that includes the drawings that we were looking at on the table and on my computer.

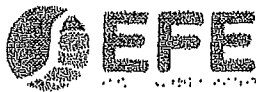
We are very active at this time with respect to engineering options and permitting investigations around Section 2 and 3. We are still targeting for an answer back to the working group by the end of the week. At this time we seem to be headed to a proposal that may actually end up being a hybrid solution that has everyone (BCH, WPI and the First Nations) working very closely to a creative solution to Section 2 in particular. This could ultimately maintain the current POI as is. The objective is to expedite the permitting process to allow the problematic Section 2 construction to start in early spring in parallel with Section 1 construction, that we have been told has all the necessary permissions from the Crown and MOTI to proceed.

We appreciate your consideration of our requests around delaying COD and compensating us under section 3.11 of the EPA.

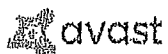
Please feel free to call anytime if you have any questions, concerns or innovative suggestions to move this forward.

Best Regards

Peter Zell, P.Eng.



206-4840 Delta Street  
Delta, BC, V4K 2T6  
250-981-1250



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28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

---

**From:** McKenna, Joanne  
**Sent:** January-20-17 1:32 PM  
**To:** Soulsby, Rohan; Lin, Frank; Rempel, Vic; Clayton, Brandee; Hefflick, Ryan  
**Cc:** McKenna, Joanne  
**Subject:** follow-up with Peter Zell

Hi all, wanted to update you on the conversation I had with Peter this morning. I communicated to him that while we were in the process of exploring options to extend Wedgemount's COD, we were not willing to extending their COD AND compensate them for a COD deferral. He was not happy to hear that we weren't going to look at compensation as they are losing a lot of money. He asked whether any consideration around delaying COD and compensating them under section 3.1.1 of the EPA would be given, based on the fact (according to them) that the delays were as a result of BC Hydro. I said that my understanding is that delays were also caused by the proponent by changing scope of work, and non-payment so that it was not all on BC Hydro. Furthermore, I noted that our Interconnections folks indicated that if WGM can confirm the remaining scope of work in a timely manner, that BCH would be able to complete the work required within the timeframe noted in the Facilities Study (Sept 29, 2017).

He also mentioned they are working on options to bring back to BCH that would focus on how we could move the project forward. Didn't get a sense that he was dropping the idea of compensation. I asked about timing, given the urgency he expressed to us when we met on Jan 17th, and if he thought there would be any latitude with the bank. He thought there might be room to extend the forbearance letter if the bank was satisfied that WGM and BCH were working on a viable solution.

I also mentioned that if we were able to extend the COD, we would need a commitment from them that they would pay their outstanding invoices with BCH.

It was left that they would send us some options for discussion.

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

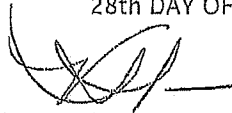
P 604-623-4162  
M 604-605-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

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28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

---

**From:** Peter Zell <pzell@ecoflowenergy.com>  
**Sent:** January-23-17 6:13 AM  
**To:** McKenna, Joanne  
**Cc:** Soulsby, Rohan; 'David Ehrhardt'; 'Brett Robinson'  
**Subject:** Follow up  
**Attachments:** Consent Letter - Hydro-Eco Flow.pdf; DY0664 SOO Wedgemount IPP RBW  
25F65-25F61 - 409-D08-01007.pdf

Joanne,

I had prepared this email and thought that it had been sent but just found it stuck in my outbox along with several others. I was having connectivity issues that I was not aware of while I was out of town last week. I thought that it needed to be sent to you anyway because it contained the attachments and is still relevant.

I appreciate that you had already followed up by phone with respect to our request around delaying COD (yes you confirmed this will be per the language in section 3.9) and compensation under section 3.11 (you stated that BCH is long on power and that this is not possible).

PZ

Joanne,

Thank you for taking the time to set up the meeting yesterday. I was not able to follow up on the meeting earlier because of other commitments. I apologize for that.

Please find attached the consent letter that Rohan had asked about as well as the drawing set that includes the drawings that we were looking at on the table and on my computer.

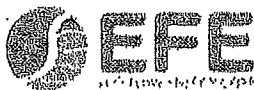
We are very active at this time with respect to engineering options and permitting investigations around Section 2 and 3. We are still targeting for an answer back to the working group by the end of the week. At this time we seem to be headed to a proposal that may actually end up being a hybrid solution that has everyone (BCH, WPI and the First Nations) working very closely to a creative solution to Section 2 in particular. This could ultimately maintain the current POI as is, but expedite the permitting process to allow the problematic Section 2 construction to start in early spring in parallel with Section 1 construction, that we have been told has all the necessary permissions from the Crown and MOTI to proceed.

We appreciate your consideration of our requests around delaying COD and compensating us under section 3.11 of the EPA.

Please feel free to call anytime if you have any questions, concerns or innovative suggestions to help this project across the finish line.

Best Regards

Peter Zell, P. Eng.



206-4840 Delta Street

Delta, BC, V4K 2T6  
250-981-1250



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---

**From:** McKenna, Joanne  
**Sent:** January-24-17 5:07 PM  
**To:** 'Peter Zell'  
**Cc:** Soulsby, Rohan; 'David Ehrhardt'; 'Brett Robinson'; Lin, Frank; Clayton, Brandee  
**Subject:** RE: What if Wedgemount were to become insolvent?

Hi Peter, in response to per your question below, we will not forebear on our right of termination in sec 8.1f of the EPA and therefore cannot provide you with the assurances you are seeking.

Joanne

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-505-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

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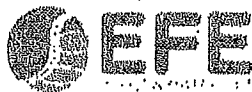
**From:** Peter Zell [<mailto:pzell@ecoflowenergy.com>]  
**Sent:** 2017, January 24 9:37 AM  
**To:** McKenna, Joanne  
**Cc:** Soulsby, Rohan; 'David Ehrhardt'; 'Brett Robinson'  
**Subject:** What if Wedgemount were to become insolvent?

Joanne,

One of the things that stuck in my mind after our telephone call last week was a comment that you made in regard to the project going into bankruptcy. Per section 8.1 f) of the EPA, BCH has the right to terminate the EPA in the event that the Seller becomes insolvent. This is an important risk item for us and will impact our decision to continue to be involved in the project going forward. Given that BCH is long on power (as you stated in our call and that is also pretty common knowledge in the industry), could you give us an indication as to whether or not BCH would exercise its termination right per section 8.1 f) should the project become insolvent or bankrupt?

Best Regards

Peter Zell, P. Eng.



206-4840 Delta Street  
Delta, BC, V4K 2T6  
250-981-1250

From: Peter Zell [mailto:pzell@ecoflowenergy.com]  
Sent: Monday, January 23, 2017 6:13 AM  
To: 'Joanne McKenna' <Joanne.McKenna@bchydro.com>  
Cc: 'Rohan Soulsby' <Rohan.Soulsby@bchydro.com>; 'David Ehrhardt' <dehrhardt@telus.net>; 'Brett Robinson' <Brxlr8@gmail.com>  
Subject: Follow up

Joanne,

I had prepared this email and thought that it had been sent but just found it stuck in my outbox along with several others. I was having connectivity issues that I was not aware of while I was out of town last week. I thought that it needed to be sent to you anyway because it contained the attachments and is still relevant.

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PZ

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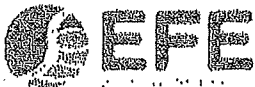
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We appreciate your consideration of our requests around delaying COD and compensating us under section 3.11 of the EPA.

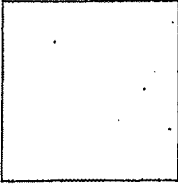
Please feel free to call anytime if you have any questions, concerns or innovative suggestions to help this project across the finish line.

Best Regards

Peter Zell, P. Eng.

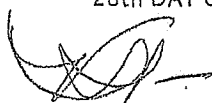


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Bryan, Vic, Bruce, Otha, Nale & Brandy

Date: May 9/17

Wedgemount Update,

- Lender has cut off financing to Wedgemount (today). IA is financing.
- IA filed for receivership - expected to be approved by Friday May 11th.
- Peter Zell & Brent Ham & David ~~Smith~~ cut off.
- IA is going to advance this project.
- Project development - completion of alls for interconnections. Receipt for one act that requires approval for SLRD interconnections.
- Will Finalize cost est & Facilitate Study scope expected completion <sup>W/ 2 wks.</sup> <sub>within</sub>
- Need a lender's consent?
- Current debts - IA has verbally agreed to settle these. <sup>E. F. H.</sup>
- No IA in place with developer.

Miracle Bind™

Date

Key amount of the latest events.

We are only supposed to be communicating  
in the phasers (and travelers) to the  
agent on behalf of (A).

we  
need authorization to allow  
B&I to communicate so there is  
history of development.

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Agreement then some stable construction timeline

Deliverables - necessary? make sense. BEH and the

information he speaking last night

to. If + Michael R. MM will send them

What's the timeline for Delta's preparation?

What's the process? What can we expect?

U. amount of financial restructuring -

MM needs to be what the design process

What's the timing on BEH's side to get to

at IA?

- allow to "fill the void" with

well process + take actions on quickly as possible.


- If standard template - there

also have been shared as developer

in well known as Delta's PH

Date

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28th DAY OF MARCH 2018



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BRITISH COLUMBIA

Date June 14/17

IA Meeting re: Wedgemount Creek

Maxime Durvage } IA  
Stephanie Leclerc }

Luc Fournier } Introductions

Arnaud H. } Ben. - committed to the project. Want  
Oual } it to be constructed. Michael Pouch  
NCR } (working for receiver Deloitte) will continue <sup>the work</sup>

Unique situation for IA. First time for this. There's  
the sole leader.

(Oct) operators - hope by this time it will  
be ready to be operated. Approached by  
many buyers (Peter Zeck) included.

In-service date? This is based on previous  
discussion in PZCC who guided discussion with  
Ben.)

- Letter of credit - IA asked if we could cash  
it + use for owed \$ to interconnections.  
The LC is \$ this the \$ owing to BCH.  
IA's expectation is that we use  
the balance to pay for any future  
work.

CMT (Michael P) responsible for obtaining  
permits.

Date

- payments to BCL will be made available ASAP (1 wk or less).

- Don't have any firm answers yet as we're working with an advisory team. timing is dependent upon state of Maryland + permits. Waiting options from the receiver.

Standard approach vs non-standard

↓  
if sufficient time  
start construction

↓  
start construction  
+ do as much as possible + then least construction of weather

least process

ISD - 90 days following the complete package

- COO - end of October.

Study

\* drawings/plans for subdivision outlining the route of the overhead/underground to reach the substn.



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28th DAY OF MARCH 2018



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BRITISH COLUMBIA

---

**From:** McKenna, Joanne  
**Sent:** September-19-17 11:44 AM  
**To:** Chambers, Paul (CA - British Columbia)  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic; Magnus C. Verbrugge (mverbrugge@blg.com); McKenna, Joanne  
**Subject:** RE: Wedgemount Power LP in Receivership

Hi Paul, as per my voicemail, we are currently waiting on information that I expect to receive tomorrow afternoon. I will call you as soon as I have it. At this time, I can't provide you with the assurances that you are seeking.

Joanne

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro  
333 Dunsmuir St, 17th floor  
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E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

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**From:** Chambers, Paul (CA - British Columbia) [mailto:pachambers@deloitte.ca]  
**Sent:** 2017, September 19 11:16 AM  
**To:** McKenna, Joanne  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic; Magnus C. Verbrugge (mverbrugge@blg.com)  
**Subject:** RE: Wedgemount Power LP in Receivership

Hello Joanne,

Just following up on my email below.

Would it be help if we had a call? Given the timing, we would appreciate a response in the next couple of days if possible.

Many thanks,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**

Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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**From:** Chambers, Paul (CA - British Columbia)  
**Sent:** Monday, September 11, 2017 11:13 AM  
**To:** McKenna, Joanne <[Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)>  
**Cc:** McKle, Mellnda (CA - British Columbia) <[mmckle@deloitte.ca](mailto:mmckle@deloitte.ca)>; Hefflick, Ryan <[Ryan.Hefflick@bchydro.com](mailto:Ryan.Hefflick@bchydro.com)>; Rempel, Vic <[Vic.Rempel@bchydro.com](mailto:Vic.Rempel@bchydro.com)>; Magnus C. Verbrugge ([mverbrugge@blg.com](mailto:mverbrugge@blg.com)) <[mverbrugge@blg.com](mailto:mverbrugge@blg.com)>  
**Subject:** RE: Wedgemount Power LP In Receivership

Good morning Joanne,

We are conscious that the second anniversary of the Target COD is approaching, as defined in the EPA (i.e. Sept 30, 2017).

Based on our discussions in May of this year, we understand that the 2 year termination provision set-out in paragraph 8.1(a) of the EPA is not applicable since the Interconnection Study Report remains in draft form and the Estimated Interconnection Facilities Completion Date remains subject to change pursuant to paragraph 3.9 of the EPA.

Please can you confirm this for us?

By way of update, the Receiver is continuing to advance planning and design for the Interconnection, and we have had several meetings with Vic Rempel and Ryan Hefflick in this regard. The Receiver is also expecting to retain a contractor to finish the Intake construction in the next couple of weeks.

Many thanks,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**  
Senior Manager | Financial Advisory  
Deloitte  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465.  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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**From:** McKenna, Joanne [<mailto:Joanne.McKenna@bchydro.com>]  
**Sent:** Friday, May 19, 2017 9:18 AM  
**To:** Chambers, Paul (CA - British Columbia)  
**Subject:** RE: Correspondence

Hi Paul, my address is correct. Ryan Hefflick's email is [ryan.hefflick@bchydro.com](mailto:ryan.hefflick@bchydro.com).  
If you could copy him on any emails that would be great.

Thank-you, Joanne

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development

BC Hydro

333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-505-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

**Smart about power in all we do.**

**From:** Chambers, Paul (CA - British Columbia) [<mailto:pachambers@deloitte.ca>]  
**Sent:** 2017, May 18 4:44 PM  
**To:** McKenna, Joanne  
**Subject:** Correspondence

Hi Joanne,

Thank you for your participation in the call this afternoon.

Just checking I have the correct email address for you. Please also provide the email addresses of any other of your team members that you would like to be copied on correspondence moving forward.

We expect to send you the letter, as requested, first thing in the morning.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**

Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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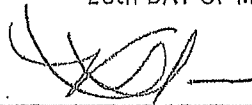
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28th DAY OF MARCH 2018



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BRITISH COLUMBIA

Wedgemant

Wed Sept 20/12  
Date

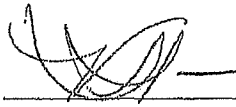
(D)

Not waiving our termination  
rights

Commented  
to Deloitte

REDACTED FOR  
PRIVILEGE - SOLICITOR/CLIENT

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28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA



---

**From:** McKenna, Joanne  
**Sent:** September-20-17 3:32 PM  
**To:** Chow, Bruce; Hefflick, Ryan; Rempel, Vic  
**Cc:** Soulsby, Rohan; McKenna, Joanne  
**Subject:** WEEdgemount

Hi wanted to let you know that I called Paul Chambers to let him know that BCH would not be waiving our termination rights.

I suggested we set up a meeting for either later this week or early next week. He will email me a list of who needs to attend on their side.

Joanne

---

Joanne McKenna | Sr. Manager, Distributed Generation, Business & Economic Development


BC Hydro  
333 Dunsmuir St, 17th floor  
Vancouver, BC V6B 5R3

P 604-623-4162  
M 604-605-7413  
E [Joanne.McKenna@bchydro.com](mailto:Joanne.McKenna@bchydro.com)

[bchydro.com](http://bchydro.com)

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28th DAY OF MARCH 2018



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## Confidential

### Summary of Meeting with Receiver for the Wedgemount Hydro Project

For Internal Discussion and Use Only

September 25, 2017

#### Attendees:

- Deloitte = Paul Chambers; Melinda Mckle (Sr VP); Peter Helland (Midgard)
- BC Hydro = Joanne Mckenna (B&ED); Bruce Chow (B&ED); Vic Rempel (Interconnections)

#### Overview of activities of Receiver:

- Receivership Initiated on May 12/17. Industrial Alliance (IA) is a secured creditor. IA has agreed that funds from the existing loan facility (Initially \$22 million) can be used to finance the work to progress the project, as required.
- Midgard hired by Receiver as an Independent Engineer (IE) to complete a status assessment of the facility. Midgard resigned as the IE for Industrial Alliance (Lender) to take on this role for the Receiver.
- Sigma engineering hired to undertake a current status of the penstock/intake.
- Awarded construction contract to True North Energy to complete the construction around the Intake before winter/ stabilize the facility and mitigate risks related to the temporary diversion.
- Multiple conversations have occurred with FLNRO and Squamish and Lil'wat First Nations, and they are meeting again on Sep 26/17. Receivers have Agreement in Principle with the two First Nations; existing IBAs have been amended to guarantee this support (both First Nations will receive royalties but will not have an equity position in the project). The Receiver believes the agreement will be executed by the First Nation because the structure of the agreement was proposed by Squamish. Evidence of support forthcoming.
- Interconnections options have focused on the Forest Service Road route.
- Conversations with Subdivision owner have also taken place. Powerhouse is to be located within subdivision. Lack of confirmation as to where the ducting for the interconnection will be located. New proposal for ducting to be sent to owner on September 27/17.
- Initiated sales process in July by Issuing an Expression of Interest to Interested buyers.
  - This process included setting up a data room that contained documents related to WGM including the EPA. NDA's were signed by prospective bidders. BC Hydro consent for the release of the EPA was not obtained.
  - BC Hydro expressed concern about the process and advised that the Receiver needs to review the confidentiality and assignment provisions in the EPA. (BC Hydro will follow up with a request for a copy of the NDA and details on the parties that have received the EPA).
  - Binding offers are expected by October 2/17. Selection will occur ASAP with recommendation to court. Stakeholders will have an opportunity to comment. (Timeline??, Process for Registering as a stakeholder in the sale).
  - The successful bidder will carry out its due diligence within about 1 week of the award.
  - BC Hydro advised that it only negotiates with the Seller, which must happen either before assignment with the existing Seller or after assignment with the successful bidder.
  - The Receiver recognizes that the uncertainties (interconnection routing and costs, termination rights within the EPA) with respect to the EPA will impact the price received for the project.
  - Receiver is under the impression that the Target COD will be reset upon completion of the study. BC Hydro commented that it has a termination right.

REDACTED FOR PRIVILEGE

## Confidential

---

- Receiver has estimated that COD can occur as early as July/August 2018.
  - The balance of the penstock needs to be completed. Total line is 4.5 km, and a 0.5 km difficult section in the middle and the connection to the powerhouse are not yet complete.

### Outstanding Items:

- Final route selection to be determined. Three routes have been studied, and a preferred route has been identified. Permits from FLNRO are still outstanding for the preferred route;
- Evidence of support from the Squamish and Lil'wat First Nations for preferred route not yet received.
- Agreement with subdivision owner re placement of the ducting not obtained.
- Permits from FLNRO for preferred interconnection route not obtained.
- Court approval for new buyer not obtained – expected late October??

### Statement with regards to BC Hydro Termination Rights

- BC Hydro emphasizes that it is not waiving any of its rights under the EPA, although the focus of this conversation was a status update from the Receiver.
- Receiver indicated that they expected BC Hydro to waive our termination rights and understood that we had done so in our first meeting with them in May. No such commitments were made by BC Hydro.
- BC Hydro commented that we needed some time to digest the information provided by the Receiver; and would consult with our legal advisors before determining next steps. We agreed to meet next week to discuss next steps.

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Wednesday, 25/11/17

Date 25/11/17

- Deloitte: Paul Chambers
- Mylan: Mike
- Peter Hecford (Midgard)
- W. Kempel (Infrastructure)
- Bruce Chou

May 12/17 Receivership initiated.

Court appointed - answerable to them & the creditor to assess the value.

- Midgard - chief status assessed - in everyone's best interest to renege the forward. Realizing that instrument needed to be resolved.

#1 - DRD work level - Due to route thru the panel. Sought license for this period difficult road

#2 - First service route + advanced work on the route. (Clear energy - in parallel 35% design drawings) Proceed in well CMT Project Sal's to obtain permit - To allow for the 2 act. miles

Route #2 runs thru the Squamish BV Area & didn't want the to happen. June 2017 this came to light -

Sept 26/17

Date

Sept 17  
LH met. PN was O.K. No meeting b/c  
APN & PNRO has occurred due  
to Forest Puro  
Met 15 May' from AK res PN Council.

#3 Alt. note PO & H. SIRD line but  
still req'd a tenure for a crossing (?)

Sept 17 Agreement in principle from Q & A/S  
amends to creating IBA PN would  
support the road #12. And for their  
support they will receive adobe benefits  
for their royalty stream.  
Contract upon Chief & Council  
approval. This contract is expected to be  
contracted in 7-10 days.

95% design drawings from Cleo Energy.

Signia tried to understand a 'current state'  
of the plantation / fields etc.

\* Status of Subdivision under construction.  
May need another R-O-W. B/c the  
clearing is next to the road - may need  
need approval from MOTT.

Date

Remembrance created on subdivisions  
page land.

New proposal <sup>being discussed</sup> re: ducting financial connects  
sent to subdivisions on 7/27/17  
on intake <sup>and review</sup>

- tender doc. not for construction -  
will be awarded to Steve North, Cherry  
Tully. To complete construction before  
winter.

Arroyo study finished - to admin. tables,  
the road. (done in June).

IA - funding - The renews process & consultant  
etc. (this incl. the  
ETA)

July

same process - approached by various  
parties. Initiated a data room w/  
Jagjit Pappu and did site visit. Rec'd  
Fisher Letters of Interest - Braden, others  
are due by Oct 2. Review  
starts on <sup>with applications</sup> ~~start~~ to seek  
approval. As a stakeholder BEM  
has rights.

Deloitte need to renew  
BEM will need to renew our Assignment  
rights.



extended date of July  
Date Complete to new

\* Deloitte - can BCH provide any assistance to the buyer that we'd assume the termination.

Overland  
Prison  
Foot  
rest  
that  
in  
in  
rest COO July 2018  
Aug.  
in  
in

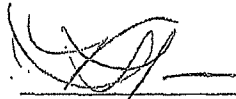
Deloitte's outlined risks to plant buyers.

- FN support & impact on IBA
- Interconnections cost
- Status of EPA - going forward
- PLRD permits could be in place

June 15th →

Next steps ?? Meet next week?

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Joanne McKenna  
Manager, Distributed Generation  
P 604 628-4162  
E Joanne.McKenna@bchydro.com

BY EMAIL

pachambers@deloitte.ca  
mmckie@deloitte.ca

September 29, 2017

Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street  
Vancouver, BC  
V7X 1P4

Attention: Melinda McKie and Paul Chambers

Dear Sirs/Mesdames:

Re: Receivership (the "Receivership") of Wedgemount Power Limited Partnership et al  
("Wedgemount")

We are in receipt of your letter dated September 27, 2017 ("Deloitte Letter"). BC Hydro does not agree with certain aspects of the Deloitte Letter; but without going into specifics at this time, we are writing in response to the Deloitte Letter and to follow up on the meeting held on September 25, 2017 (the "September 25 Meeting") between representatives of British Columbia Hydro and Power Authority ("BC Hydro") and Deloitte Restructuring Inc., as court appointed receiver of Wedgemount (the "Receiver") pursuant to the Order of Mr. Justice Steeves pronounced May 12, 2017 in Vancouver Registry Action No. S-174308 (the "Receivership Order").

As you are aware, Wedgemount and BC Hydro are party to an Electricity Purchase Agreement made as of March 6, 2015 (the "EPA"). While BC Hydro has been aware of the Receivership generally, and has had some contact with the Receiver with respect to the project interconnection options and studies, we have not been closely involved in, nor advised of, the Receivership process to date aside from an initial phone call with the Receiver on May 18, 2017 (the "May 2017 Call"), in which BC Hydro confirmed that the Project needed to achieve COD by September 30, 2017. At no time during the May 2017 Call did we waive our termination rights under the EPA.

You advised at the September 25 Meeting that in July, the Receiver commenced a marketing and sale process for certain assets of Wedgemount (the "Sale Process"). We learned from you that the Receiver has set up a data room that includes the EPA and other agreements between BC Hydro and Wedgemount, and that potential bidders who signed non-disclosure agreements ("NDAs") with the Receiver have been granted access to that data room. You further advised that the Receiver expects

binding offers for Wedgemount's assets by October 2, 2017, with the successful bidder then having a week or so to conduct further diligence after having been selected by the Receiver.

We were very surprised to learn about the Sale Process given the obvious importance to us of the sale of the EPA and the need for BC Hydro's involvement throughout the Sale Process (which has not occurred). The EPA is Wedgemount's principal asset and its purchase will be the foundation of any binding offers submitted to the Receiver. You heard some immediate concerns from us at the September 25 Meeting. On further reflection, our concerns have expanded and we believe that the Sale Process as currently constituted has significant flaws that may potentially result in negative outcomes for BC Hydro, the Receiver, and potential bidders. We believe it is important that we set out our concerns for you now, so that there is no misunderstanding as to BC Hydro's position and no surprises for the Receiver or any potential bidders in the Sale Process. This letter is not intended to be technical in any way and is not meant to present an exhaustive list of BC Hydro's concerns, but it is intended to precipitate an urgent discussion to see whether a workable Sale Process can be achieved.

First, we note that the EPA has confidentiality provisions that cannot be addressed by interested bidders signing an NDA with the Receiver. The EPA cannot be disclosed without BC Hydro's consent, which was neither sought nor granted. Populating the data room with the EPA, and giving access to it to bidders, is a breach of the EPA and constitutes a default under the EPA. BC Hydro is a regulated entity; it takes its confidentiality agreements very seriously and insists on them being honoured. We have not seen the form of NDA; we do not know who or how many people have had access to the data room and the EPA, nor what use they might otherwise make of the information found there, notwithstanding whatever restrictions the form of NDA imposes on them.

We have not seen the bid package that was sent to prospective bidders. We do not know what the Receiver is offering to sell, or on what terms, or what is said about BC Hydro's involvement, or what qualifications have been communicated to bidders about what they would be buying. BC Hydro will need to see the complete bid package as soon as possible so that we can assess whether it raises any additional issues for us.

Critically, any assignment of the EPA or any related agreements cannot be achieved without BC Hydro's consent. Any assignment to a successful bidder would have to be on terms acceptable to BC Hydro, taking into account (among other things) the need to cure all existing defaults, and the requirement to address the changing circumstances between the time that the EPA was entered into and the present date. Amendments to the EPA may be required before it can be assigned. It is unknown whether a successful bidder and BC Hydro could agree on the terms of any consent to the assignment. The bids could change, or the identity of the successful bidder could change, if interested parties were aware of all of the circumstances of the EPA and the requirements of BC Hydro in connection with an assignment.

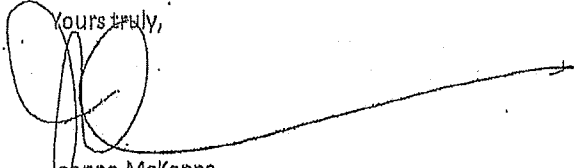
The Receiver has embarked on the Sales Process without sufficient consultation with BC Hydro regarding the EPA. A Sale Process that results in an accepted bid that subsequently results in a complex and material negotiation with BC Hydro, raises the prospect of an unsuccessful Sale Process in which both the successful and unsuccessful bidders view it as a "bait and switch" that results in a non-sale. Furthermore, as discussed in the September 25 Meeting, is it not BC Hydro's practice to negotiate with any party other than the "Seller" under the EPA, which is currently the Receiver. It would be problematic for BC Hydro to negotiate with a prospective bidder who was not yet a party to the EPA. All these issues need to be addressed.

Perhaps most importantly, as we raised in the September 25 Meeting, BC Hydro has an impending termination right under the EPA as a result of Wedgemount not reaching COD within two years of the September 30, 2015 Target COD under the EPA. By email dated September 11, 2017 (the "September 2017 Email"), the first communication from the Receiver to the undersigned since the May 2017 Call, the Receiver asked BC Hydro to confirm the Receiver's presumption that the termination provision under the EPA is not applicable. By telephone call September 20, 2017, BC Hydro confirmed that its termination right crystallizes on September 30, 2017, and that BC Hydro would not be waiving that right. We are concerned that prospective bidders may not be aware of BC Hydro's impending termination right.

As noted above, there are material, serious and complex issues that need to be addressed before any Sale Process can be completed. To be clear, BC Hydro reserves, has not waived, and will not waive any of its rights or remedies under the EPA or any of its other agreements with Wedgemount, and it has not waived and will not waive any existing or future defaults, other than on terms acceptable to it in its sole discretion. BC Hydro is not in a position to provide any assurance at this time that it will not exercise any termination rights that it has under the EPA. Subject to the terms of the Receivership Order, BC Hydro will insist on strict compliance with the terms of the EPA going forward and in connection with any proposed assignment of the EPA. BC Hydro's intention is that this letter will lead to immediate discussions with the Receiver, and to BC Hydro being informed about the Sale Process as appropriate, assuming a practical path forward can be found.

We look forward to your reply at your earliest convenience.

Yours truly,

A handwritten signature in black ink, appearing to be "Joanne McKenna", written over a horizontal line that extends across the page.

Joanne McKenna  
Manager, Distributed Generation

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28th DAY OF MARCH 2018

A handwritten signature in black ink, consisting of several loops and a horizontal stroke at the end, positioned above a horizontal line.

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SPMs contained  
an est cost  
of end of Aug. 2015

Date Oct. 6/17

Deloitte

- Melinde

- Paul

- Vic

- Bruce

- Deloitte (Melinde)

not intended to do an offer

but due to interest they ended  
up setting up non-binding offers.

two reps / two warrants of the EPA

WBSM

mid-June began recy individual call set  
up data room in July (late).

- EPA's <sup>fin</sup> amended  
model (Deloitte deal); permits to date  
(process); IBAs; route / r-o-w; engineering  
report by Synco new on the data room.

AGS

can we get NDA form + when it's final  
date

10 potential interest phase 1

3 pre-qualified bidders phase 2

- due diligence / site visit Oct 2/17

to submit final bidding offer

draft ~~data~~ <sup>purchase</sup> agreement in data room +  
asked to mark up + submit to them  
bid.

6 bids rec'd 15 Oct 2017

2 non-binding

3-4 serious bids

Date

Sigma undertaking peer review - duration 7 wks - bidders could ask Qs of Sigma re: engineering of project - where it is at - amp / stress etc.

Greis - original engineer of record + now Sigma. now the engineer of record.

Sigma to submit final peer review of next wk - Oct. 12<sup>th</sup>

to potential bidders re our discussions is BCR to try & work out a sale to the terminator right.

- D. offered for us to meet the bidders or do I preferred bidders in view of the size?

BC - no. we only deal with the seller

How did bidders react to the news that the target corp. was expired - bidders' looks for comfort that were not going to be harmed. They want to



Date: 1/26/2020

get better perspective as to turning rate  
as to when corp can be delivered.  
What interactions with her been shared?  
- Interim structure - status;

FN - status update.  
current dm - I think FN to say amendments  
show that is in front of chair - Council &  
expert emphasis today. And will give  
a BCE to execute the plan

From finance. Clear message in document. They  
reviewed the amendment & they will follow.  
They're comfortable & will be getting  
the input of chair & council next  
ask

- prepared to send letter & support  
to see favorite (FLARO).  
Amendments in EOP. Make what  
members who will support the CEO  
structure.  
with the timeline?

FLARO: will send next week. Form & is  
prepared by timeline for review.

- Describe any potential as to chemistry  
of resources to date.

Miracle  
Jind  
Miracle  
Jind  
Miracle  
Jind  
Miracle  
Jind

deal closed by end of Nov, 2017  
Date

Q/ Is there a deadline / timeline the receiver is looking at? No stated timeline - like to be out of this process as soon as possible.

As part of the Assignment process - we need to ensure FN interests are closed off - a well need to undertake a FN risk assessment.

Financial model ref. an est target COV of end of Aug. 2018.

ABC  
Can they obtain access to the data rooms? They'll ok & get back to us

\* formal marketing process

• bids expire in 15 days / 30 days

- \* critical criteria to make future bidder
  - IBA / FN
  - Interconnections 50%  
enlighten work to
  - Final Engineering Study
  - EPC term, right section

keep track of pending

The receiver prepares reports that go to court the receiver would go to court to have the transaction ~~not~~ approved. (hearing 10-14 days with report & filed)

Date

Deloitte - will provide us with the info about the proposed bidder so we can do our due diligence re: the assignment process. They want this to be done relatively quickly...

Next Steps: meet next wk?

- reiterate not wanting on termination rights.

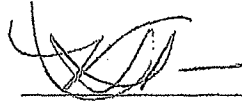
set up mtg  
2:30 pm / 3:00 pm Friday Oct 13/17

We need to do to move this forward:

- Escrow approval reqs
  - bus. case / BN
  - ask Brandee for the model to determine the impact.

familiar for intervention - at 3 mos.

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BRITISH COLUMBIA



Joanne McKenna  
Manager, Distributed Generation  
P 604 623-4162  
E Joanna.McKenna@bchydro.com

BY EMAIL

pachambers@deloitte.ca  
mmckle@deloitte.ca

October 17, 2017

Deloitte Restructuring Inc.  
2800 – 1055 Dunsmuir Street  
Vancouver, BC  
V7X 1P4

Attention: Melinda McKle and Paul Chambers

Dear Sirs/Mesdames:

**Re: Receivership (the "Receivership") of Wedgemount Power Limited Partnership et al ("Wedgemount")**

We are in receipt of the letter from Deloitte Restructuring Inc. ("Receiver") and enclosures dated October 11, 2017 (collectively, the "October 11 Letter"), which followed our meeting on October 6 (the "Meeting"). BC Hydro is deeply troubled by several significant false and/or misleading statements in the October 11 Letter that concern the discussions that have taken place between BC Hydro and the Receiver with respect to the Electricity Purchase Agreement between BC Hydro and Wedgemount (the "EPA"). In our letter to you dated September 29, 2017 (the "September 29 Letter"), we indicated our concern about the Receiver's breach of the confidentiality provisions within the EPA, potential misrepresentations to bidders about BC Hydro's termination rights under the EPA, and the potential for a flawed sales process with respect to the disposition of certain assets of Wedgemount, including the EPA (the "Sale Process").

Although the October 11 Letter did not provide all of the information that was requested in the Meeting, it has magnified our concerns about the integrity of the Sale Process and the Receiver's handling of the EPA. As a result, we believe that the Sale Process has significant flaws that will result in negative outcomes for BC Hydro, the Receiver, and bidders. Furthermore, false and/or misleading statements in the October 11 Letter, combined with the scope of the Receiver's breach of the confidentiality provisions of the EPA, are extremely damaging to BC Hydro's commercial interests with respect to other electricity purchase agreements in its portfolio.

Our specific primary concerns are outlined below:

**1. Receiver's Representations to Bidders Regarding Discussions with BC Hydro Concerning the EPA**

At the Meeting and in section 5 of the October 11 Letter, the Receiver indicated that it had not made any representations to bidders in relation to the EPA. However, in Appendix D of the October 11 Letter, the Receiver's response to Question 9 states that:

*"BC Hydro has verbally confirmed to the Receiver that the EPA will not be terminated as a result of the COD deadline of September 2017. The EPA includes various provisions for changing the Target COD (paragraphs 3.9 and 3.11). Based on discussions with BC Hydro, the Receiver understands that since the Interconnection Study Report remains in draft form and has not yet been finalized, the Estimated Interconnection Facilities Completion Date remains subject to change, and accordingly, the Target COD may be changed subject to the provisions of paragraph 3.9 of the EPA."*

This statement is both false and misleading. Prior to July 11, 2017 (the apparent date the statement was posted in the data room), BC Hydro's interaction with the Receiver with respect to the EPA was limited to a single conference call on May 18, 2017 that was brief and introductory in nature. In that call, we stated very clearly that the COD deadline was September 30, 2017, and at no time did we agree to waive our termination rights. As we have reminded the Receiver since, BC Hydro reserves, has not waived, and will not waive any of its rights or remedies under the EPA or any of its other agreements with Wedgemount, and it has not waived and will not waive any existing or future defaults, other than on terms acceptable to it in its sole discretion. Furthermore, the second and third sentences of Deloitte's response to Question 9 imply that BC Hydro and the Receiver had discussions regarding the interpretation of the EPA with respect to the draft Interconnection Study Report, which is misleading because no such conversations had taken place.

It is inconceivable that the Receiver would embark on the Sale Process, which involves assets potentially worth many millions of dollars and one primary agreement, without seeking confirmation from the counterparty (BC Hydro) on an issue as significant as a termination right. In fact, the Receiver didn't seek confirmation from BC Hydro regarding termination rights under the EPA until September 11 (only four days before final bids were originally due on September 15), when it emailed a request for confirmation to BC Hydro. As you know, BC Hydro responded that it would not be waiving its termination rights via a telephone call on September 20, and in a meeting with the Receiver on September 25, followed with written confirmation in the September 29 Letter. It is further disturbing that the Receiver neglected to advise BC Hydro of the existence of the ongoing Sale Process until our meeting on September 25.

At the Meeting, we expressed concerns about the Receiver's representations regarding BC Hydro's EPA termination rights and you indicated that you had corrected this information to bidders subsequent to our meeting on September 25. We are assuming that you were referring to the following statement in Appendix D of the October 11 Letter, in the section entitled "Further Due Diligence and Meeting Requests (September 28, 2017)":

*"The Receiver met with BC Hydro on September 26, 2017 to provide an update on the activities of the Receiver and anticipated next steps in relation to the Interconnection*

*and sale process. The Receiver made a request that BC Hydro agree to a postponement of the Target COD under the EPA. BC Hydro has committed to consider this request and will meet the Receiver again in the week commencing October 2, 2017 to discuss further."*

This statement to bidders includes both false and misleading information. Firstly, the reference to an "update" implies that BC Hydro was already aware of the Sale Process and was receiving an update to prior briefings in the meeting (which actually occurred on September 25, rather than September 26). In fact, BC Hydro only learned that the Sale Process existed at the September 25 meeting. This is very problematic for BC Hydro because the Receiver's statement to bidders could easily be interpreted to indicate that BC Hydro was aware of and even a participant in the design of the Sale Process that the Receiver has implemented, which of course is not true. Secondly, the Receiver's request that BC Hydro consider postponement of the Target COD under the EPA was not discussed at the September 25 meeting, but was delivered to BC Hydro in the Receiver's letter dated September 27. Furthermore, at the September 25 meeting we were clear in stating that BC Hydro has not waived any termination rights under the EPA (and we reiterated this point in the September 29 Letter), and we indicated that before we could consider options for resolving BC Hydro's EPA termination rights, we needed the Receiver to provide information regarding the Sale Process and its communications with bidders.

The Receiver's communication to bidders that BC Hydro had committed to consider the request to postpone the Target COD is again false and grossly misleading and provides unfounded comfort to potential bidders that BC Hydro had committed to consider a specific amendment to the EPA.

## **2. Receiver's Breach of the Confidentiality Provisions of the EPA**

As outlined in the September 29 Letter, the Receiver has breached the confidentiality provisions in the EPA through the Sales Process. A template of the non-disclosure agreement between Receiver and each bidder (the "NDA") was attached as Appendix B to the October 11 Letter, and the Receiver has indicated that it has entered into the NDA with each of the entities that was granted access to the data room under the Sale Process. BC Hydro nonetheless remains deeply concerned about the Receiver's breach of the confidentiality of the EPA for the following reasons:

- BC Hydro has not consented to the Receiver sharing the EPA to third parties, and the Receiver did not advise BC Hydro that the EPA was being shared in advance.
- The term of the NDA is much shorter than the term of the confidentiality provisions in the EPA.
- Individuals with access to the data room were allowed to make copies of any documents therein (including the EPA), which creates a situation where it is impossible to monitor and control confidential information in the documents.
- The scope of the breach is broad, with NDAs being signed with 25 different interested parties and 47 individuals granted access to the data room.

The impact to BC Hydro of the Receiver's breach of the confidentiality provisions of the EPA has been exacerbated by the false and/or misleading statements that the Receiver has made to the above-referenced 25 interested parties regarding discussions with BC Hydro concerning the EPA. The resulting impacts to BC Hydro extend beyond the EPA and its potential future dealings related to the Sale Process, as the Receiver's false and misleading statements will potentially impact BC

Hydro's ability to negotiate commercial arrangements where similar circumstances arise in its other electricity purchase agreements.

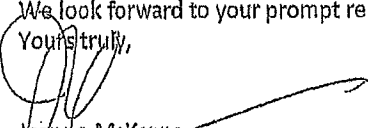
To move forward, the Receiver needs to take the following action prior to discussions with BC Hydro regarding resolution of issues related to the EPA and the Sale Process:

1. Enter into a NDA with BC Hydro related to discussions concerning the EPA
  - a. Under this non-disclosure agreement, any releases of information concerning the discussions between the Receiver and BC Hydro will be subject to approval by BC Hydro (including those described in Item 2 below).
2. Correct false and misleading statements made by the Receiver regarding discussions with BC Hydro concerning the EPA
  - a. Retract the response to Question 9, of the "Additional Information Request – Responses (July 11, 2017)".
  - b. Correct the statement in "Further Due Diligence and Meeting Requests (September 28, 2017), regarding discussions with BC Hydro regarding the Receiver's request to Postpone COD.
  - c. Clarify that BC Hydro has a termination right under section 8.1(a) of the EPA effective September 30, 2017 (failure to reach COD within two years of Target COD) and under section 8.1(f) of the EPA (Insolvency) and BC Hydro has not waived any rights under the EPA.
  - d. Clarify that BC Hydro and the Receiver are in discussions with BC Hydro concerning the status of the EPA.
3. Provide the following information and documents to BC Hydro:
  - a. Index listing of all documents in the data room
  - b. Written confirmation that the October 11 Letter includes all statements made by the Receiver concerning discussions with BC Hydro regarding the EPA.
  - c. Explanation of the redactions in the materials provided in the October 11 Letter
  - d. Details concerning the nature of the 27 entities that signed the NDA and the 25 different interested parties. We note that BC Hydro was advised by the Receiver at the Meeting that there were only 10 entities.
  - e. Copies of communications issued to bidders or posted in the data room that reference BC Hydro, interconnections or the EPA that are not included in the October 11 Letter

BC Hydro believes that the Receiver should consider suspension of the Sale Process, pending the outcome of discussions with BC Hydro, and that it would be imprudent for the Receiver to advise any bidder that its bid has been selected. In BC Hydro's view, only if and when an agreement has been reached with BC Hydro, the Receiver should select a short list of bidders and request an updated bid based on the amended EPA.

We look forward to your prompt reply.

Yours truly,

  
Joanne McKenna  
Manager, Distributed Generation



THIS IS EXHIBIT "P" REFERRED TO IN THE AFFIDAVIT OF  
JOANNE MCKENNA MADE BEFORE ME ON THE  
28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

Date Nov. 20/17

Management Mtg

May w/o prejudice - all agreed

Issues: Melinda - Status of Fall Program - CS  
VR phone - where we're @ re: ERM Delivered  
+ next steps

• Status Update - PC

① - finalizing the peer review (which was completed by Sigma + has been shared with the President's board)

② Work @ intake has been temp. addressed + tested to ensure not leaking

discussion shared - had add'l authority - again temp. sol'n - weaker

sol'n + permit permanent work

ERM monitor agreed to de-authorize

work @ this site until written permits

some work to lead to permanent work

sub process is stalled until the ERM issue is resolved

# of binding hrs (in b.) Delivered to customer  
under review, still interest in the project

Agreed Dilante to provide as well a copy of the peer review from Sigma Engineering

Interconnection

- ESR note - clear energy has been submitted & SW drawings - (Herlax process - minor changes)

Midgaard - Benjamin - FLURO  
undertaking - CN crossing / MOT crossing

the permitting section  
PC to let us know where Midgaard is at

- Liberal EN - has approved (verbally) the note. NO PC resolution yet.  
- Strategic EN -> Chief Bill Williams has reviewed the note & approved it - however not brought forward to Board Council yet. hoping to get this item on the Council's agenda before end of Nov.

Shan (?) Bill Mellon to Square  
Shan (?) Dilante has been asked to respond to guest from Square

- time based bids are still alive - no formal process to rolled bids - bidders still engaged but delays could make bids fall off

Date

Information will be updated V. soon to ~~the~~

- Peer Review Report  
- 95% drawings from Clean Energy Inc.  
- website updated re: EPA status. Will put  
in website update taking Beth's wording.

pc: [incl. comments from Dir (EBM).] VR will  
double check that the delivery team  
is ok. to share these comments.

- access is open to all participants &  
contractors this way. (Some rationale  
put forward b/c. they're officers of  
court).

- still has funding remaining from as \$5.5M  
w/ ability to seek more funding.

IA - primary creditor still uncertain  
what the final bids are + if there's \$B  
for the unsecured creditors. He bids  
have production proceeds.

Prize:

Need the NDA in place before we  
can have the discussion re: the EPA  
and resolve that. We're seeking  
amendments with the  
NDA to remedy the comments  
now.

Miracle  
Bind  
Miracle  
Bind  
Miracle  
Bind  
Miracle  
Bind  
Miracle

June: NPA Special

Date

1. BOM will make a proposal to Deloitte outlining the work we need from Deloitte to move forward

- BOM - to receive EPA & send to Deloitte hopefully by end of month

2. Common land issue application + ROW: Haven't really moved forward - Deloitte not necessarily going to obtain approval from FERC & PA approval

- Resumes to the IBA are being worked on by Deloitte but may not be completed

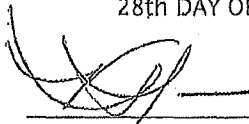
[Black-lined NDA - Deloitte]

[Delphond] Debned & Ryan + Vic

BOM likely not willing to ~~share~~ <sup>accept</sup> the comments ~~to be shared~~ with the Data Row on feedback on the 95% drawings

• I'll follow up on Shay

THIS IS EXHIBIT "Q" REFERRED TO IN THE AFFIDAVIT OF  
JOANNE MCKENNA MADE BEFORE ME ON THE  
28th DAY OF MARCH 2018



A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

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**From:** Chambers, Paul (CA - British Columbia) <pachambers@deloitte.ca>  
**Sent:** November-20-17 3:17 PM  
**To:** McKenna, Joanne; Chow, Bruce  
**Cc:** McKie, Melinda (CA - British Columbia); Hefflick, Ryan; Rempel, Vic  
**Subject:** Meeting Follow-up

Joanne / Bruce,

I confirm that this email is provided on the basis that the information herein will be kept strictly confidential, in accordance with the October 6, 2017 confidentiality agreement between the Receiver and BC Hydro.

Thanks for your time this morning. Please find below responses to your requests:

- 1) At the conclusion of the detailed due diligence phase of the sale process, the Receiver was in receipt of two binding, and four non-binding offers for the assets and undertakings of Wedgemount Power LP et al.
- 2) With respect to FLNRO's involvement with the interconnection design/approval process, any crossings of the Forest Service Road must be at the full height required for an active logging road. The approval of any FSR crossings will be dealt with in conjunction with the Crown land utility applications submitted to FrontCounterBC.
- 3) The Receiver's legal counsel will provide BC Hydro's legal counsel (Magnus Verbrugge) with a blackline to BC Hydro's proposed additional NDA in the next 24 hours.

As discussed, the Receiver will be adding an update to the Project data room this week. The Receiver intends to add the following update in relation to the EPA:

**Q Update: Energy Purchase Agreement ("EPA")**

**A** As previously advised, BC Hydro has a termination right under sections 8.1(a) and 8.1(f) of the EPA. BC Hydro has advised the Receiver that it has not waived any of its rights under the EPA. The Receiver is in discussions with BC Hydro in relation to the status of the EPA. The Receiver will provide an update on this matter and next steps in relation to the sale process in due course.

Please confirm by end of business on November 22 if this narrative is acceptable to BC Hydro.

Kind regards,

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

**Paul Chambers**

Vice President | Financial Advisory  
Deloitte Restructuring Inc.  
2800 - 1055 Dunsmuir Street, Vancouver, BC V7X 1P4  
D: +1 (604) 640 3368 | M: +1 (604) 365 4465  
[pachambers@deloitte.ca](mailto:pachambers@deloitte.ca) | [deloitte.ca](http://deloitte.ca)

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No. S-174308  
Vancouver Registry

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

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AFFIDAVIT

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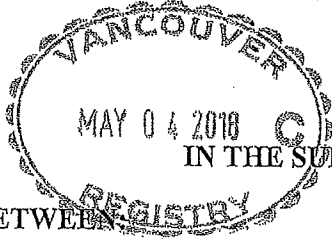
BORDEN LADNER GERVAIS LLP  
1200 - 200 Burrard Street  
Vancouver, BC V7X 1T2  
Telephone: (604) 687-5744  
Attn: Magnus Verbrugge/Lisa Hiebert  
544441.001726

THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Yves-Marie Manabe, Notary (41133)  
A Notary for taking Affidavits within the Province of Quebec

This is the 1<sup>st</sup> Affidavit  
of Olha Lui in this case and  
was made on March 29, 2018

No. S-174308  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, OLHA LUI, of 333 Dunsmuir Street, 17<sup>th</sup> Floor, in the City of Vancouver, in the Province of British Columbia, SOLEMNLY AFFIRM as follows:

1. I am the Tech Lead, Power Acquisition and Contract Management at British Columbia Hydro and Power Authority ("BCH"), a stakeholder in these proceedings, and as such have personal knowledge of the facts and matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information and belief, and in all such cases do verily believe it to be true.
2. On May 18, 2017, I attended a call between the Receiver, Deloitte Restructuring Inc. (Melinda McKie and Paul Chambers) and BCH (Frank Lin, Joanne McKenna and Ryan Hefflick). On that call:
  - (a) Ms. McKenna advised the Receiver that the project was at a standstill and that the deadline for achieving COD (commercial operation date) was the end of

September 2017;

- (b) BCH advised that its scope of work was ready to go, but that Wedgemount has had various issues, including financing issues;
- (c) BCH required approval to begin work towards interconnection, including the Receiver paying the \$200,000 debt;
- (d) the Receiver advised that it was in the shoes of Wedgemount and making determinations regarding next steps, including whether the lender, Industrial Alliance Insurance and Financial Services Inc. ("IA") would step in eventually; and
- (e) when asked about the timing on the BCH side, BCH advised that it needed to get the drawings (from the Receiver), which would then be reviewed and approved before entering into an interconnection agreement. My notes say "get to IA stage", and this means execution of an interconnection agreement, which includes the final study as an appendix and is required before BCH can start construction on the interconnection facilities.

Attached and marked as **Exhibit "A"** is a true copy of my handwritten contemporaneous notes of the May 18 call. Based on my notes and my recollection of the call, Ms. McKenna specifically advised the Receiver of the September 2017 deadline with respect to the project.

- 3. My notes from the May 18 call indicate that September 2017 was the Receiver's plan for interconnection. I understood at the meeting that the Receiver wanted to complete interconnection of the project by September 2017, which would include the Receiver and BCH completing all necessary studies, followed by construction, before that time.
- 4. On June 14, 2017, I attended a meeting with IA (Maxime Durivage, Luc Fournier and Stefanie Leduc) and BCH (Joanne McKenna, Ryan Hefflick and Vic Rempel). Attached and marked as **Exhibit "B"** is a true copy of my handwritten contemporaneous notes from the June 14, 2017 meeting (the "**Handwritten Notes**"). Attached and marked as

Exhibit "C" is a true copy of an email that I sent on June 14, 2017 summarizing the June 14, 2017 meeting with IA (the "Email Summary"). The June 14 Handwritten Notes and the Email Summary are consistent with my recollection of what was discussed at the June 14 meeting. In particular:

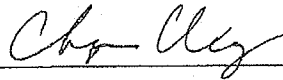
- (a) IA summarized their plans with respect to the project and the role of the Receiver;
  - (b) IA indicated that they intended to complete the project and connect to the BCH system as soon as possible, and had interested parties to act as operators for the project;
  - (c) IA hoped for the project to be in operation by October 2017;
  - (d) BCH advised that it would work to complete the interconnection work as quickly as possible;
  - (e) BCH required drawings from IA (or the Receiver) in order to update the schedule and costs under the draft facilities study, after which the study could be finalized; and
  - (f) BCH explained that when the facility study was finalized, this would reset the Target COD date pursuant to the terms of the EPA.
5. Based on my June 14 Handwritten Notes, I believe that, at the time of the June 14 meeting, IA's plan was for the interconnection study to be finalized within weeks of the meeting, in order to allow for "operation by October (4 month construction window)". Since IA's plan would require them to accept the final study soon after the June 14 meeting, at that time, there was no particular concern with respect to the Target COD deadlines in the EPA since the study being accepted as final would, under the EPA section 3.9, reset the deadline.
6. I have reviewed the Affidavit of Luc Fournier made March 13, 2018, and in particular paragraph 17 in which Mr. Fournier says that I informed them that "IA should not worry about the EPA remaining valid even if the COD was not achieved by September 30, 2017 because the facility study was not final and the time did not start to run until it was final".

This is not consistent with my Handwritten Notes or the Email Summary of the June 14 meeting. I do not recall saying that the time would not start to run until the facility study was final. Further, I would not have said that "the time did not start to run" until the study was final because that is not consistent with the terms of the EPA. The EPA specifies a Target COD, although that date can be reset in accordance with the EPA section 3.9 when the facility study is finalized.

7. I have reviewed the Affidavit of Maxime Durivage made March 13, 2018, and in particular paragraph 4 which says that I said that "the time did not start until the facility study was finalized." This is not consistent with my Handwritten Notes or the Email Summary of the June 14 meeting. I do not recall saying this and would not have said that "the time did not start until the facility study was finalized" since, as noted above, that is not consistent with the EPA.
8. I have reviewed the Affidavit of Stefanie Leduc made March 13, 2018 and in particular Exhibit A which includes the phrase "ISD + 90 days for COD" and paragraph 4 which says that this means "the Target COD would be set in the final facilities study report 90 days from the In-Service Date set out therein". This is not consistent with my Handwritten Notes or the Email Summary of the June 14 meeting. As noted above, I advised IA that the interconnection study, when finalized, can reset the Target COD in the EPA in accordance with the EPA section 3.9. I did not say that the interconnection study set the Target COD because that is not correct. The Target COD is defined in the EPA and can be reset under the EPA section 3.9 when the interconnection study is finalized. To the extent that I referenced Target COD being 90 days from the In-Service Date, I would have made this comment in the context of the interconnection study being finalized, and the dates being reset in accordance with the EPA.
9. Based on the Application filed by IA in these proceedings, it appears that IA's representatives misunderstood or mischaracterized what I said at the June 14 meeting. In particular, I would not have advised IA that the time did not start to run until the study was finalized, or that the final study would set the date because that is not consistent with



THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF  
OLHA LUI MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018



\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA



05-18-2017

①

→ Wedgemount, Deloitte Restructuring In  
Frank, Joanne<sup>M</sup>, Olga<sup>L</sup>, Ryan H.  
Melinda McKie i. Paul<sup>S</sup> Chambers  
mmekie@deloitte.ca from Deloitte  
+ Michael Pottack, Midgard.  
- David Arthardt, Wedgemount

JMc  
→ Standstill with the project  
→ COD expires at end of Sept 2017

↳ Sept 2017 - plan for Interconnection  
- BKH scope of work - ready to go  
- Wedgemount - termcare has issues.  
+ financing issues.

- Ecosystems?

- what's the timelines for  
interconnection work?

↳ <sup>BKH</sup> needs approval for start work:

↳ what's the Interconnection plan?

↳ \$200K \$ debt

↳ Magnus, legal counsel

↳ BKH will prepare fee  
invoice

• Receiver → Deloitte

• IA - secured lender

↳ providing funding for the  
project

• Michael Pottack → role in moving  
project forward

• As Receiver, Deloitte is in the shoes of  
Wedgemount and they are making  
determinations on the next steps

To determine whether Travellers  
and IA will step into shoes  
eventually.

- what's the timing on left side
  - get the drawings
  - review / approve
  - get to IA stage

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF  
OLHA LUI MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018

*Chp Alzy*

\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA



THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF  
OLHA LUI MADE BEFORE ME ON THE  
*29* DAY OF MARCH 2018

*Chy Uly*

A COMMISSIONER FOR TAKING AFFIDAVITS FOR  
BRITISH COLUMBIA

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**From:** Lui, Olha  
**Sent:** September-11-17 4:38 PM  
**To:** Chow, Bruce; McKenna, Joanne  
**Subject:** FW: Wedgemont EPA - today's meeting with IA

Hi Bruce and Joanne,

FYI, meeting notes from June; and last bullet would be of particular importance.

Thanks,  
Olha

Olha Lui  
Ph: 604-623-4539

---

**From:** Lui, Olha  
**Sent:** June 14, 2017 5:10 PM  
**To:** McKenna, Joanne; Rempel, Vic; Hefflick, Ryan  
**Subject:** Wedgemont EPA - today's meeting with IA

Just a brief snap-shot of what was discussed today with IA, for our files:

- Attendees from IA: Luc Fournier, Stefanie Leduc, Maxime Durlvage. Luc is the main contact until Sept 1, when he is expecting to retire, then Stephanie will take over.
- Attendees from BCH: recipients of this email and moi
- On BCH Interconnection side, the intention is to meet IPP's requested timeline to start operation by end of October. Internal work is underway to find solutions to outstanding issues. IPP has to provide drawings, permitting info, and other necessary info in a timely fashion. Michael Potyok (Midgard) is the key technical contact assigned by Receivers. Internal review is underway to determine best way to fund BC Hydro's work, e.g. whether LOC can be used.
- IA is a lender for the project, intending to provide financing as may be required; decided not to step into the project at this time, as they don't have restructuring team in BC and experience with this type of issue, and receivership was recommended by their legal counsel as the most efficient way to address their interest and interest of other shareholders. IA sees long term value of the project and is intending to keep the project, unless another best option is identified by Receivers. Apparently there is a lot of interest in the project from external parties. Operator will be identified at a later date. IA and Receiver are on the same page with intentions for the project. Receiver's mandate is to review all the options and pick the best one. Meanwhile everybody understands that interconnection work has to continue as fast as possible.
- From BCH CM perspective, no particular concern about Target COD deadlines in the EPA, since it is understood that Final Interconnection Study will be issued shortly and that study would effectively reset the Target COD in the EPA. COD procedure will take place closer to the new estimated interconnection deadline, ISD.

If I missed something, please let me know.

Cheers,  
Olha

No. S-174308  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

PLAINTIFF

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., WEDGEMOUNT POWER INC., THE EHRHARDT 2011 FAMILY TRUST, POINTS WEST HYDRO POWER LIMITED PARTNERSHIP by its general partner POINTS WEST HYDRO (GP) INC., CALAVIA HOLDINGS LTD., SWAHEALY HOLDING LIMITED, BRENT ALLAN HARDY, DAVID JOHN EHRHARDT, 28165 YUKON INC., PARADISE INVESTMENT TRUST and SUNNY PARADISE INC.

DEFENDANTS

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THIS IS EXHIBIT "M" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec city, QC, THIS 15 DAY  
OF JUNE, 2018.

Veronique Hamon Gidet, notary (M1133)  
A Notary for taking Affidavits within the Province of Québec





COURT FILE NUMBER S-174308

COURT SUPREME COURT OF BRITISH COLUMBIA

JUDICIAL CENTRE VANCOUVER REGISTRY

PLAINTIFF INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

DEFENDANTS WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., AND WEDGEMOUNT POWER INC.

DOCUMENT **FIRST REPORT OF THE COURT APPOINTED RECEIVER AND MANAGER OF WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., AND WEDGEMOUNT POWER INC.**

**DATED APRIL 2, 2018**

**PREPARED BY DELOITTE RESTRUCTURING INC.**

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## INTRODUCTION

- 1) Pursuant to an Order (the "**Receivership Order**") of the Supreme Court of British Columbia (the "**Court**") dated May 12, 2017 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver and manager (the "**Receiver**"), without security, of all assets, undertakings and properties of Wedgemount Power Limited Partnership ("**Wedgemount LP**"), Wedgemount Power (GP) Inc. ("**Wedgemount GP**") and Wedgemount Power Inc. ("**Wedgemount Power**") (collectively, the "**Wedgemount Entities**" or the "**Group**"). The Court proceedings in which the Receiver was appointed are referred to herein as the "**Receivership Proceedings**".
- 2) The Receivership Order was granted pursuant to an application by Industrial Alliance Insurance And Financial Services Inc. ("**IA**") in which IA stated it was owed approximately \$21.9 million by Wedgemount LP at the Date of Receivership. IA holds various registered security over all of Wedgemount LP's and Wedgemount GP's present and after-acquired real and personal property, along with various other corporate and personal guarantees (collectively, the "**IA Security**").
- 3) The Receiver's independent legal counsel, McMillan LLP ("**McMillan**"), has performed an independent review of the validity and enforceability of the IA Security and has advised that it is valid and enforceable and ranks in priority to the unsecured creditors of the Wedgemount Entities and to any subsequently appointed trustee in bankruptcy (the "**Security Opinion**").
- 4) Following the issuance of the Receivership Order, the Receiver issued a statutory Notice and Statement of the Receiver for each of Wedgemount LP, Wedgemount GP and Wedgemount Power (the "**Notices to Creditors**") pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**").
- 5) On November 24, 2017, the Receiver issued its First Interim Report pursuant to subsection 246(2) of the BIA for the Wedgemount Entities attaching an interim statement of receipts and disbursements for the period from the Date of Receivership to November 23, 2017.
- 6) The Receivership Order, together with the Notices to Creditors and the First Interim Report have been posted on the Receiver's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/wedgemount.aspx>. This first report of the Receiver to Court ("**First Report**") will also be posted to the Receiver's website after it has been filed with the Court.
- 7) In addition to this First Report, the Receiver has prepared a confidential supplement to the First Report dated April 2, 2018 (the "**First Confidential Report**") which the Receiver is seeking to be sealed in the Court file.
- 8) Unless otherwise provided, all other capitalized terms not defined in this First Report are as defined in the Receivership Order.

### **Purpose of the First Report**

- 9) This First Report provides the Court with an overview of the Receiver's activities and the Receiver's receipts and disbursements since the Date of Receivership.
- 10) This First Report has been filed in response to the application of British Columbia Hydro and Power Authority ("**BCH**") filed on January 19, 2018 (the "**BCH Application**") seeking leave of the Court to exercise its termination rights under the EPA (as that term is hereinafter defined).
- 11) This First Report has also been filed in support of the Receiver's application (to be filed) for a declaration that BCH is not entitled to terminate the EPA on the basis of any ground or fact existing at the time of the declaration, and the Receiver's application (to be filed) for an order that the First Confidential Report be filed under seal pending further order of this Court.

### **Terms of Reference**

- 12) In preparing this First Report, the Receiver has relied upon unaudited financial and other information prepared by the Group's former directors, the Group's books and records, and discussions with the Group's former directors and consultants.
- 13) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of this information.
- 14) All dollar amounts in this First Report are in Canadian dollars, unless otherwise indicated.

### **BACKGROUND**

- 15) Wedgemount LP is a privately owned limited partnership that is incorporated in the Province of British Columbia ("**BC**") and is the owner and developer of a partly-constructed five megawatt run-of-river hydro power facility located on Wedgemount Creek, near Whistler, BC (the "**Project**").
- 16) Wedgemount GP is also incorporated in the Province of BC and is the general partner of Wedgemount LP. Wedgemount GP was set-up to manage the day-to-day operations of the Project once it had been completed and commissioned pursuant to an Operating Management Agreement among the Wedgemount Entities dated March 25, 2015 (the "**Management Agreement**").
- 17) Pursuant to the Management Agreement, Wedgemount Power was retained as the manager to assist Wedgemount GP with respect to the day-to-day operations of the Project.
- 18) Mr. David Ehrhardt and Mr. Brent Hardy acted as directors of both Wedgemount GP and Wedgemount Power. The Wedgemount Entities were operated from and maintained their books and records at Mr. Hardy's personal residence in Burnaby, BC.

- 19) The Project was developed with the intention that it would generate electricity that would then be sold to BCH. Wedgemount LP, by its general partner Wedgemount GP, and BCH entered into an Electricity Purchase Agreement dated March 6, 2015 (the "EPA"). A redacted copy of the EPA is attached as Exhibit "A" to the Affidavit of Mr. Bruce Chow made January 19, 2018 and filed with the BCH Application.
- 20) Pursuant to the terms and conditions of the EPA, BCH agreed to purchase electricity generated by the Project upon its completion and once it was connected to the BCH electrical grid, a process known as "interconnection".
- 21) Lli'wat Nation and Squamish Nation (together, the "Nations") entered into an Impact and Benefits Agreement with Wedgemount Power dated August 1, 2014 (the "Initial IBA"). Wedgemount Power assigned all of its rights and obligations in and to the Initial IBA to Wedgemount LP and the Nations consented to that assignment in an Assumption and Acknowledgement Agreement dated November 25, 2014 (collectively with the Initial IBA, the "IBA").
- 22) Prior to the Date of Receivership, Wedgemount LP had experienced permitting difficulties and cost issues associated with determining an economic and technically feasible interconnection route for the Project's distribution line and point of interconnection to the BCH electrical grid. These problems led to significant Project development delays, and additional costs.
- 23) Construction activity at the Project site had been temporarily halted over the winter of 2016/17 due to the snowpack in and around the Project site. However, the onset of the snowmelt in the spring of 2017 presented environmental risks if not properly managed and monitored. In particular, there were concerns related to the integrity of the temporary diversion channel and drainage control and runoff along the upper access road and buried penstock.
- 24) Despite efforts to refinance the Project, negotiations between Wedgemount LP and IA broke down in April of 2017. On May 9, 2017, IA commenced an action to appoint a receiver over the Wedgemount Entities to ensure environmental risks at the Project site were properly managed and to protect the value of the assets for all the creditors of the Wedgemount Entities.
- 25) Subsequently, on May 12, 2017, the Honourable Mr. Justice Steeves granted the Receivership Order.

#### **POWERS OF THE RECEIVER**

- 26) The Receiver's powers are detailed in paragraph 2 of the Receivership Order and include, among others, the power to take and maintain possession and control of the assets of the Wedgemount Entities; the power to manage, operate and carry on the business of the Wedgemount Entities; and, the power to market and sell the assets of the Wedgemount Entities (subject to Court approval if any one transaction exceeds \$50,000 or if the aggregate of transactions exceeds \$250,000).

## POSSESSION AND CONTROL OF THE ASSETS

- 27) In the initial stages of the Receivership Proceedings, the Receiver took the following steps with respect to the assets and operations of the Group:
- a) Attended the Project site to inspect the Project and take an inventory of the Group's assets and equipment;
  - b) Arranged for the assets to be secured and the locks to be changed at the powerhouse and controls container at the intake;
  - c) Advised the Group's insurance broker of the Receivership Proceedings and confirmed and arranged for amendments to the existing insurance policies to reflect the Receivership Proceedings;
  - d) Met with Mr. Ehrhardt to discuss the current construction status of the Project and the status of the design and permitting of the Interconnection;
  - e) Corresponded with Mr. Ehrhardt and Mr. Hardy to obtain and take possession of the Group's books and records;
  - f) Had a conference call with BCH on May 18, 2017 to introduce the Receivership process generally and to obtain an understanding of the next steps required for both BCH and the Receiver to complete the Project;
  - g) Retained Midgard Consulting Inc. ("**Midgard**") to undertake an initial assessment and regular inspections of the Project site in order to evaluate the integrity of the diversion channel and any environmental concerns associated with erosion events caused by snowmelt run-off;
  - h) Retained SJA Forestry Consultant to undertake remediation works on the Project site to ensure the stability of the roads accessing the Project site and various run-off channels and drainage ditches;
  - i) Retained Mr. Mike Nelson of Cascade Environmental Resource Group Ltd. to act as the Independent Environmental Monitor ("**IEM**") for the Project and to undertake regular monitoring of the environmental impacts of the construction works, with reporting obligations to the Ministry of Forests, Lands and Natural Resource Operations ("**FLNRO**") and Fisheries and Oceans Canada;
  - j) Retained Mr. George Stéves of True North Energy ("**True North**") to act as the Independent Engineer ("**IE**") pursuant to the requirements of the Water Licence granted to Wedgemount LP under the *Water Act* to review various aspects of the engineering design and construction works, with reporting obligations to FLNRO;
  - k) Arranged for the redirection of the Group's mail to the Receiver's office;
  - l) Liaised and met with various creditors, subcontractors, the Nations and other stakeholders relating to the Group's outstanding liabilities, unfinished construction contracts, and the IBA; and
  - m) Contacted Canada Revenue Agency ("**CRA**") to open a new goods and services tax ("**GST**") account to facilitate GST filings for the period subsequent to the Date of Receivership.

## PROJECT DESCRIPTION AND ASSETS OF THE WEDGEMOUNT ENTITIES

### Project Overview and Construction Status at the Date of Receivership

- 28) The Project is located just north of Whistler, on Wedgemount Creek in the Pacific Range of the Coast Mountains, BC. The Project site is accessed using BC Highway 99.
- 29) The powerhouse is located in the valley floor and is accessed via a road through the WedgeWoods residential subdivision which is owned and being developed by 28165 Yukon Inc. ("Yukon"). Wedgemount Power is party to a right of way agreement with Yukon for the land area on which the powerhouse is located.
- 30) The Project comprises the following key elements:
- a) **Intake.** The intake weir and spillway are located on Wedgemount Mountain, approximately 2.6km upstream of Wedgemount Creek's confluence with the Green River, and 85m downstream of the boundary of Garibaldi Provincial Park. The Intake is accessed using first the pre-existing Cheakamus Community Forest Society ("CCFS") road (for 2.85km) and then an extension of the same road (for 1.2 km) constructed by the Project in 2015. The Project uses a concrete weir to create a small head pond and divert water into the side channel intake structure. Diverted water is taken into the intake structure and is then channeled through a series of chambers and transitioned into the penstock. The intake structure is substantially completed, but Wedgemount Creek is currently diverted away from the intake weir using a temporary diversion channel. The control equipment at the intake is not yet fully installed.
  - b) **Penstock.** The penstock is a 2.3km long pipe that conveys water from the intake structure down Wedgemount Mountain to the powerhouse. The penstock is constructed with sections of ductile iron and steel pipe. It is generally buried except for certain steep segments of its route, where it is surface-mounted. Sections of the surface-mounted penstock are partially completed and still need to be installed.
  - c) **Powerhouse.** The Project's powerhouse is substantially completed aside from the wiring and commissioning of the turbine and generator located therein. It is a 13x10m concrete structure located on the left bank of Wedgemount Creek, approximately 50m upstream of its confluence with Green River. At the powerhouse, water passes from the penstock through a turbine inlet valve, through the turbine and back into Wedgemount Creek via a 135m pipe tailrace. The powerhouse also contains ancillary equipment such as switchgear, electrical protection equipment, a control room, hydraulic pressure unit, and other miscellaneous electrical and mechanical equipment. The switchyard with the main step-up transformer and associated equipment is located adjacent to the powerhouse.
  - d) **Interconnection.** The Project's design contemplates that a buried 25 kV distribution line will pass through the WedgeWoods subdivision and will connect the Project switchyard to a riser structure approximately 1.1 km from the powerhouse. From the riser structure, approximately 350 m of overhead distribution line will be used to reach BC Hydro's 25 kV distribution feeder line which is the point of interconnection ("POI") for the Project. BCH is responsible for all network upgrades beyond the POI. As outlined in paragraphs 53 to 67 of this First Report, the interconnection is still in the process of being designed and permitted, and construction has not yet started.

- 31) Several uninstalled sections of penstock pipe, in addition to couplings, expansion joints and reducers, are currently stored on the Project site in a holding area located close to the trailhead and parking area for Wedgemount Mountain. Vehicle access to this holding area is restricted using large boulders.
- 32) The Receiver is advised by SJA Forestry Consultant that these penstock sections must be moved within the month of April to allow the construction of a water reservoir for the WedgeWoods subdivision and because they are blocking access to a disused forestry road that CCFS would like to reactivate in 2018.

### **Bank Accounts**

- 33) At the Receivership Date, Wedgemount LP held cash in several bank accounts with Bank of Montreal pursuant to a Restricted Accounts Agreement among Wedgemount LP, Bank of Montreal and Travelers Capital Corporation, which acted as an agent for IA.
- 34) The Proceeds Account held a balance of approximately \$1,800 at the Date of Receivership and it acted as Wedgemount LP's operating account. The Funding Account held a balance of approximately \$2.5 million which constituted unused funds from the initial construction loan advanced by IA to Wedgemount LP in 2015.
- 35) Shortly after the Date of Receivership, the Receiver set up its own bank accounts and arranged for the balances in the Proceeds and Funding accounts to be transferred to the Receiver. Having sought the approval of IA, the Receiver has utilized these funds throughout the course of the Receivership Proceedings in order to make disbursements to its consultants and legal counsel, to advance the Project's engineering design and construction, and to implement the Sale Process (as hereinafter defined).
- 36) Wedgemount also maintained four segregated builder's lien accounts (the "**Holdback Accounts**") for holding and administering construction holdback monies pursuant to the Builders Lien Act. The Receiver arranged for these balances to be transferred to segregated accounts and holds these monies in trust.

## **PROJECT EVALUATION AND INITIAL STAKEHOLDER MEETINGS**

### **Current State Assessment of the Project**

- 37) Having secured the Project assets and dealt with any immediate environmental concerns, in late May 2017, the Receiver instructed Midgard to assess the current status of the Project including the stage of completion of the various construction contracts, the status of the design and permitting of the interconnection, and the potential costs and timeline to complete the construction and commissioning of the Project. Midgard was familiar with the Project having previously acted as an engineering consultant for IA.
- 38) Midgard also assisted the Receiver in reviewing and updating the Project's economic model to evaluate the potential value of the Project once completed and factoring in the anticipated costs to complete the construction and permitting.
- 39) In the first few weeks of the Receiver's appointment, the Receiver and IA were contacted by several parties that were potentially interested in acquiring the Project. The Receiver had initial discussions with these parties regarding their interest in the



Project, and maintained a list of interested parties. Refer to paragraphs 97 to 118 for more details regarding the Sale Process.

- 40) Prior to the Date of Receivership, Clean Energy Consulting Inc. ("**Clean Energy**") had been retained by the Group to assist with the engineering design for the Project's interconnection. In addition, CMJ Project Solutions Inc. ("**CMJ**") had been retained to provide assistance with the permitting requirements and stakeholder liaison associated with the interconnection. Given their knowledge and prior involvement in the Project and understanding of the challenges it faced, in addition to the steps required to advance the Project, the Receiver retained both CMJ and Clean Energy in early June 2017 to assist the Receiver in assessing the current status of the interconnection route, design and permitting.
- 41) In early June 2017, the Receiver and CMJ liaised with the Nations to discuss the Receivership process, the implications for the IBA and to listen to and understand any concerns related to the Project. It was established that the Nations had provided letters of support for the Project related to the route of interconnection known as "**SLRD Route A**" which would involve the Project's distribution line passing through certain unresolved Crown lands and through the Squamish-Lillooet Regional District ("**SLRD**") municipal park. Specifically, in early 2017, the Nation's wrote letters confirming their support of this proposed use of Crown lands within their traditional territories.

#### **Initial Meetings and Correspondence with BCH**

- 42) On June 6, 2017, after the Receiver had a better understanding of the status of the Project, the Receiver, along with Midgard (the Receiver's engineering consultant), attended at the BCH office in Burnaby to meet with BCH representatives Mr. Ryan Hefflick and Mr. Vic Rempel (the "**June 6 Meeting**").
- 43) Various aspects of the Project were discussed, including the status of the interconnection and the anticipated timeline to move the Project forward including the interconnection route, engineering design and permitting.
- 44) During the June 6 Meeting, BCH advised the Receiver that because the Draft Interconnection Facilities Study and Project Plan for the Project dated August 16, 2016 (the "**Draft Interconnection Study Report**") was only in draft form, there was no Target COD (as defined in the EPA) set and consequently there was no commercial operations date ("**COD**") deadline of September 30, 2017. In addition, BCH advised that the Draft Interconnection Study Report would not be finalized until the final route and design of the interconnection was determined.
- 45) As a result of the representations made by BCH at the June 6 Meeting, the Receiver understood that until the point at which a Final Interconnection Study Report was issued, there was no hard deadline by which the Project had to reach COD in order for the EPA to remain in effect. The statements made by Mr. Hefflick and Mr. Rempel at the June 6 Meeting regarding the Draft Interconnection Study Report and there being no determined Target COD were consistent with the Receiver's understanding of the terms of the EPA. This representation by BCH was significant for the Receiver, given the Receiver's need to determine whether to progress the Project for the benefit of the stakeholders.
- 46) At the request of BCH, in late June 2017, the Receiver advanced \$105,000 (the "**BCH Retainer**") as a prepayment to cover the costs to be incurred by BCH and its consultants in advancing the interconnection design and planning from the Date of

Receivership. The Receiver provided these funds in reliance on the representations made by BCH to the Receiver that the EPA would not expire on or be terminated after September 30, 2017, and the understanding that BCH would work cooperatively with the Receiver to advance the interconnection engineering design and permitting.

### **Decision to Advance the Project and Importance of BCH's Representations**

- 47) In early June 2017, Midgard completed its Project evaluation and provided it to the Receiver. At this point, the Receiver was able to make a more informed decision regarding the strategic alternatives in respect of the Project, including a sale of the Project in its current state, or to advance to Project towards COD. Based on the information available to the Receiver at the time, including the recommendations made by Midgard, it was determined that the best route forward to maximize realizations for the benefit of the Group's creditors and other stakeholders would be to continue to advance the construction and permitting of the Project, while in parallel assessing interest in a sale of the Project to qualified interested parties.
- 48) This decision was made in collaboration with IA as the secured creditor with the primary economic interest in the Project, and was taken, in part, due to the likely significant discount associated with a sale of the Project in its then existing state of completion, and given the challenges related to permitting for the interconnection.
- 49) Having reviewed the EPA and the Project economics, it was clear to the Receiver that for the Project to be successful, and to preserve Project value, it was critical that the EPA remain in place. While the Receiver was aiming to progress the Project to COD by the end of summer 2017, BCH had itself expressed concerns regarding its ability to fulfil its obligations in this timeframe, particularly due to the potential timelines required to construct the distribution line once the interconnection route and engineering design had been fully determined, as well as prospective permitting timelines. Accordingly, the decision made by the Receiver in early June 2017 to advance the Project was taken in reliance on BCH's assurances made in the June 6 Meeting that the EPA would remain in place.
- 50) Furthermore, as more fully described in the 1<sup>st</sup> Affidavit of Melinda McKie sworn March 12, 2018 (the "**McKie Affidavit**") and the 1<sup>st</sup> Affidavit of Paul Chambers sworn March 13, 2018 (the "**Chambers Affidavit**"), following the June 6 Meeting and until the email was received from Ms. McKenna on September 19, 2017, the Receiver had received no indication whatsoever that BCH would seek to terminate the EPA. In fact, during this period, BCH continued to correspond and meet with the Receiver and the Receiver's consultants in order to advance the design and permitting of the Project's distribution line and POI.
- 51) Based on the work performed and costs incurred by BCH during this period, in addition to the representations made by BCH in the June 6 Meeting, the Receiver had no reason to believe that BCH would not continue to work with the Receiver to advance the Project to COD. Furthermore, BCH continued to work with the Receiver to advance the interconnection design and permitting beyond the purported Target COD of September 30, 2017.
- 52) In addition, following multiple meetings and correspondence with BCH over the course of September to December 2017 (as more fully described in the McKie and Chambers Affidavits), the Receiver was led to believe that BCH would allow the EPA to continue with some amendments. Accordingly, given all the progress made in advancing the Project and based on all the correspondence and meetings with BCH

since the Date of Receivership, it came as a surprise to the Receiver when it received notice of the BCH Application seeking leave of the Court to terminate the EPA altogether.

## **PROJECT PERMITTING AND CONSTRUCTION**

### **Interconnection Permitting and Design**

- 53) As previously indicated, prior to the Date of Receivership, Wedgemount LP had experienced permitting difficulties and cost issues associated with determining an economic and technically feasible interconnection route for the Project's distribution line and POI.
- 54) In particular, Wedgemount LP had been advancing the permitting and design of SLRD Route A that would run through certain unresolved Crown lands and through the SLRD municipal park, with the POI also located within the SLRD municipal park. However, owing to certain requirements of BCH and legal difficulties associated with the SLRD Community Charter, Wedgemount LP and BCH had been unable to negotiate a suitable licence or right of way to allow for the interconnection to pass through the SLRD municipal park.
- 55) As a result of these difficulties, immediately prior to the Date of Receivership, Wedgemount LP had begun to investigate an alternative routing option along Wedge Forest Service Road which passes through certain unresolved Crown lands and avoids the SLRD municipal park, referred to as the "**FSR Route**".
- 56) In early June 2017, the Receiver instructed Clean Energy to review the technical viability of the FSR Route and to develop initial overhead line layout and profile drawings for discussion with BCH. The Receiver also instructed CMJ to review the permitting requirements related to the FSR Route.
- 57) On June 15, 2017, the Receiver, CMJ and Clean Energy, met with BCH to present a preliminary plan and profile drawings for the FSR Route. Subsequently, BCH's regional distribution engineer, Mr. Om Acharya, was provided with the drawings to review and provide feedback on the feasibility of the FSR Route from BCH's perspective.
- 58) On June 21, 2017, Clean Energy met with Mr. Acharya of BCH on the Project site to review the proposed FSR Route. Clean Energy advised the Receiver that the site visit went well, and BCH did not raise any major issues or concerns with the route. The only change requested to the layout related to a slight movement in the location of the POI.
- 59) Based on its own investigations and the positive outcome of BCH's initial review of the FSR layout and profile drawings, Clean Energy advised the Receiver that the FSR Route was feasible from a technical perspective, subject to obtaining permits from the Ministry of Transportation and Infrastructure ("**MOTI**") and Canadian National Rail ("**CN**") for the portions of the overhead line that would cross Highway 99 and the CN rail tracks, respectively. Accordingly, the Receiver instructed Clean Energy to develop engineering design concept drawings, and permitting drawings for the Highway 99, CN rail tracks, Green River and BCH transmission line crossings ("**Crossings**").

- 60) On June 22, 2017, the Receiver met with Lill'wat Nation to share and discuss information and maps regarding the proposed FSR Route. A similar meeting was held with legal counsel for Squamish Nation on June 23, 2017. At that meeting, Squamish Nation raised concerns related to the interconnection route passing through certain unresolved Crown lands that are designated as a Squamish cultural heritage area (the "**Reserve**").
- 61) CMJ advised the Receiver that the Province is able to grant tenure in the Reserve, but has a duty to consult with the affected Nations regarding the proposed changes in land use.
- 62) Given the concerns raised by Squamish Nation, the Receiver and CMJ entered into dialogue and correspondence with Squamish Nation and the Province (FrontCounter BC), regarding permitting requirements for the FSR Route. Refer to paragraphs 71 to 75 of this First Report for more details.
- 63) On June 30, 2017 and July 4, 2017 updated Crown land tenure applications (the "**Utility Applications**") were submitted by Wedgemount LP and BCH, respectively, seeking tenure for certain Crown lands required for both interconnection route options (SLRD Route A and the FSR Route). On July 14, 2017, FrontCounter BC confirmed to CMJ that both Wedgemount LP's and BCH's Utility Applications had been accepted and moved onto a Land Officer for review.
- 64) The Receiver and its engineering consultants, Midgard and Clean Energy, continued to work with BCH to advance the interconnection design for the FSR Route through the summer and fall of 2017, progressing the design from 35% engineering drawings to 95% drawings (close to "Issued For Construction" status).
- 65) On October 13, 2017, the Receiver provided BCH with updated (95%) overhead line design and Crossing drawings for the FSR Route and POI. Feedback on these drawings was provided by BCH on October 27, 2017 (the "**BCH Comments**"). Clean Energy subsequently met with BCH on November 7, 2017 to review and discuss the BCH Comments.
- 66) Responses to the BCH Comments and updated Crossing drawings for CN, MOTI and BCH were provided to BCH by Clean Energy on November 9, 2017. The drawings have now been referred out to these parties and the permitting process is underway.
- 67) In summary, the engineering design for the interconnection is now significantly advanced, and could likely be completed in a matter of a few weeks, pending feedback from the permitting process for the Crossings, in addition to the assessment of foundations for structures located adjacent to Highway 99 and near to the bank of the Green River.

#### **Negotiations related to the IBA**

- 68) Through the summer of 2017, the Receiver and CMJ entered into various discussions and correspondence with the Nations related to the FSR Route, particularly pertaining to the Squamish Nation's concerns related to the Reserve. The Receiver also worked with FrontCounter BC to facilitate a meeting in early September 2017 between Squamish Nation and the Province to discuss Squamish Nation's concerns and the proposed land use change for the interconnection.
- 69) In light of these concerns, the Receiver and Clean Energy explored a third interconnection route option ("**SLRD Route B**") which was essentially the same as SLRD Route A, but which moved the POI onto Crown land and out of the SLRD

municipal park, so that the section of the distribution line owned by BCH up to the POI would be entirely on Crown land and would thereby avoid BCH having to obtain a suitable licence agreement with SLRD.

- 70) Clean Energy has explored, at a high level, the technical feasibility of SLRD Route B and has advised the Receiver that it would likely work from a technical perspective. However, this route option remains suboptimal owing to the permitting constraints and associated tenure risk related to Wedgemount LP acquiring a short-term occupancy licence agreement with SLRD for the section of the distribution line owned by the Project.
- 71) On September 12, 2017 a proposal was made by the Nations to the Receiver in respect of the terms on which the Nations would consider supporting the FSR Route for the interconnection, including an increase to the royalty stream contemplated by the IBA.
- 72) Following further negotiations among the Receiver, the Nations and the Nations' respective legal counsel, in late September 2017, the terms of a draft Amending Agreement to the IBA ("**Amending Agreement**") were agreed to in principle with the Nations, subject to Chief and Council ratification.
- 73) The Amending Agreement contemplates that the Nations will support the Utility Applications for the FSR Route as the preferred route of interconnection. It also contemplates that the Nations would support the Utility Applications for SLRD Route A or B in the (unlikely) event that the FSR Route is not technically feasible or there is some other (as yet unknown) issue with the Crown granting a Statutory Right of Way for the FSR Route.
- 74) On October 20, 2017, Lil'Wat Nation advised the Receiver that its Chief and Council had approved the form of the Amending Agreement and was prepared to execute it once Squamish Nation had obtained the necessary approvals.
- 75) Based on correspondence with Squamish Nation's legal counsel and Chief Bill Williams, the Receiver understands that the Chief and Council for Squamish Nation have not yet approved the form of the Amending Agreement, owing in part to difficulties in finding time on the Council agenda in late 2017, and also due to the recent Council election process. Furthermore, Chief Bill Williams expressed concerns regarding the position of BCH in relation to the status of the EPA since he did not want to use valuable time of the Council absent confirmation by BCH that the EPA would not be terminated.
- 76) The Receiver understands that the next stage of the permitting process related to the Utility Applications is for FrontCounter BC to complete its review of the applications, and then to send out referrals to impacted parties, including the Nations. This process is effectively on hold until Chief and Council of Squamish Nation approve the Amending Agreement, which itself is on hold due to the uncertainty related to the status of the EPA.

### **Engineering Peer Review**

- 77) Prior to the Date of Receivership, Creus Engineering Ltd. ("**Creus**") was engaged as the Engineer of Record ("**EOR**") for the Project. In addition, several sub-engineers were engaged, including GeoPacific Consultants Ltd. as the geotechnical engineers, United Building Systems International Corp. as the structural engineers, and Bruce Campbell Ltd. as the electrical engineers (collectively, the "**Sub Engineers**").

- 78) At the outset of the Receivership Proceedings, the Receiver entered into discussions with Creus to seek its assistance in evaluating the current status of the Project, and to provide the Receiver with copies of all engineering drawings and documents pertaining to the Project in Creus' possession. Initially, Creus was not prepared to provide any documents to the Receiver or to assist the Receiver in its review of the current status of the Project absent payment of \$300,000, representing a portion of the \$752,000 in fees purportedly owing to Creus at the Date of Receivership.
- 79) Creus, through its legal counsel, disputed the Receiver's request for the provision of Project related documents pursuant to paragraphs 4 and 5 of the Receivership Order. However, after several weeks of discussions and correspondence between Creus, its legal counsel, the Receiver, and the Receiver's legal counsel, Creus did provide electronic copies of the Project documentation in its possession to the Receiver on July 7, 2017.
- 80) The Receiver and Creus were unable to reach agreement pertaining to the terms on which Creus would be prepared to continue to work on the Project. Therefore, on July 17, 2017, the Receiver retained Sigma Engineering Ltd. ("**Sigma**") to undertake an independent peer review (the "**Peer Review**") of the current status of the engineering design and construction undertaken to date, and the necessary steps to advance the design to completion. In addition, the Receiver, IA and Midgard all felt there would be significant value to obtaining an independent assessment of the Project for the benefit of sharing with Interested Parties as part of their due diligence in the Sale Process (both terms as hereinafter defined).
- 81) The Receiver retained Creus and each of the Sub Engineers to assist Sigma with the provision of information, attendance at Project site inspections, and to answer queries related to the engineering design.
- 82) The Peer Review was an extensive process which evolved as interested parties requested more information regarding the design integrity of various aspects of the Project. The Peer Review is now completed and has been uploaded to the data room used in the Sale Process. Sigma has also confirmed its ability to act as the EOR for the completion of the construction.

### **Intake Construction**

- 83) In September 2017, the Receiver, with the assistance of Midgard, ran a competitive tender process to award a contract to undertake headpond and headtank fill tests and, subsequently, to complete the intake works and divert Wedgemount Creek back to its original channel and through the intake (the "**Intake Contract**"). This work is necessary to advance the construction of the Project and to evaluate the integrity of the intake weir and spillway.
- 84) This was a high priority item on the critical path towards moving the Project to COD. In addition, the temporary diversion channel had been constructed with the view to it being used for six to eight months and owing to the delays experienced on the Project its life had been extended to more than two years. Accordingly, the IEM and IE both expressed the importance of completing the intake weir and diverting the channel to its original course and through the intake in order to mitigate the risks associated with large volumes of snowmelt running through the temporary diversion channel in the spring of 2018.
- 85) The Receiver invited three contractors to bid for the Intake Contract and a bid deadline of September 18, 2017 was set for submission of proposals.

- 86) After review of the proposals received, and based on discussions with IA and advice received from Midgard, the Receiver awarded the Intake Contract on a cost-plus basis to North Construction, a reputable construction contracting company based in North Vancouver, BC. The Intake Contract had an estimated value of \$541,000, exclusive of applicable taxes.
- 87) Construction works at the Intake commenced in the last week of September, and the headpond and headtank fill tests were both successfully completed in mid-October. However, in late October, the weather on Wedgemount Mountain closed in earlier than anticipated, with significant quantities of snow and rain received. This saturated the soil close to the intake that was to be used for "plugging" the temporary diversion channel in order to decommission it and divert the channel through the intake, thereby making the soil difficult to use. The weather also made operating conditions on the Project site problematic and potentially unsafe.
- 88) Accordingly, based on discussions between the IEM, Midgard, IA and the Receiver, the decision was taken to winterize the Project site at the intake and demobilize in the last week of October. As part of this process, additional armouring of the temporary diversion channel was undertaken as a precaution for the spring snowmelt in 2018, and other cross-ditching and road stabilization activities were completed to minimize run-off issues and preserve the Project.
- 89) While it was not possible to complete the works under the Intake Contract, significant value was obtained through proving the integrity of the headpond and headtank, which assisted the Interested Parties in valuing the Project by reducing contingencies.
- 90) In early November 2017, the Receiver retained Bruce Campbell Ltd. and Corporate Electric Limited to undertake the necessary electrical wiring to winterize the powerhouse. The Receiver has also leased a generator to heat the powerhouse and arranged for snow clearance through the winter months in the area of the powerhouse.

## **OTHER PROJECT STAKEHOLDERS**

### **Yukon**

- 91) As indicated at paragraph 30(d) of this First Report, it is contemplated that a section of the Project's interconnection will run to the powerhouse through the WedgeWoods subdivision owned by Yukon.
- 92) Wedgemount LP entered into a Repairs Agreement with Yukon, among other parties, dated February 13, 2015 (the "**Repairs Agreement**"). The Repairs Agreement provides for a royalty payment to Yukon based on a percentage of the Project's net revenue.
- 93) It is contemplated that portions of the distribution line will run through the WedgeWoods subdivision through a buried duct bank within the Provincial Public Highway right of way known as Riverside Drive. Prior to the Date of Receivership, Yukon had undertaken construction works in the WedgeWoods subdivision related to the installation of the ducting to carry the distribution for the Project, with a purported cost of approximately \$419,000, excluding taxes. Yukon has advised the Receiver that certain portions of this duct bank have been installed within Lot A Plan

BCP39068 on Yukon owned lands, for which Wedgemount LP would require a new right of way (the "**New RoW**") to be granted by Yukon. Counsel for Yukon has also advised the Receiver that there is time sensitivity associated with granting of the New RoW due to the ongoing development of the WedgeWoods subdivision.

- 94) Over the course of the Receivership Proceedings, the Receiver has entered into various discussions and correspondence with Yukon and its legal counsel in an effort to negotiate a mutually acceptable agreement that would enable the completion of the ducting through the WedgeWoods subdivision in order to facilitate an interconnection for the FSR Route.
- 95) Counsel for Yukon has advised the Receiver that Yukon would be willing to enter into further discussions with the Receiver pending a resolution to the EPA, and/or upon the sale of the Project to a third party.

#### **CCFS**

- 96) CCFS entered into a Road Use and Logging Cost Agreement with Yukon dated September 12, 2012 which was subsequently assigned to Wedgemount LP. Discussions have been held with CCFS regarding the conversion of the CCFS managed access road from a cutting permit road to a forest permit road, and in relation to a new road use agreement.

#### **SALE PROCESS**

##### **Initial Interest and Phase I**

- 97) In the first few weeks of the Receiver's appointment, the Receiver and IA were contacted by several parties that were potentially interested in acquiring the Project.
- 98) Owing to the partly constructed status of the Project at the Date of Receivership, the Receiver did not compile any form of bid package for the marketing of the Project, nor did it run a formal sale process at the outset of the Receivership Proceedings. However, in response to enquiries and indications of interest from numerous parties ("**Interested Parties**"), and given the Receiver's desire to assess the level of interest in and potential value of the Project in its current state, the Receiver undertook an informal sale process in respect of the Project and related assets (the "**Sale Process**"). On or about June 20, 2017, the Receiver:
  - (a) established a data room for Interested Parties to review information pertaining to the Project, including the EPA, various other agreements and contracts, engineering reports and financial information. All Interested Parties were required by the Receiver to enter into a binding non-disclosure agreement ("**NDA**") with the Receiver before being granted access to the data room. The NDA set out various customary terms and controls to ensure that information in the data room is kept strictly confidential by the Interested Parties; and
  - (b) invited Interested Parties to submit non-binding letters of intent ("**LOIs**") for the purchase of the Project and related assets, including Wedgemount LP's right, title and interest in and under the EPA, by July 14, 2017.
- 99) On July 11, 2017, the Receiver posted to the data room responses to various queries posed by Interested Parties in relation to the Project. As set out in paragraphs 25



and 26 of the McKie Affidavit, one of these requests concerned the status of the EPA. Relying on the representations made by BCH in the June 6 Meeting, the Receiver informed Interested Parties of the verbal confirmation given by BCH that the EPA would not be terminated as a result of the purported COD deadline of September 30, 2017 owing to the Draft Interconnection Study Report being in draft form.

- 100) Over the course of the Receivership Proceedings, the Receiver has entered into NDAs with 24 different Interested Parties. From June 20, 2017 to July 14, 2017, Project site visits were undertaken with 11 Interested Parties.
- 101) Initial non-binding LOIs were received from nine Interested Parties. However, the LOIs were submitted using various different assumptions related to timing of COD, assignment of debt, and acquisition structure. Based on an assessment of the LOIs received, the Receiver requested four of the Interested Parties to submit revised LOIs by July 31, 2017, after providing clarifications on potential timing of COD and various other matters.
- 102) On July 31, 2017, revised non-binding LOIs were received from each of the four selected Interested Parties. In early August 2017 following discussions with IA, and based on an assessment of the LOIs received, the Receiver determined to impose more structure on the Sale Process. Three preferred bidders were selected to move to the second phase of the Sale Process ("**Phase II**") and undertake detailed due diligence in respect of the Project.

## **Phase II**

- 103) On August 14, 2017, the Receiver requested that the preferred bidders deliver binding offers for the acquisition of the Project and related assets on a cash-free, debt-free basis by September 15, 2017. Offers were to be submitted on an "as-is, where-is" basis, with no representations or warranties to be provided by the Receiver.
- 104) During Phase II of the Sale Process, the data room remained open to all Interested Parties who had executed NDAs. Given the Project had not been formally marketed by the Receiver, if new parties expressed an interest in the Project, they were also provided access to the data room upon execution of an NDA and were informed as to the status of the Sale Process.
- 105) Throughout Phase II, the Receiver continued to advance various aspects of the Project, including the Peer Review, interconnection design and permitting, discussions with Yukon, and the intake construction. In addition, the Receiver received and responded to multiple information requests and queries from Interested Parties related to various aspects of the Project via updates to the data room.
- 106) On September 14, 2017 the deadline for submission of binding offers was extended to October 2, 2017 since the Receiver and Midgard were working on providing various information to the Interested Parties related to the engineering design and intake.
- 107) On October 2, 2017 binding offers were received from two Interested Parties, and non-binding offers were received from a further four Interested Parties. The nature of these offers is discussed in more detail in the First Confidential Report.
- 108) Prior to September 2017, due to the representations made by BCH in the June 6 Meeting, the Receiver did not have any reason to request written confirmation from BCH that the termination provision of the EPA was not applicable. However, by

September 2017 the second anniversary of the Target COD as initially stipulated in the EPA was approaching and it was a condition precedent to a number of the LOIs received by the Receiver in the course of the Sales Process that the Receiver provide some written evidence that BCH would not exercise, or would waive, BCH's right to terminate the EPA on the grounds that the Target COD had not occurred before the deadline set forth in the EPA, or that BCH had not set the Target COD.

- 109) Therefore, out of an abundance of caution, the Receiver emailed BCH on September 11, 2017 to confirm that, based on BCH's previous representations to the Receiver, the termination provision set out in paragraph 8.1(a) of the EPA was not applicable because the Draft Interconnection Study Report remained in draft form.
- 110) At this stage, the Receiver had no reason to believe that the requested confirmation from BCH would not be forthcoming. IA was also of the view that confirmation would be forthcoming given the representations which had been made to it in June 2017.
- 111) Following discussions with IA in relation to the LOIs received, the Receiver had planned to enter into discussions with a preferred bidder in the first two weeks of October 2017, with the view to negotiating and executing a definitive asset purchase agreement by the end of October, subject to discussions with key stakeholders in relation to the proposed transaction and obtaining the support required to facilitate the transaction. This plan was outlined to BCH in the Receiver's letter dated October 11, 2017.
- 112) As set out in the October 11, 2017 letter, given the progress made with respect to the Nations' support of the FSR Route and in light of the offers received on October 2, 2017, the Receiver was confident that a transaction of the Project would be feasible prior to the end November 2017, assuming BCH continued to support the Project.
- 113) Unfortunately, BCH took several weeks to consider its position in relation to the EPA which delayed the Sale Process. The McKie Affidavit and Chambers Affidavit explain in detail the nature of the discussions and correspondence held between the Receiver and BCH in relation to the EPA. The Sale Process has effectively been on hold since early October 2017 as a result of the ongoing discussions with BCH regarding the EPA.

#### **Assessment of the Offers**

- 114) The Sale Process in this matter has been robust and has engaged several Interested Parties, including strategic buyers, financial buyers and high net worth investors.
- 115) Given the current unfinished and unpermitted status of the Project, the Receiver is of the view that the likely acquirer would be a strategic buyer with similar run-of-river assets in its portfolio located in the vicinity of the Project, and with the ability to mobilize a local team to complete the construction with knowledge of the BC permitting process. This narrows down the pool of potential buyers somewhat, and the Receiver is confident that the opportunity to acquire this Project is well known within these industry circles.
- 116) As outlined more fully in the First Confidential Report, all indications are that, absent termination of the EPA, it is likely that a sale of the Project to a credible purchaser can be completed with a substantial realization for several of the stakeholders.

## **Impact of BCH's Application to Terminate the EPA**

- 117) As outlined in this First Report, there are many stakeholders in the Project including all the creditors, the Nations (who stand to benefit under the IBA), Yukon (which stands to benefit from the Reparations Agreement), the Wedgemount Entities, the guarantors on the Project, and the many professionals and contractors working on the Project.
- 118) If BCH is allowed to terminate the EPA, it is uncertain whether any bidders will be interested in acquiring the Project (and/or what the impact on the value of the Project would be). Further, the Receiver has been advised by Midgard that, if the Project is not sold and completed by a purchaser, there will be significant environmental remediation issues that will need to be attended to in an area that is frequently used by recreational hikers (the Wedgemount Mountain trail). Both these factors are discussed in more detail in the First Confidential Report.

## **CREDITORS AND SECURED CHARGES**

- 119) The IA Security is subject to certain prior ranking Court-ordered charges and statutory interests, which include:
- a) the Receiver's Charge (as that term is defined in the Receivership Order);
  - b) the Receiver's Borrowing Charge (as that term is defined in the Receivership Order);  
and
  - c) certain deemed trust and priority claims (if any).
- 120) Pursuant to paragraph 16 of the Receivership Order, the Receiver and McMillan as its legal counsel are the beneficiaries of the Receiver's Charge, which is a first-ranking charge over the property of the Group to secure payment of their fees and disbursements incurred in the Receivership Proceedings.
- 121) Pursuant to paragraph 19 of the Receivership Order, the Receiver is authorized to borrow up to \$2.0 million without further approval of the Court for the purpose of carrying out its duties and powers. As at the date of this First Report, the Receiver has utilized funds on hand at the Date of Receivership and has not required any borrowing facility.
- 122) At the Date of Receivership, Wedgemount LP was in a net refund position in relation to GST outstanding for the periods January to April 2017 in the total amount of \$9,500. These amounts have since been received from CRA.
- 123) The Receiver completed a GST return for the pre-filing period May 1 to 12, 2017 which resulted in a refund in the amount of \$600. The Receiver has also set up a new post-filing GST account for the period May 12, 2017 onwards and to date has recovered a further \$26,000 in GST refunds.
- 124) The Receiver understands that the Wedgemount Entities did not employ any people and the Receiver is not aware of any CRA related deemed trust claims in respect of payroll source deductions, or any other similar priority claims.
- 125) As noted previously, IA is the principal secured creditor of the Wedgemount Entities, and was owed \$16 million in principal at the Date of Receivership pursuant to a credit

agreement (the "**Credit Agreement**") dated June 30, 2015 among Wedgemount LP, IA and Travels Capital Corporation (as agent), and pursuant to a construction loan note dated June 30, 2015. IA has valid and enforceable security (as reported in the Security Opinion). Interest continues to accrue on this principal amount.

- 126) IA has advised the Receiver that as at September 30, 2017, it was owed a further \$5.6 million in relation to a make whole (prepayment) fee pursuant to the Credit Agreement, to bring the total amount claimed by IA to approximately \$21.6 million at September 30, 2017. The validity and enforceability of this prepayment fee has not yet been fully considered by the Receiver.
- 127) The Receiver has been contacted by a number of contractors requesting the release of the monies held in the Holdback Accounts. The Receiver has not to date released these monies, pending further review of the contractors' claims pursuant to the *Builders Lien Act*.
- 128) As at the Date of Receivership, the available books and records of Wedgemount LP reported unsecured creditors with claims of approximately \$6.2 million. The directors of Wedgemount GP and Wedgemount Power advised the Receiver that there are no known unsecured creditors of these entities. Several creditors have contacted the Receiver to advise that their claims were understated in the Group's books and records, and did not include invoices submitted close to the Date of Receivership.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

- 129) Attached as Appendix "A" to this First Report is a Statement of Receipts and Disbursements reflecting the administration of the Receivership Proceedings for the period from the Date of Receivership to March 26, 2018.
- 130) As at March 26, 2018, the Receiver's gross receipts amounted to approximately \$3.2 million, primarily relating to the cash on hand at the Date of Receivership in the amount of \$2.5 million, in addition to the Holdback Accounts.
- 131) During the same period, the Receiver has made disbursements totalling \$1.5 million including, among other items, engineering and environmental consulting fees, the BCH Retainer, the cost of the Intake construction works, road remediation, powerhouse winterization, legal fees and the Receiver's fees.
- 132) The Receiver has invoiced and been paid approximately \$351,000 in fees and costs (before taxes) covering the period to January 11, 2018. The Receiver has also disbursed \$84,000 to McMillan and \$69,000 to Gowling WLG LLP in respect of legal fees and costs (before taxes). The legal services provided by Gowling WLG LLP to the Receiver relate to the initial stages of the Receivership Proceedings prior to the involvement of McMillan as the Receiver's independent counsel.
- 133) The Receiver notes that included in the disbursements made to date are payments totalling approximately \$59,000 made to two consulting companies that relate to expenses incurred by Wedgemount LP prior to the Date of Receivership. The Receiver linked the payment of these amounts to meeting certain milestones in the consulting services provided to the Receiver after the Date of the Receivership.
- 134) The Receiver believes that the payment of these costs is justified as these expenditures were necessary to secure the ongoing cooperation of the consultants to

assist the Receiver in carrying out its powers and duties, and to ensure the proper transfer of knowledge related to the Project to the Receiver.

- 135) In addition, the Receiver believes that, absent payment of these amounts, the costs of retaining new consultants would likely have exceeded the pre-receivership amounts paid due to the amount of time required for new consultants to familiarize themselves with the current status of the Project and related documentation.

## **CONCLUSIONS AND RECOMMENDATIONS**

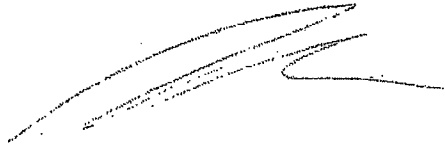
- 136) The Receiver has expended significant time and resources in advancing the Project since the Date of Receivership in reliance on the representations made by BCH at the June 6 Meeting that the EPA would not be terminated as a result of the Project COD not being achieved by September 30, 2017.
- 137) IA has continued to support the Project, and the funding of the Receivership, on the basis of representations made to IA by BCH.
- 138) The BCH Application to obtain leave of the Court to terminate the EPA is contradictory to the verbal assurances made by BCH to the Receiver and also represents a marked change in direction as compared to the actions of BCH, which continued to work with the Receiver and incur costs to advance the interconnection well beyond the purported Target COD of September 30, 2017.
- 139) The spring snowmelt in Whistler is expected imminently, and monitoring of the Project site, along with remedial works to manage run-off and tree falls, will be required in the next few weeks. Given the uncertainty associated with the status of the EPA, and consequential potential impact on Project value, the Receiver requires a resolution to this issue be obtained swiftly.
- 140) The Receiver has been in active discussions with BCH regarding the EPA with BCH since September 2017. As time passes, stakeholder value continues to erode due to the carrying cost of interest on IA's debt, and the likelihood that COD will continue to be delayed, thereby postponing Project revenue streams, not only to Wedgemount LP, but also to the Nations and, potentially, Yukon.
- 141) The Sale Process cannot advance absent a resolution to the EPA. However, if the EPA remains in place, the Receiver is of the view that it is likely that a sale of the Project to a credible purchaser can be completed within a relatively short timeframe with a substantial realization for several of the stakeholders.
- 142) The Receiver also notes the time sensitivity related to the requirement to move the penstock sections from their current holding area, and to reaching an agreement with Yukon for obtaining the New RoW which Yukon asserts is required for use of the ducting running through Yukon lands for the purposes of the interconnection, as referenced at paragraph 93 of this First Report.
- 143) Given all the factors outlined above, the Receiver is reluctant for the dispute in relation to the EPA to be dealt with through a potentially protracted arbitration process.
- 144) Based on the foregoing, the Receiver respectfully requests that the Court:

- a) Grant an order that the First Confidential Report be filed under seal pending further order of the Court; and
- b) make a declaration that BCH may not terminate the EPA on the basis of any ground or fact existing as at the date of the declaration.

All of which is respectfully submitted at Vancouver, BC this 2<sup>nd</sup> day of April, 2018.

**DELOITTE RESTRUCTURING INC.**

In its capacity as Court-Appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity



Per: Melinda McKie, CPA, CMA, CIRP, LIT  
Senior Vice-President

## Appendix "A"

### Receiver's Statement of Receipts and Disbursements for the period from May 12, 2017 to March 26, 2018

Description	Wedgemount Power Limited Partnership	Wedgemount Power (GP) Inc.	Wedgemount Power Inc.	Total
<b>Receipts</b>				
Cash in bank	\$ 2,543,670	\$ -	\$ -	\$ 2,543,670
Trust funds (holdback accounts)	590,038	-	-	590,038
Recoverable expenses	-	70	70	140
GST refunds	35,815	-	-	35,815
Interest	22,723	-	-	22,723
<b>Total receipts</b>	<b>3,192,246</b>	<b>70</b>	<b>70</b>	<b>3,192,386</b>
<b>Disbursements</b>				
Filing fees to Receiver General	70	70	70	210
Bank charges	103	-	-	103
Contractor services:				
Forestry and crown tenure consulting	53,903	-	-	53,903
Engineering consulting	522,414	-	-	522,414
Environmental consulting	18,721	-	-	18,721
Construction works and site remediation/winterization	213,643	-	-	213,643
BC Hydro retainer	105,000	-	-	105,000
GST/PST paid	59,874	-	-	59,874
Insurance	37,869	-	-	37,869
Receiver's fees	351,060	-	-	351,060
GST on Receiver's fees	17,553	-	-	17,553
Legal fees	153,010	-	-	153,010
Misc. disbursements	3,548	-	-	3,548
<b>Total disbursements</b>	<b>1,536,768</b>	<b>70</b>	<b>70</b>	<b>1,323,265</b>
<b>Excess of receipts over disbursements</b>	<b>\$ 1,655,478</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,655,478</b>
<b>Represented by:</b>				
Cash in bank	1,065,440	-	-	1,065,440
Trust funds (holdback accounts)	590,038	-	-	590,038
<b>Cash in bank</b>	<b>\$ 1,655,478</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,655,478</b>

THIS IS EXHIBIT "N" REFERRED TO IN THE  
AFFIDAVIT OF STÉFANIE LEDUC #1, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Veronique Man Gibelet, notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: *Industrial Alliance Insurance and Financial Services Inc. v. Wedgemount Power Limited Partnership*,  
2018 BCSC 723

Date: 20180406  
Docket: S174308  
Registry: Vancouver

Between:

**Industrial Alliance Insurance and Financial Services Inc.**

Plaintiff

And

**Wedgemount Power Limited Partnership  
Wedgemount Power (GP) Inc.  
Wedgemount Power Inc.  
The Ehrhardt 2011 Family Trust  
Points West Hydro Power Limited Partnership  
by its general partner Points West Hydro (GP) Inc.  
Calavia Holdings Ltd.  
Swahealy Holding Limited  
Brent Allan Hardy  
David John Ehrhardt  
28165 Yukon Inc.  
Paradise Investment Trust  
Sunny Paradise Inc.**

Defendants

Before: The Honourable Madam Justice Fitzpatrick

**Oral Reasons for Judgment**

In Chambers

Counsel for Plaintiff:

C.D. Brousson  
J.D. Bradshaw

Counsel for BC Hydro and Power Authority:

M.C. Verbrugge  
L. Hiebert

Counsel for Receiver, Deloitte Restructuring Inc.:

V. L. Tickle

Place and Date of Hearing:

Vancouver, B.C.  
April 6, 2018

Place and Date of Judgment:

Vancouver, B.C.  
April 6, 2018

[1] **THE COURT:** These are receivership proceedings. Three interrelated applications are before me: firstly, BC Hydro and Power Authority's ("BC Hydro") application to lift the stay of proceedings; secondly, Deloitte Restructuring Inc.'s (the "Receiver") application for a declaration as to whether BC Hydro has certain termination rights under a certain contract; and thirdly, BC Hydro's application to stay the Receiver's application pursuant to s. 15 of the *Arbitration Act*, R.S.B.C. 1996, c. 55.

**The Facts**

[2] The facts are both controversial and non-controversial. I will briefly summarize them.

[3] On March 6, 2015, BC Hydro and the defendants Wedgemount Power Limited Partnership and its general partner Wedgemount Power (GP) Inc. (collectively, "Wedgemount") entered into an electricity purchase agreement (the "EPA").

[4] The EPA is a complex document. In broad terms, it provided that, after completion of Wedgemount's run-of-river project, the power supplied through the operations would be linked to the hydro or electrical grid in this province, and that BC Hydro would pay a certain amount for the electricity supplied.

[5] Not surprisingly, Wedgemount required financing to complete this project. On June 30, 2015, BC Hydro, Wedgemount and Travelers Capital Corporation, as agent, entered into a lender consent agreement (the "LCA"). The lender who financed the project is the plaintiff, Industrial Alliance Insurance and Financial Services Inc. ("Industrial Alliance"). As part of those arrangements, Industrial Alliance took security against Wedgemount's assets. I am advised that, as of the spring of 2015, Industrial Alliance had advanced funds in excess of \$20 million.

[6] The EPA includes various so-called "deadlines". It provides for a "Target COD" (COD meaning "commercial operation date") of September 30, 2015. The EPA provides that, if completion of the project had not occurred by that date, the COD could be extended for a two-year period, meaning to September 30, 2017.

[7] By the spring of 2017, Wedgemount had failed to reach the Target COD. Unfortunately, at that time, Wedgemount defaulted in its loans to Industrial Alliance and that default in turn led to the filing of this receivership proceeding. On May 12, 2017, Justice Steeves granted a receivership order appointing Deloitte Restructuring Inc. as receiver manager of Wedgemount's assets and undertakings.

[8] In the usual fashion, the receivership order empowered the Receiver to take steps to sell the assets of Wedgemount. In addition, the receivership order granted a stay of proceedings in respect of Wedgemount and its assets, including the right to terminate contracts to which Wedgemount was a party.

[9] Following the granting of the receivership order, the Receiver undertook extensive steps to deal with the assets. All of these steps are outlined in the First Report of the Receiver dated April 2, 2018 and reference the Receiver's extensive sales process, including such steps as setting up a data room and inviting expressions of interest or offers.

[10] In addition, the Receiver made extensive efforts to move the project towards completion. I do not propose to set out those efforts in detail, save to note that all of the Receiver's efforts have been towards putting the Receiver in a position where it can complete a sale of the project for the purpose of realizing on Wedgemount's assets for the benefit of the stakeholders.

[11] Importantly, the Receiver has been operating on the understanding that Wedgemount's assets, which were to be disposed of, included its rights under the EPA. I accept without hesitation that those rights are valuable and comprise a significant proportion of the value of the operations and assets. BC Hydro's counsel suggests that the project and assets can be sold without the EPA. I do not doubt that that is true, however, I consider it inarguable that, if Wedgemount's rights under the EPA are not married up with the other project assets, there will be a significant reduction in the realizations from those assets.

[12] The importance of the looming two-year deadline from the Target COD has not been something that has simply come to the fore recently. Industrial Alliance and the Receiver have been very much alive to that date. Both engaged in discussions with BC Hydro from the outset of the sales process to ensure that all of Wedgemount's rights under the EPA were intact for the purpose of completing the sales process, which understandably did include Wedgemount's rights under the EPA. Numerous discussions, meetings and email and/or letter correspondence took place between Industrial Alliance's representatives, the Receiver and BC Hydro.

[13] The crux of the matter arose on September 29, 2017. On that date, the Receiver and Industrial Alliance received what they describe as a dramatic communication from BC Hydro. That communication indicated or suggested that BC Hydro was not on side with the disposition of Wedgemount's rights under the EPA and that in fact, BC Hydro had an "impending termination right" with respect to the EPA. That communication, received on September 29, 2017, was just one day prior to the two-year deadline from the Target COD.

[14] Since September 29, 2017, much has transpired between the parties. Even in the face of BC Hydro's communication on that date, the Receiver has soldiered on towards a completion of the project. In that respect, I have reviewed the Receiver's Confidential Supplement to the First Report dated April 2, 2018. That document was sealed by my order. The Supplement indicates that there are two binding offers in hand

that, presumptively, can proceed toward completion. However, both binding offers, not surprisingly, state that completion of any sale is contingent on BC Hydro agreeing to an assignment of Wedgemount's rights under the EPA.

[15] The Receiver and Industrial Alliance assert that, in reliance of what it says were representations of BC Hydro from the time of the receivership, Industrial Alliance advanced approximately \$1.5 million to the Receiver in respect of this work to bring the project toward completion.

[16] The conundrum that has arisen is how to resolve the impasse that has developed between Industrial Alliance and the Receiver, on the one hand, and BC Hydro, on the other. I will turn to the application to lift the stay.

### Lifting of Stay

[17] Counsel for Industrial Alliance refer to two authorities as to the applicable test in lifting a stay: *Ford Credit Canada Ltd. v. Welcome Ford Sales Ltd.*, 2010 ABQB 199 at para. 14 and *Scanwood Canada Ltd.*, 2011 NSSC 189 at para. 19. Both decisions state that, when considering whether a stay should be lifted, the court should consider the totality of the circumstances and the relative prejudice to both sides.

[18] It is common ground here that BC Hydro, as the applicant seeking to lift the stay, bears the burden of convincing the Court that that relief is appropriate.

[19] Turning to the overall circumstances of the case, BC Hydro asserts that it has a right to terminate the EPA on two bases, which I will summarize for the purpose of today's reasons.

[20] Firstly, BC Hydro asserts a contractual right to terminate the EPA since May 12, 2017, arising from the appointment of the Receiver. There is a provision in the EPA referring to such circumstances, although whether that provision applies is far from clear, particularly given the LCA, which ameliorates those rights to some extent.

[21] Secondly, BC Hydro argues that since September 30, 2017, the ultimate COD deadline, it has a contractual right to terminate the EPA.

[22] In those circumstances, BC Hydro asserts that the Court should lift the stay so as to allow it to immediately deliver a notice of termination to Wedgemount (and presumably Industrial Alliance and the Receiver) under section 8.1 of the EPA.

[23] To the contrary, the Receiver and Industrial Alliance argue that BC Hydro does not presently have a contractual right to terminate the EPA. In addition, the Receiver and Industrial Alliance argue that BC Hydro is estopped from asserting a right of termination right at this time because of the interactions between Industrial Alliance, the Receiver and BC Hydro that I have very generally referred to above.

[24] All parties agree that the determination of whether BC Hydro has the right to terminate is not to be determined at this hearing. It remains relevant to consider whether any of these arguments have merit. Again, the parties agree that all arguments have some merit and therefore, should be resolved in some forum.

[25] There is also the arbitration issue. Section 7.5 of the EPA, titled Dispute Resolution, provides that any dispute under the EPA is to be referred to arbitration. The decision of the arbitrator is to be final and binding on the parties. Referring to this provision in the EPA, BC Hydro's counsel submits that the issue as to whether it has the right to terminate the EPA must be referred to arbitration.

[26] On the face of it, the *Arbitration Act* supports BC Hydro's position. Section 15 of the *Arbitration Act* provides:

15 (1) If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may apply, before filing a response to civil claim or a response to family claim or taking any other step in the proceedings, to that court to stay the legal proceedings.

(2) In an application under subsection (1), the court must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed.

...

[27] The Receiver advances a number of arguments in support of its position that s. 15(2) is not the operative statutory provision in these circumstances. Those arguments include: that the Receiver is not bound by that provision in the EPA; a paramountcy argument; and, that within the context of this receivership, the provision for arbitration in the EPA can be considered "inoperative."

[28] I now turn to the issue of prejudice.

[29] BC Hydro does not assert that it would suffer any prejudice if the stay is maintained in respect of any right to deliver a notice of termination. To the contrary, Industrial Alliance and the Receiver advance that there will be significant prejudice if BC Hydro is allowed to deliver a notice of termination.

[30] I would note at this stage that, even if BC Hydro does deliver a notice of termination, that step does not resolve the issue between the parties as to whether the dispute between the parties is to be decided in this Court or by arbitration.

[31] I agree that there is no question that significant prejudice, or financial loss, will be visited upon numerous stakeholders in the event that the EPA is terminated. These stakeholders, of course, includes Industrial Alliance. In addition, the Receiver refers to potential prejudice arising from the impact benefits agreements negotiated or to be negotiated with the First Nations that are involved.

[32] There are significant other consequences arising from any termination of the EPA. If the project fails and Industrial Alliance walks away, it has been suggested that millions of dollars of remediation costs will be incurred to clean up the site. Without Industrial Alliance there to pick up the tab, there is no doubt that the British Columbia taxpayers will be next up to pay the bill. Not surprising, in light of this risk, the Province of British Columbia has filed a response supporting the continuation of the stay.

[33] BC Hydro's counsel makes the point that there is a distinction between prejudice from the notice of termination and prejudice from the cancellation or termination of the EPA. In the circumstances of this case, I consider that this is a distinction without a difference. If nothing else, if the notice of termination is delivered, it will lead, as Industrial Alliance's counsel argues, to uncertainty in the marketplace and will put the entire sales process in potential jeopardy. Therefore, even though the prejudice may not directly arise from the notice of termination, in my view there is certainly interim prejudice, which may in fact lead to the ultimate prejudice that I have already referred to above.

[34] The other issue is urgency. Urgency here may be relevant as to where the termination issue is to be resolved. Counsel refer to the fact that the snowmelt is almost upon us, if not upon us. The Receiver indicates that various work has to be undertaken to address and avoid any environmental concerns arising from spring runoff. Again, with uncertainty as to whether the termination issue is going to be resolved quickly, the ability or willingness of Industrial Alliance to advance funds for this purpose is in jeopardy. In short, there is considerable risk that the uncertainty here could result in the whole house of cards falling down.

[35] In summary, I accept that there is no prejudice to BC Hydro and that there is substantial prejudice to the other stakeholders, both present and potential, if the stay is lifted in order to allow BC Hydro to deliver any notice of termination.

[36] I conclude that the stay should not be lifted. Of course, it is obvious to everyone that the issues need to be resolved, whether by arbitration or in this Court. Those looming options pose their own uncertainty and risk. There is the risk to the Industrial Alliance side, if I can call it that, that this Court will ultimately decide that the matter must be arbitrated, which will result in further cost and delay. Further, even if the matter is ultimately addressed in this Court, there is also potential for delay and costs, depending on whether the issue can be decided on a summary basis.

[37] In any event, the parties are well-attuned to the state of play going forward. No doubt they will continue discussions toward having the matter heard or determined as soon as possible in whatever forum is necessary or appropriate.

[38] Accordingly, BC Hydro's application to stay the Receiver's application filed January 19, 2018 is adjourned. I agree with BC Hydro's counsel that that application should be adjourned to the next set of hearings, which will also include the Receiver's application for the declaration as to BC Hydro's termination rights. So all three matters can be before the court at the same time.

[39] It is my intention that the two applications, the Receiver's application and BC Hydro's application to stay that application will be heard at the same time. At the conclusion of those matters, you can address the lifting of the stay, if necessary.

[40] MR. VERBRUGGE: My Lady, the practical problem that raises for me is that until my stay application is decided, I can't file responsive materials to the Receiver's application.

[41] THE COURT: Well, I am dismissing BC Hydro's application to lift the stay.

[42] MR. VERBRUGGE: Sorry, not lifting of the stay. Sorry, we're confusing the matter. My application under the *Arbitration Act* to stay the Receiver's application, I can't file – if the Receiver's application is to be heard at the same time on the merits before my stay application is

decided, I'm stuck, because I can't file responsive materials to my friend's application as a result of the *Arbitration Act*.

[43] THE COURT: Do you want to have the Receiver's application heard first?

[44] MR. VERBRUGGE: Well, that would render my application moot, because the – I'm just not sure how I can deal with it.

[45] THE COURT: I think they both have to be heard at the same time, Mr. Verbrugge. It seems to be that everybody is onside. I do understand the position of the other side to be that they are going to stick the procedural issue or substantive issue to you if you provide your materials.

[46] MR. BROUSSON: I think that's a done deal. He can file –

[47] THE COURT: That is what I am saying. I do not think they are going to stick the procedural issue to you if you provide your materials. You can provide it even unfiled, I suppose, although it has to be before the Court at some point. It could be on an unfiled basis if that makes you more comfortable. You could also get some written assurance from them that they will not take that position. It seems to me this is doable. I appreciate your concerns. No one dismisses those concerns. However, we will have to arrive at a work-around for it.

[48] MR. BROUSSON: We can formally on the record agree that if my friend wants to file the affidavits, we're not going to take the procedural issue and say, oh, we've got you. Now you've filed these affidavits and therefore you've attorned to the jurisdiction. We're not going to make that argument.

[49] MR. VERBRUGGE: Well, I think the right way to proceed, then, is to just adjourn both of those applications, both the Receiver's application and the *Arbitration Act* application, because I will need to get instructions. One of the issues of course is the problem with arguing the merits of the Receiver's application at the same time is that if we then file all of our materials, that sort of guts the privacy benefit of an arbitration; right?

[50] THE COURT: Privacy?

[51] MR. VERBRUGGE: The ability to do a private arbitration, because now all of your materials are out in the public. That is one of the reasons why BC Hydro wants to rely on this arbitration provision. What I'm saying is, I think if both applications are adjourned, then my friends and I can try to work out some way to deal with that issue, and if we can't, then we may have to make a further application to deal with it. Antecedent to those things being heard, make an application to deal with, look, it's filed, and on what terms. Do you see what I mean?

[52] THE COURT: I cannot speak to privacy issues. It seems to me that at least half of the dispute is already public, so whether that issue still arises is debatable. However, I appreciate your comment, Mr. Verbrugge, that you need to get instructions. In summary, I am dismissing BC Hydro's application to lift the stay with liberty to bring it back before the court. I am adjourning the other two applications generally.

[53] THE COURT: Some final comments. I am not seized of this matter. In addition, I am suggesting to counsel, towards assisting the judge who hears these later applications, that a chronology would be very helpful in this situation in terms of setting out the dates of the documents and the various communications between the parties as are relevant to the issues.

"Fitzpatrick J."

THIS IS EXHIBIT "Q" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Yves-Henri Gauthier, notary (41133)  
A Notary for taking Affidavits within the Province of Quebec

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Industrial Alliance Insurance and Financial Services Inc. v. Wedgemount Power Limited Partnership*,  
2018 BCSC 970

Date: 20180504  
Docket: S174308  
Registry: Vancouver

Between:

**Industrial Alliance Insurance and Financial Services Inc.**

Plaintiff

And

**Wedgemount Power Limited Partnership  
Wedgemount Power (GP) Inc.  
Wedgemount Power Inc.  
The Ehrhardt 2011 Family Trust  
Points West Hydro Power Limited Partnership  
by its general partner Points West Hydro (GP) Inc.  
Calavia Holdings Ltd.  
Swahealy Holding Limited  
Brent Allan Hardy  
David John Ehrhardt  
28165 Yukon Inc.  
Paradise Investment Trust  
Sunny Paradise Inc.**

Defendants

Before: The Honourable Mr. Justice Butler

## Oral Reasons for Judgment

Counsel for the Plaintiff:

C. Brousson  
J. Bradshaw

Counsel for BC Hydro and Power Authority:

M. Verbrugge  
L. Hiebert

Counsel for the Receiver, Deloitte  
Restructuring Inc.:

V. Tickle

Place and Date of Hearing:

Vancouver, B.C.  
May 3, 2018

Place and Date of Judgment:

Vancouver, B.C.  
May 4, 2018



**THE COURT:**

**Background**

[1] By a receivership order dated May 12, 2017 (the "Order"), Deloitte Restructuring Inc. was appointed as receiver and manager (the "Receiver") of all the assets, undertakings and properties of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (collectively, "Wedgemount").

[2] Wedgemount is the owner and developer of a run-of-river power generation project near Whistler, British Columbia. When the Order was made, the project was not finished, and it remains unfinished, although I am told it is more than 90% complete.

[3] The Order, which is in the standard form, was made on the application of Industrial Alliance Insurance and Financial Services Inc. ("IA"), the secured creditor and primary lender to Wedgemount.

[4] Wedgemount entered into a long-term electricity purchase agreement (the "EPA") dated March 6, 2015, with British Columbia Hydro and Power Authority ("BC Hydro") for sale of the power that would be generated by the project.

[5] Since the Order was made, the Receiver has been working towards completing the construction of the project and implementing the EPA. The Receiver wants to sell the project and Wedgemount's rights under the EPA to maximize recovery for the creditors, including IA.

**Applications before the Court**

[6] Two applications were set down to be heard by me on an urgent basis. The Receiver brings an application for a declaration that BC Hydro may not terminate the EPA on the basis of any existing ground or fact. The Receiver's application was prompted by the delivery, on January 19, 2018, of BC Hydro's application seeking

leave of the court to lift a stay imposed by the Order, in order to allow BC Hydro to exercise purported rights of termination under the EPA (the "First Application").

[7] The First Application was brought pursuant to paras. 8 and 9 of the Order, which are standard provisions in a receivership order. Paragraph 8 is the stay provision which provides that all rights and remedies against Wedgemount or affecting Wedgemount's property are stayed except with the Receiver's consent or leave of the court.

[8] Paragraph 9 prevents any person from terminating any right, contract or agreement held by Wedgemount without the consent of the Receiver or leave of the court. It is not disputed that the EPA is fundamental to the value of the project and that termination of the EPA would have a significantly adverse effect, not only on Wedgemount, but also on the creditors and other stakeholders, including the Lil'wat First Nation and the province.

[9] After receiving the Receiver's application, BC Hydro brought the second urgent application that is set before me. BC Hydro seeks to have the Receiver's application stayed on the basis that the Receiver's application for declaratory relief involves a determination of rights under the EPA. The EPA contains an arbitration clause that provides that any "dispute under or in relation to this EPA shall be referred to and finally resolved by arbitration". Pursuant to s. 15 of the *Arbitration Act*, R.S.B.C. 1996, c. 55, if a party to an arbitration agreement commences legal proceedings in a court in respect of a matter agreed to be submitted to arbitration, the court must stay the legal proceedings. BC Hydro says the effect of the arbitration clause and this provision in the *Arbitration Act* is that this Court has no jurisdiction to hear the Receiver's application.

[10] The other relevant procedural history is that the two applications before me were originally set down at the same time as the First Application. On April 6, 2018, Madam Justice Fitzpatrick heard the applications. She dismissed the First Application. The reasons for judgment from that application are not yet available. I am advised by counsel that she found there was no need to lift the stay, as BC

Hydro would not suffer prejudice of any significance if the stay was left in place. The dismissal was without prejudice to BC Hydro's right to apply to have the application re-heard. Madam Justice Fitzpatrick adjourned the two applications that are now before me and directed that they be heard at the same time.

[11] The delay in having these applications heard since April 6, 2018 was caused by a lack of available court time. Whatever the reason, there is no doubt that there is urgency to the matters before the Court.

[12] Yesterday, the parties agreed that BC Hydro's application must be heard and determined first; the Court cannot hear the Receiver's application without first determining the jurisdictional issue raised by BC Hydro. In addition, BC Hydro has not been able to file a substantive response to the Receiver's application, given its position on the court's lack of jurisdiction. However, BC Hydro has delivered unfiled copies of its affidavits and application response to the Receiver and IA on a confidential basis.

[13] Accordingly, I heard the BC Hydro stay application yesterday. I indicated to the parties that I would provide my ruling this morning. The following is my ruling on that application. As always, I reserve the right to edit this ruling should the transcript be ordered. Needless to say, my decision on the stay application has serious consequences. I heard extensive argument that occupied a full day. Given the short time frame which I have had to make my ruling, my reasons are relatively brief. Accordingly, and given the importance of this issue, I also reserve the right to supplement the reasons if the transcript is ordered.

[14] I will commence this ruling by setting out the positions of the parties. I will then give my ruling and explain why I arrived at that decision.

#### **Position of BC Hydro**

[15] BC Hydro says that where a receiver elects to perform and benefit from a contract of the debtor, it is bound by the terms of that contract. While BC Hydro's ability to pursue rights against Wedgemount is stayed by the Order, none of those

rights are rendered void or otherwise modified. BC Hydro says that the Receiver's application seeks a determination of BC Hydro's rights (and those of Wedgemount) under the EPA. In other words, it is asking the Court to do exactly that which Wedgemount cannot do; seek a remedy under the EPA in a court proceeding. In effect, the Receiver is seeking a permanent injunction against BC Hydro in terms of its contractual rights.

[16] BC Hydro says it is clear that the provisions of the *Arbitration Act* apply, and the Court is required to stay the Receiver's application. The *Arbitration Act* applies to any arbitration agreement, and the arbitration clause in the EPA clearly meets that definition. Section 15(1) of the *Arbitration Act* allows a party to apply to stay a court proceeding prior to filing a response to the claim. Section 15(2) provides that a court "must make an order staying the legal proceedings unless it determines that the arbitration agreement is void, inoperative or incapable of being performed" (emphasis added). The onus is on the Receiver to establish one of those three exceptions and BC Hydro says it cannot do so. BC Hydro says the Receiver has provided no legal or factual basis on which the Court could find that the arbitration clause is void, inoperative or incapable of being performed. Accordingly, BC Hydro says the Court must order the stay of the Receiver's application.

[17] BC Hydro also says the Receiver's arguments to avoid the operation of s. 15 are based on authorities that are distinguishable. The arguments rely on cases decided under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA]. The powers of the court under s. 11 of the CCAA are very broad and have no analog in receivership proceedings or under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA].

[18] In a receivership, the court is concerned with liquidation and realization, not restructuring. BC Hydro says that restructuring cases are of limited utility in receivership proceedings because of the different policy goals governing those proceedings. There is no reason to import into a receivership the kind of broad discretion that is granted under s. 11 of the CCAA.

[19] BC Hydro says that the Receiver's reliance on paramountcy is misplaced. Section 72(1) of the *BIA* specifically provides that provisions of the *BIA* shall not "abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act". Arbitration rights in British Columbia are governed by the *Arbitration Act*, and the rights created are substantive rights. BC Hydro says that there is no operational conflict between any general power of the court under s. 243(1) of the *BIA* and s. 15 of the *Arbitration Act*.

[20] BC Hydro relies on the Supreme Court of Canada decision in *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35, for the proposition that the powers given to the bankruptcy court under the *BIA* do not confer authority to make unilateral declarations about the protected rights of third parties that are affected or governed by other statutory schemes. This is confirmed by s. 72(1) of the *BIA*.

[21] BC Hydro says the powers granted by the Order that allow the Receiver to initiate or continue proceedings do not provide any support for the position taken by the Receiver. The Order merely allows the Receiver to do what Wedgemount could have done, and Wedgemount could not have brought this application to court. It would have had to bring it to arbitration.

[22] Finally, BC Hydro says that the urgency of the present situation does not assist the Receiver in any way. Urgency, speed of resolution and convenience are not enumerated in the *Arbitration Act* as reasons for the court to deny a stay.

[23] The Receiver does not take the position that the dispute cannot be resolved at arbitration but merely that it is advantageous to have it resolved in this proceeding. BC Hydro argues that the Receiver has known since January that BC Hydro was going to take this position; it could have proceeded to arbitration in the interim. The urgency is thus self-created.

[24] Moreover, the Receiver must take Wedgemount's contracts as it finds them; it cannot take the benefit of terms it likes and avoid terms that are not to its advantage. If the Receiver wants to dispute BC Hydro's right to terminate, it must do that in accordance with the rules and procedures agreed to in the EPA.

**Position of the Receiver and IA (collectively, the "respondents")**

[25] The respondents' primary position is that the *Arbitration Act* does not apply to the Receiver and it has no application in the situation before the Court. If it does have any application, they say the *BIA* is paramount to the *Arbitration Act* and should prevail.

[26] The Receiver argues that the *Arbitration Act* does not apply to it, as it is not a party to the arbitration agreement. That is a requirement for the application of s. 15 of the *Arbitration Act*. Rather, it is a court-appointed receiver and its obligations and duties are those imposed under the *BIA* and by the Order. Pursuant to s. 243(1) of the *BIA*, a court-appointed receiver must, under subsection (b), exercise any control that the court considers advisable over the insolvent person's property, and, under subsection (c), "take any other action that the court considers advisable."

[27] The Receiver says that there are strong reasons why the issues it asks the Court to resolve do not fall within s. 15(1) of the *Arbitration Act*. The facts it relies on in support of the application arise from steps taken by the Receiver acting in its court-appointed role, and, more particularly, on representations made by BC Hydro in June 2017 after its court appointment. In these circumstances, it cannot be said that it is bringing issues to court that fall within the EPA: this is not a "dispute under or in relation to this EPA". Rather, this is a dispute that arises from representations made by BC Hydro in the course of the administration of Wedgemount's receivership.

[28] The powers granted to the Receiver under the Order include initiating and prosecuting any action, marketing the property of Wedgemount, and taking "any steps reasonably incidental to the exercise of these powers or the performance of

any statutory obligations” (subparas. 2(j), (k) and (s) of the Order, respectively). Of course, the Receiver may apply to the court for advice and directions in the discharge of its powers and duties (para. 24 of the Order and s. 249 of the *BIA*). The Receiver says it has no alternative but to bring the application for a declaration given the urgency created by the circumstances.

[29] One of the important duties of the Receiver is to manage the property of the insolvent person in a commercially reasonable manner. The Receiver must take steps to maximize the realization of the estate of Wedgemount. In order to do that, it needs to determine the status of the EPA. The position of BC Hydro, which was not taken until January of this year, has created great uncertainty about the value of the main asset of the estate. The Receiver’s application has been brought to determine if the EPA is available to the Receiver to market and sell as an asset of Wedgemount; this is at the core of the duties of the Receiver.

[30] The respondents say the position of BC Hydro is procedurally unfair; if the Receiver is required to proceed to arbitration under the arbitration clause, the project will be at an end. BC Hydro has only recently taken the position that it can terminate the EPA. However, given the circumstances, it could achieve its desired result – that termination – without having any adjudication of the rights of the parties. This would be unfair not only to creditors and contractors, but also to the other third parties, including First Nations bands and the province.

[31] The respondents say that the court has a wide jurisdiction to interfere with contractual rights that should be exercised here. They rely on the statements by Frank Bennett in his text, *Bennett on Receiverships*, 2nd. ed. (Toronto: Carswell, 1999) at 341, for the proposition that a receiver may ask the court to break or vary an onerous or material contract so long as it acts reasonably and exercises good business sense.

[32] The respondents also rely on two decisions of Mr. Justice Walker in insolvency proceedings for the company Pope & Talbot Ltd. (the decisions are collectively referred to as *Pope & Talbot*). In *Pope & Talbot Ltd. (Re)*, 2009 BCSC

1014 [P&T #1], Mr. Justice Walker concluded that the court has considerable jurisdiction to suspend private contractual rights where it is appropriate to do so, both under CCAA proceedings and in bankruptcy proceedings. In *Pope & Talbot Ltd. (Re)*, 2009 BCSC 1552 [P&T #2], in circumstances that are similar to those before the court, Mr. Justice Walker concluded that all of the parties and participants involved in the insolvency needed to know if coverage under an insurance policy was available. He refused to stay the proceedings under a mediation and arbitration ("ADR") clause in the insurance policy and relied on the inherent jurisdiction of the court to effect an orderly and expeditious resolution of that issue in the insolvency proceedings.

[33] The respondents say that P&T #2 is on all fours with the current application. All parties need to know if the EPA can be terminated based on the existing facts and circumstances. The only way to have this issue determined is by the court. The respondents say it is necessary to dismiss BC Hydro's application for a stay of the Receiver's application to allow for the orderly, expedient and effective resolution of the insolvency. It is relevant that the time sensitivity is acute; any delay will be fatal to the viability of the project.

[34] The respondents emphasize that while a dismissal of BC Hydro's application will affect a contractual right to arbitrate, this is a relatively small compromise in the furtherance of the objectives of the insolvency regime. Further, granting the BC Hydro application would negate the ongoing supervision of this Court in this insolvency.

[35] Finally, the respondents say that the harm suffered by all the stakeholders would eclipse any prejudice to BC Hydro.

**Urgency**

[36] The urgency in the present situation arises because of a combination of circumstances. First, the project will require the investment of significant funds within the next two to four weeks to deal with the spring snow melt. I was advised that this



investment will be in the neighbourhood of \$150,000. The funds are required to protect the project and the environment from the high runoff that is expected. If the issue about the right of BC Hydro to terminate the EPA is not resolved, it is extremely unlikely that IA will provide funds to do this work. No other party will provide the funding.

[37] If the funds are not provided, that will be the end of the project. This in turn will result in a serious reduction in the value of the assets of Wedgemount and that will impact third parties. The third parties include creditors, contractors, the Lil'wat First Nation and the Province of British Columbia. The province may be left without any recourse to deal with decommissioning and environmental remediation issues under the *Land Act*, R.S.B.C. 1996, c. 245, and the *Water Sustainability Act*, S.B.C. 2014, c. 15, and the Lil'wat First Nation will get no benefit from their agreement with Wedgemount.

#### **Ruling**

[38] I dismiss BC Hydro's application for a stay of the Receiver's application. I am doing so on the basis that the Receiver has the jurisdiction, in the unusual circumstances of this case, to bring the application for a declaration and directions. It falls within the powers granted to the Receiver under subsections 243(1)(b) and (c) of the *BIA* and under the terms of the Order.

[39] The application is necessary in these circumstances to facilitate the preservation and realization of the assets for the benefit of all creditors. As set out in *Hamilton Wentworth Credit Union Ltd. v. Courtcliffe Parks Ltd.*, [1995] O.J. No. 1482 at para. 18 (Ont. Ct. J. (Gen. Div.)), that is the purpose of the receivership:

The purpose of a general receivership is to enhance and facilitate the preservation and realization of the assets for the benefit of all of the creditors, including secured creditors: *Robert F. Kowal Investments Ltd. v. Deeder Electric Ltd.* (1975), 9 O.R. (2d) 84 at p. 88, 59 D.L.R. (3d) 492 (C.A.); *Re Winmil Holidays Co.* (1984), 10 D.L.R. (4th) 572 (B.C.C.A.) at pp. 579-80. The debtor's property comes under the administration and supervision of the court, through the receiver and manager, which is the agent of the court and not of the creditors at whose instance it is appointed. This being the case, the integrity of the receivership process requires that the court perform its role as

supervisor in connection with whatever happens to the property that comes under its administration: see Bennett, supra, at pp. 110-11.

[40] The only reason the Receiver might not have the ability to bring the application is the existence of the arbitration clause in the EPA. As the parties have argued, that raises two issues: is the Receiver a party to an arbitration agreement; and is the proceeding in respect of a matter agreed to be submitted to arbitration?

[41] The argument that the Receiver is not a party to the EPA and has not assumed the EPA has some merit. However, it is a difficult point of principle on which to rest my decision.

[42] If I were to conclude that a receiver is never bound by an arbitration agreement, that would have potentially wide-ranging implications. My decision is not based on that point of principle. Rather, it is the particular circumstances of this case that permit the Receiver to bring the issue it has raised to the court for determination.

[43] As the respondents argue, where a receiver is court-appointed, it is not bound by existing contracts made by the debtor. They refer to *New Skeena Forest Products Inc., Re v. Don Hull & Sons Contracting Ltd.*, 2005 BCCA 154 at paras. 16 and 17. In *New Skeena*, the court determined that a receiver has the common law power to disclaim contracts and (at para. 17) referred with approval to *Bennett on Receiverships* at 341:

In a court-appointed receivership, the receiver is not bound by existing contracts made by the debtor.... However, that does not mean the receiver can arbitrarily break a contract. The receiver must exercise proper discretion in doing so since ultimately the receiver may face the allegation that it could have realized more by performing the contract than terminating it or that the receiver breached the duty by dissipating the debtor's assets. Thus, if the receiver chooses to break a material contract, the receiver should seek leave of the court. The debtor remains liable for any damages as a result of the breach.

[44] BC Hydro says that that power of a receiver cannot apply here because where a receiver chooses to disclaim or break a contract, the debtor remains liable

for damages. It says the nature of BC Hydro's loss from a failure to be bound by the arbitration clause cannot be remedied by damages, and so this principle cannot apply. I disagree. The fact that BC Hydro cannot demonstrate any loss that is compensable by damages or sue for damages is merely a factor for this Court to take into account in deciding whether to allow the Receiver to take this step. The point taken from the principle outlined in *Bennett on Receiverships* is that a court-appointed receiver has wide powers that can extend to the position taken here by the Receiver.

[45] The second issue raised by the respondents in relation to s. 15(1) of the *Arbitration Act* – whether the application brought by the Receiver is in respect of a matter agreed to be submitted to arbitration – has more merit. The issue raised by the Receiver's application, as I presently understand it, is not "a dispute under or in relation to the EPA". Rather, the dispute relates to representations made by BC Hydro to the Receiver. The representations took place after May 12, 2017, and while the Receiver was acting in its court-appointed role.

[46] BC Hydro says that is still a dispute under the EPA. I disagree. It is not the type of dispute that the arbitration agreement provided would be referred to arbitration. The Receiver is seeking directions of the Court based on representations made to an officer of the court. Of course, I appreciate that the determination of those issues likely also involves questions that, but for the receivership and the matters alleged by the Receiver, may have fallen within the arbitration agreement. In other words, the issues to be considered by the Receiver's application may well be hybrid questions. Some are within the arbitration agreement and some are not. However, given the present circumstances, those issues must be considered together for the proper administration of the receivership.

[47] However, if I am wrong in coming to that conclusion, I nevertheless conclude that the Court has the inherent jurisdiction to consider the Receiver's application. In doing so, I rely on the decisions of this Court in *Pope & Talbot* and the decision in *Hayes Forest Services Limited (Re)*, 2009 BCSC 1169.

[48] As Mr. Justice Walker noted at paras. 149-150 of *P&T #1*, the *BIA* confers jurisdiction on superior courts to disrupt private contractual rights. In *P&T #2*, he stated as follows at paras. 119-121:

[119] The rationale underlying that point is well set out in the decision of Topolniski J., whose reasoning was affirmed by the Alberta Court of Appeal in *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236, 62 Alta. L.R. (4th) 168, aff'd 2006 ABCA 293, 65 Alta. L.R. (4th) [32]:

[25] A significant objective of the *BIA* is to ensure that all of the property owned by the bankrupt or in which the bankrupt has a beneficial interest at the date of the bankruptcy will, with limited exceptions, vest in the trustee for realization and ratable distribution to creditors. To further this objective, the *BIA* provides for practical, efficient and relatively inexpensive mechanisms for asset recovery, determination of the validity of creditor claims, and distribution of the estate. A fundamental tenet of *BIA* proceedings is that fairness should govern.

[120] Resort to inherent jurisdiction may be made to further the objects of the *BIA* where the *Act* does not provide a specific mechanism. In essence, failing specific provision in the statute, the "gap" may be filled by statutory construction, or failing that, then by resort to inherent jurisdiction. According to Topolniski J., the *BIA* expressly preserves the Bankruptcy Court's equitable and ancillary powers. Resort to inherent jurisdiction is "maintained and available as an important but sparingly used tool". At para. 26, he wrote:

The *BIA* expressly preserves the Bankruptcy Court's equitable and ancillary powers. Accordingly, inherent jurisdiction is maintained and available as an important but sparingly used tool. There are two preconditions to the Court exercising its inherent jurisdiction: (1) the *BIA* must be silent on a point or not have dealt with a matter exhaustively; and (2) after balancing competing interests, the benefit of granting the relief must outweigh the relative prejudice to those affected by it. Inherent jurisdiction is available to ensure fairness in the bankruptcy process and fulfilment of the substantive objectives of the *BIA*, including the proper administration and protection of the bankrupt's estate.

[121] Topolniski J. also remarked that solutions to *BIA* issues will require judges to consider the realities of commerce and business efficacy:

[27] Solutions to *BIA* concerns require consideration of the realities of commerce and business efficacy. A strictly legalistic approach is unhelpful in that regard. What is called for is a pragmatic problem-solving approach which is flexible enough to deal with unanticipated problems, often on a case-by-case basis.

[49] The circumstances in *Pope & Talbot* were similar to those here. Insurers brought a stay application relying on an ADR provision in an insurance policy and

sought to have coverage determined in accordance with that provision rather than by the court. Mr. Justice Walker refused the stay and determined (at para. 134) that there was “no good reason for the ADR clause to stand in the way of an orderly and expeditious resolution of the insolvency proceedings.”

[50] I arrive at the same conclusion here. When I balance the competing interests, it is clear that the benefit of granting the relief outweighs the relative prejudice to those affected by it. The relief I am granting is, of course, very limited; I will hear the Receiver’s application. This allows the dispute between the Receiver and BC Hydro to be determined expeditiously and on its merits. It is significant that if I did not allow the Receiver to bring this application, it is probable that the dispute would not be resolved on its merits. The prejudice to BC Hydro is very limited. It has retained the right to have the issues it wants to raise adjudicated. I understand that it has prepared the relevant affidavit evidence and is prepared to proceed.

[51] I wish to make one final observation. I accept the position of the respondents about the nature of this receivership and accept that the consideration of this issue in the circumstances of this case is the proper way to further the objects of the *BIA*. I do not accept BC Hydro’s submission that as a receivership this is a mere liquidation of assets and that the principles that animate the court’s role in restructuring situations have no application here. As the respondents argue, the actions the court takes under the *BIA* cover a broad range of situations. This receivership has elements of a restructuring. There are significant interests beyond those of the creditors that the Court can consider, including those of the Lil’wat First Nation and the province.

[52] In summary, BC Hydro’s application is dismissed. I will hear the Receiver’s application.

“Butler J.”

THIS IS EXHIBIT "P" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec City, QC, THIS 15 DAY  
OF JUNE, 2018.

Vaince Housidet, notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Industrial Alliance Insurance and Financial Services Inc. v. Wedgemount Power Limited Partnership*,  
2018 BCSC 971

Date: 20180518  
Docket: S174308  
Registry: Vancouver

Between:

**Industrial Alliance Insurance and Financial Services Inc.**

Plaintiff

And

**Wedgemount Power Limited Partnership  
Wedgemount Power (GP) Inc.  
Wedgemount Power Inc.  
The Ehrhardt 2011 Family Trust  
Points West Hydro Power Limited Partnership  
by its general partner Points West Hydro (GP) Inc.  
Calavia Holdings Ltd.  
Swahealy Holding Limited  
Brent Allan Hardy  
David John Ehrhardt  
28165 Yukon Inc.  
Paradise Investment Trust  
Sunny Paradise Inc.**

Defendants

Before: The Honourable Mr. Justice Butler

## Oral Reasons for Judgment

Counsel for the Plaintiff:

C. Brousson  
J. Bradshaw

Counsel for BC Hydro and Power Authority:

M. Verbrugge  
L. Hiebert

Counsel for the Receiver, Deloitte  
Restructuring Inc.:

V. Tickle

Place and Date of Hearing:

Vancouver, B.C.  
May 4, 2018

Place and Date of Judgment:

Vancouver, B.C.  
May 18, 2018



**THE COURT:**

**Introduction**

[1] This is the second of two urgent applications I have heard in this receivership proceeding. In the first, I dismissed the application of British Columbia Hydro and Power Authority (“BC Hydro”) for a stay of this application, which has been brought by Deloitte Restructuring Inc. (the “Receiver”). In this application, the Receiver seeks a declaration that BC Hydro “may not terminate the Electricity Purchase Agreement dated March 6, 2015 (the “EPA”) between BC Hydro and Wedgemount Power Limited Partnership ... on the basis of any existing ground or fact.”

[2] Industrial Alliance Insurance and Financial Services Inc. (“IA”) is the primary lender to and secured creditor of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc. and Wedgemount Power Inc. (collectively, “Wedgemount”). It commenced this action and obtained the order of May 12, 2017 appointing the Receiver (the “Order”). IA supports the Receiver’s application, while BC Hydro opposes it.

**Background**

[3] The history and circumstances are well known to the parties and were succinctly summarized in the reasons of Madam Justice Fitzpatrick in *Industrial Alliance Insurance and Financial Services Inc. v. Wedgemount Power Limited Partnership*, 2018 BCSC 723. I can do no better than repeat that summary at paras. 3-12:

[3] On March 6, 2015, BC Hydro and the defendants Wedgemount Power Limited Partnership and its general partner Wedgemount Power (GP) Inc. (collectively, “Wedgemount”) entered into an electricity purchase agreement (the “EPA”).

[4] The EPA is a complex document. In broad terms, it provided that, after completion of Wedgemount’s run-of-river project, the power supplied through the operations would be linked to the hydro or electrical grid in this province, and that BC Hydro would pay a certain amount for the electricity supplied.

[5] Not surprisingly, Wedgemount required financing to complete this project. On June 30, 2015, BC Hydro, Wedgemount and Travelers Capital

Corporation, as agent, entered into a lender consent agreement (the "LCA"). The lender who financed the project is the plaintiff, Industrial Alliance Insurance and Financial Services Inc. ("Industrial Alliance"). As part of those arrangements, Industrial Alliance took security against Wedgemount's assets. I am advised that, as of the spring of 2015, Industrial Alliance had advanced funds in excess of \$20 million.

[6] The EPA includes various so-called "deadlines". It provides for a "Target COD" (COD meaning "commercial operation date") of September 30, 2015. The EPA provides that, if completion of the project had not occurred by that date, the COD could be extended for a two-year period, meaning to September 30, 2017.

[7] By the spring of 2017, Wedgemount had failed to reach the Target COD. Unfortunately, at that time, Wedgemount defaulted in its loans to Industrial Alliance and that default in turn led to the filing of this receivership proceeding. On May 12, 2017, Justice Steeves granted a receivership order appointing Deloitte Restructuring Inc. as receiver manager of Wedgemount's assets and undertakings.

[8] In the usual fashion, the receivership order empowered the Receiver to take steps to sell the assets of Wedgemount. In addition, the receivership order granted a stay of proceedings in respect of Wedgemount and its assets, including the right to terminate contracts to which Wedgemount was a party.

[9] Following the granting of the receivership order, the Receiver undertook extensive steps to deal with the assets. All of these steps are outlined in the First Report of the Receiver dated April 2, 2018 and reference the Receiver's extensive sales process, including such steps as setting up a data room and inviting expressions of interest or offers.

[10] In addition, the Receiver made extensive efforts to move the project towards completion. I do not propose to set out those efforts in detail, save to note that all of the Receiver's efforts have been towards putting the Receiver in a position where it can complete a sale of the project for the purpose of realizing on Wedgemount's assets for the benefit of the stakeholders.

[11] Importantly, the Receiver has been operating on the understanding that Wedgemount's assets, which were to be disposed of, included its rights under the EPA. I accept without hesitation that those rights are valuable and comprise a significant proportion of the value of the operations and assets. BC Hydro's counsel suggests that the project and assets can be sold without the EPA. I do not doubt that that is true, however, I consider it inarguable that, if Wedgemount's rights under the EPA are not married up with the other project assets, there will be a significant reduction in the realizations from those assets.

[12] The importance of the looming two-year deadline from the Target COD has not been something that has simply come to the fore recently. Industrial Alliance and the Receiver have been very much alive to that date. Both engaged in discussions with BC Hydro from the outset of the sales process to ensure that all of Wedgemount's rights under the EPA were intact for the purpose of completing the sales process, which understandably did

include Wedgemount's rights under the EPA. Numerous discussions, meetings and email and/or letter correspondence took place between Industrial Alliance's representatives, the Receiver and BC Hydro.

[4] In the application before Madam Justice Fitzpatrick, BC Hydro sought to lift the stay of proceedings granted under the Order, so that it could deliver a notice of termination to Wedgemount and IA based on Wedgemount's failure to meet the September 30, 2017 commercial operation date. That application was dismissed, and Madam Justice Fitzpatrick directed that the two applications I have heard be heard at the same time. In arriving at these conclusions, she found that BC Hydro would suffer no prejudice if the stay continued, while the other stakeholders, including the Receiver and IA, would suffer substantial prejudice if the stay was lifted. She commented as follows at para. 36:

[36] I conclude that the stay should not be lifted. Of course, it is obvious to everyone that the issues need to be resolved, whether by arbitration or in this Court. Those looming options pose their own uncertainty and risk. There is the risk to the Industrial Alliance side, if I can call it that, that this Court will ultimately decide that the matter must be arbitrated, which will result in further cost and delay. Further, even if the matter is ultimately addressed in this Court, there is also potential for delay and costs, depending on whether the issue can be decided on a summary basis.

[5] At the time of the Order, Wedgemount's hydro generation facilities were substantially complete. However, the design for the interconnection facilities that would connect the project to the BC Hydro grid was not finalized and the construction of the interconnection facilities was far from complete. The delay in completing the interconnection facilities appears to have been caused by both parties, although a considerable amount of the fault rests with BC Hydro. The parties spent some time in pointing out the difficulties and delays caused by the issues that arose in planning the interconnection facilities. I conclude that it is not possible in this summary application to determine, with any confidence, the extent of each party's responsibility for the delay. However, the draft interconnection facilities study and project plan dated August 16, 2016 (the "Draft Report"), issued by BC Hydro's consultant, was delivered seven months later than promised, and it was evident to

all parties that the route and design in the Draft Report was not acceptable to BC Hydro or Wedgemount and would have to be revised.

[6] When the Receiver became involved, the first step was to assess the situation, including the looming issue of the commercial operation date (the "COD") deadline. The Receiver's first contact with BC Hydro was during a conference call on May 18, 2017. The Receiver wanted to understand the steps required to complete the project and in particular, what was required to connect the project to BC Hydro's grid. This was critical because the Receiver wanted to know if the project could be put in service without BC Hydro terminating the electricity purchase agreement (the "EPA") in accordance with the contract provisions. During the conference, Joanne McKenna, a project manager for BC Hydro, told the Receiver that BC Hydro was still "awaiting an interconnection solution" and that the COD deadline would expire on September 30, 2017 under the EPA.

[7] The EPA is a standard form agreement drafted by BC Hydro. It contains the following provisions for termination by BC Hydro (which is described as the "Buyer"):

8.1 Termination by Buyer - in addition to any other right to terminate this EPA expressly set out in any other provision of this EPA and in addition to all other rights and remedies the Buyer may have under this EPA or at law or in equity in respect of any of the following events, the Buyer may terminate this EPA on notice to the Seller if:

(a) COD does not occur by the second anniversary of Target COD for any reason whatsoever (including Force Majeure), provided that the Buyer may terminate the EPA under this provision only if the Buyer delivers a termination notice prior to COD; or

...

(f) any one of the Seller or the General Partner is Bankrupt or Insolvent; or

...

(i) any one of the Seller or the General Partner is in material default of any of its covenants, representations and warranties or other obligations under this EPA (other than as set out above), unless within 30 days after the date of notice by the Buyer to the Seller of the default the Seller has cured the default...

Any termination pursuant to this section shall be effective immediately upon delivery of the notice of termination to the Seller.

[8] The EPA contains other terms that are central to the positions taken by the parties on this application. I will set out the relevant provisions to which I was referred.

[9] The EPA provides that the "Effective Date" is March 6, 2015. Section 2.1 provides that "the term ('Term') of this EPA commences on the Effective Date and continues until the anniversary of COD, unless it is terminated earlier as authorized under this EPA." The "COD" is the date on which Wedgemount must have satisfied certain conditions necessary to begin selling electricity to BC Hydro. The "Target COD" was defined to mean "September 30, 2015, as revised pursuant to either or both of ss. 3.9 and 3.11, if applicable." The parties agree that s. 3.11 is not relevant on this application.

[10] Section 3.9 provides:

Change in Target COD - if the Estimated Interconnection Facilities Completion Date is later than 90 days prior to the Target COD, and unless otherwise agreed by the Parties in writing, the Target COD shall be postponed to the Estimated Interconnection Facilities Completion Date plus 90 days.

[11] Relevant definitions in the EPA include:

"Estimated Interconnection Facilities Completion Date" means the most recent estimated date for completing the Interconnection Network Upgrades, as set forth in the Final Interconnection Study Report.

"Final Interconnection Study Report" means the final report issued to the Seller by the Distribution Authority or the Transmission Authority, as applicable, in respect of the interconnection of the Seller's Plant, consisting of a system impact study report and the facilities study report. (the "FIS Report")

[12] The FIS Report must be issued by BC Hydro. As of the date of the Order, no FIS Report had been issued. Accordingly, there was no Estimated Interconnection Facilities Completion Date. In addition, there had been no agreement between the parties to set a Target COD at any other date.

[13] It should be evident from this review of the relevant EPA provisions that there was some doubt in May 2017 as to BC Hydro's right of termination. Section 8.1(a)

gives BC Hydro the right to terminate "if the COD does not occur by the second anniversary of Target COD", meaning September 30, 2017. However, pursuant to s. 3.9, the Target COD "shall be postponed" to the Estimated Interconnection Facilities Completion Date plus 90 days, if the latter date is later than 90 days prior to the Target COD. The Estimated Interconnection Facilities Completion Date could only be set by the FIS Report, which must be issued by BC Hydro, and that report had not been issued because BC Hydro had not signed off on an interconnection design for the network upgrades.

[14] Later in May, after the first discussion with the Receiver, BC Hydro gave the Draft Report to the Receiver. As previously noted, the parties were aware that the Draft Report would not be used to establish the connections to the grid. However, it was understood by all parties that a modified design was being prepared by the Receiver's consultant.

[15] With this background, two representatives of the Receiver (Melinda McKie and Paul Chambers) met with BC Hydro representatives on June 6, 2017, along with the Receiver's consultant, Michael Potyok. BC Hydro was represented by Ryan Hefflick and Vic Rempel. The Receiver maintains that BC Hydro made critical representations at that meeting which led the Receiver to spend substantial sums and pursue completion of the project on the understanding that BC Hydro would not terminate the EPA at the end of September 2017.

[16] The Receiver says, based on the affidavit evidence of Ms. McKie, Mr. Chambers and Mr. Potyok, that it told BC Hydro it was considering the design of a new route for interconnection along Wedge Creek Forest Service Road and that it hoped to accomplish that by late summer or fall of 2017. The BC Hydro representatives said that that timing might be challenging for BC Hydro because of technical issues. However, according to the Receiver, the following significant representations were made by BC Hydro at that meeting:

- the Draft Report of August 2016 was still in draft form, and that the route of interconnection had changed since it was issued;

- the FIS Report would not be issued until the route of interconnection was finalized and the engineering design work for the interconnection was further developed; and
- because the Draft Report was still in draft form, there was no Target COD set and consequently there was no COD deadline of September 30, 2017 (collectively the "June 6 Representations").

[17] BC Hydro denies making the last of these alleged representations. It says that the discussions at the meeting of June 6, 2017 were limited to technical aspects of the project. BC Hydro said it needed to receive a complete design from the Receiver in order to move forward with the FIS Report. Mr. Hefflick and Mr. Rempel advised the Receiver of the amount required (\$105,000) to pay the cost of the reports associated with connecting the project to BC Hydro's grid. Neither Mr. Hefflick nor Mr. Rempel recall making any comments about a "COD deadline" and both say that "the interconnections group does not discuss contractual issues" and had no authority to do so. Mr. Rempel says it was his experience with similar projects that where contractual issues arise in the course of discussions, the interconnections group would refer independent power producers to BC Hydro's contracts management group. Both of the men at the meeting were part of BC Hydro's interconnections group.

[18] Mr. Hefflick and Mr. Rempel say they would have discussed the Draft Report and acknowledged that it was in draft form and that an FIS Report would not be issued until the route of interconnection was finalized. However, they say they would not have discussed the implications of those reports in relation to the EPA. They stressed that they do not address contractual issues and so they do not have discussions related to the terms of the contracts or the interpretation of the contracts.

[19] The next meeting of significance took place on June 14, 2017 between BC Hydro representatives and three representatives of IA: Stefanie Leduc, Maxime

Durivage and Luc Fournier. On a May 9, 2017 telephone call, prior to the receivership, the IA representatives had been advised by BC Hydro representatives (including Mr. Rempel and Mr. Hefflick) that extending the Target COD should not be a problem because the facilities study report that forms part of the FIS Report was not completed. The IA representatives say that Olha Lui, a BC Hydro representative, stated at the June 14 meeting that IA should not worry about the EPA remaining valid even if the COD was not achieved by September 30, 2017, because the facility study was not final and the time did not start to run until it was finalized.

[20] Ms. Lui says that IA “misunderstood” what she said at the meeting, although she acknowledges that she did say “when the facility study was finalized, this would reset the Target COD date pursuant to the terms of the EPA.” Further, her note of that meeting states:

From BCH CM perspective, no particular concern about Target COD deadlines in the EPA, since it is understood that Final Interconnection Study will be issued shortly and that study would effectively reset the Target COD in the EPA.

[21] The Receiver says the June 6 Representations were consistent with its understanding of the terms of the EPA. IA agrees with the Receiver’s understanding of the EPA and says that the statements made at the June 14 meeting confirmed this understanding.

[22] The Receiver had a second meeting with BC Hydro on June 15, 2017, following which the Receiver dispersed to BC Hydro the \$105,000 requested at the June 6 meeting. Over the following months, in consultation with IA, the Receiver:

- a) determined to move ahead with the project and pursued a sales process;
- b) worked with BC Hydro to advance the engineering design for the distribution line and point of interconnection on the new route;



- c) applied for and obtained the necessary permits and approvals for the project from various government agencies;
- d) negotiated a revised impacts and benefits agreement with the Lil'wat and Squamish First Nations;
- e) engaged engineering, forestry and environmental consultants and professionals to advance the engineering design, permitting and environmental monitoring of the project;
- f) advanced construction of the project; and
- g) in doing all of the above, expended funds in excess of \$1.5 million.

[23] As part of this process, the Receiver set up a data room so that parties who had expressed an interest in acquiring the assets of Wedgemount could review information about the project following execution of a confidentiality agreement. Based on its understanding of the June 6 Representations, the Receiver posted the following update in the data room:

[BC Hydro] has verbally confirmed to the Receiver that the EPA will not be terminated as a result of the COD deadline of September 2017. The EPA includes various provisions for changing the Target COD (paragraphs 3.9 and 3.11). Based on discussions with [BC Hydro], the receiver understands that since the Interconnection Study Report remains in draft form and has not been finalized, the Estimated Interconnection Facilities Completion Date remains subject to change, and accordingly the Target COD may be changed subject to the provisions of paragraph 3.9 of the EPA.

[24] The Receiver's consultant, Mr. Potyok, indicates that the design for the interconnection was 95% complete as of September 2017. It is not clear to the Court exactly what is required to complete the design, what construction is required to complete the interconnection or how long that would take. However, it is evident that as of September 2017, the interconnection process stalled. The FIS Report was not issued and so the Estimated Interconnection Facilities Completion Date has not been set.

[25] The sales process that was established by the Receiver after the June meetings has produced offers from potential purchasers of the assets and undertakings. I understand that at the present time there are at least six offers, all of which seek some form of confirmation about the status of BC Hydro's termination rights. As a result of the offers it was receiving, the Receiver sought written confirmation from BC Hydro that the termination provision in para. 8.1(a) of the EPA was not applicable. Ms. McKie sought that confirmation from Ms. McKenna by email on September 11, 2017.

[26] That request started a new round of discussions. On September 19, 2017, Ms. McKenna indicated that she was not able to provide the confirmation sought, as BC Hydro was awaiting information. The parties met on September 25, 2017, at which time Ms. McKenna indicated that BC Hydro was reviewing its rights under the EPA. At that meeting, the Receiver provided updates on the interconnection design and permitting. On September 27, 2017, Ms. McKie wrote to BC Hydro referencing the June 6 Representations and the extensive work done based on those representations. On September 29, 2017, Ms. McKenna responded by stating that BC Hydro was only "aware of the receivership generally", denied making any representations or assurances, and asserted that it had an impending termination right.

[27] On October 6, 2017, Ms. McKie and Mr. Chambers attended a further meeting with Ms. McKenna and other BC Hydro representatives. At that meeting Ms. McKenna stated, for the first time, that BC Hydro did not need the power that would be produced by the project. However, Ms. McKenna said BC Hydro was prepared to reconsider its position on the EPA.

[28] Further discussions took place between the parties, including discussions about BC Hydro's comments on the nearly-complete design drawings for the interconnection distribution line and interconnection on the new route.

[29] On November 20, 2017, BC Hydro indicated that it was still in the process of considering the EPA and that it would require further discussion to be kept

confidential and subject to a proposed non-disclosure agreement (“NDA”). BC Hydro indicated that subject to the NDA, it expected to provide a proposal for an amended EPA within two weeks. No such proposal was forwarded, and the Receiver sought updates at various times over the next two months. On January 19, 2018, BC Hydro gave its response: it delivered the notice of application seeking an order lifting the stay so that it could issue a notice of termination based on the failure to meet the September 30, 2017 COD deadline.

[30] To complete this background, I should note that until recently, BC Hydro ran what is described in the EPA as a “Standing Offer Program”, under which it agreed to purchase power from independent power producers from run-of-river hydro power generation facilities. However, its policy has changed, perhaps in part because of the Site C dam development. In any event, on October 6, 2017, BC Hydro advised the Receiver, for the first time, that it did not need the power that would be produced by the project.

**Position of the Receiver and IA**

[31] The Receiver says that when the provisions of the EPA are properly construed and considered in light of the circumstances of this case, BC Hydro does not have a right of termination on the basis that the COD did not take place on or before September 30, 2017. This is because s. 3.9 provides that the Target COD “shall be postponed” to the Estimated Interconnection Facilities Completion Date plus 90 days. Of course, that date depends on the “most recent estimated date for completing the Interconnection Network Upgrades” which must be set by the FIS Report which has not been issued by BC Hydro. The failure of BC Hydro to issue the FIS Report and establish the Estimated Interconnection Facilities Completion Date cannot be relied upon by BC Hydro as a basis for termination of the project.

[32] With regard to the alleged representations at the meetings in June 2017, the Receiver says the evidence of its affiants and those from IA is direct, clear and credible, while the evidence of the BC Hydro affiants is much less so. Further, the Receiver emphasizes its role as an officer of the court. The Receiver received the

representations made by BC Hydro while acting in that role and relied upon those representations in carrying out its duties. As noted in the Receiver's first report to the Court:

The Receiver has expended significant time and resources in advancing the Project since the Date of Receivership in reliance on the representations made by BC Hydro at the June 6 Meeting that the EPA would not be terminated as a result of the Project COD not being achieved by September 30, 2017.

IA has continued to support the Project, and the funding of the Receivership, on the basis of representations made to IA by BC Hydro.

[33] The Receiver stresses that the EPA is a standard form contract drafted by BC Hydro as part of its Standing Offer Program to purchase power from independent power producers. The ability to achieve a COD within two years of a Target COD was in the hands of BC Hydro as it must complete the steps required to issue the FIS Report. The contract cannot be interpreted in a way that would allow BC Hydro to unilaterally avoid its contractual obligations because it did not complete steps it was required to perform. The Receiver says that to the extent there is any ambiguity in the EPA, that ambiguity should be resolved against BC Hydro as the author of the agreement.

[34] The Receiver also says that BC Hydro should not be permitted to rely on Wedgemount's insolvency to issue a notice of termination. It says that BC Hydro only recently took this position and it had previously given assurances to Wedgemount that, so long as it was working towards finishing the project, it would not rely on s. 8.1(f) to terminate the EPA. In any event, the stay is still in place which prevents BC Hydro from taking any action on the basis of s. 8.1(f) of the EPA.

[35] IA supports the position of the Receiver. It notes that the system impact study issued by BC Hydro to Wedgemount as the first step in the EPA process dramatically underestimated the cost estimate for interconnection and the time required to produce the Draft Report. IA says that the delays in producing the FIS Report were caused almost entirely by the actions of BC Hydro, including the provision of unrealistic cost estimates and a failure to live up to proposed timelines.

[36] IA also argues that the termination right under s. 8.1(a) of the EPA has not been triggered because the Target COD has been postponed pursuant to s. 3.9 of the EPA. This is because BC Hydro has yet to complete the FIS Report. IA says that the subsequent conduct of the parties is relevant because of ambiguity in the EPA. Here, the subsequent conduct supports the conclusion that the Target COD was postponed. It also argues that the subsequent change in the standard form EPA supports its contention that there is ambiguity in the agreement. BC Hydro subsequently revised s. 3.9 to require an independent power producer to request a change to the Target COD in writing.

[37] IA also says the Court can and should grant a permanent stay that would prevent BC Hydro from relying on Wedgemount's insolvency to form the basis for terminating the EPA under s. 8.1(f). It says the powers of the court in a receivership under the *BIA* are similar to those of the court under a *CCAA* proceeding. It says the court can take into account the interests of the third parties, including First Nation bands and the province, in deciding to make such an order.

**Position of BC Hydro**

[38] BC Hydro opposes the application on a number of bases. It says that the Receiver has failed to prove that BC Hydro made the alleged June Representations to the Receiver's representatives or to IA. It says the evidence of the BC Hydro representatives establishes that no such representations were made. Rather, the Receiver's representatives misunderstood what was said by BC Hydro's representatives or their statements were taken out of context. It says statements were taken out of context because all of the discussions in May and June 2017 took place in the context of the Receiver's expressed intention to have the project operational by the fall of 2017. Had the technical information to achieve that completion date been provided, the FIS Report could have been issued and the Estimated Interconnection Facilities Completion Date could have been set.

[39] BC Hydro says it did nothing other than cooperate with the Receiver as it was required to do. It says it always maintained its rights under the EPA, including the right to terminate for failure to achieve the COD by September 30, 2017.

[40] BC Hydro rejects IA's complaints about the shortcomings of the Draft Report and says it does not and cannot guarantee the cost or the requirements for upgrades to facilitate interconnection. Wedgemount, as the independent power producer, has the obligation to fund all of the work and perform the required work. Here, it says the challenges and the risks were properly identified in the Draft Report. The project has never reached the stage where the FIS Report could be issued by BC Hydro or agreed to by Wedgemount. Both parties have to sign off on it before they can enter into the interconnection agreement that would allow interconnection construction to take place.

[41] BC Hydro also relies on s. 8.1(i) and says that this provision governs the ability of Wedgemount to cure a default and specifically excludes the curing of a default under s. 8.1(a) or (f). BC Hydro says that as a result of this provision it has had termination rights under the EPA for some time: since May 12, 2017, as a result of the breach of s. 8.1(f); and since September 30, 2017, as a result of the breach of s. 8.1(a). Pursuant to s. 8.1(i), those breaches cannot be cured.

[42] BC Hydro argues that the plain meaning of the EPA is that Wedgemount was obliged to reach the COD by September 30, 2017, failing which it could exercise its right of termination. While that right has been stayed by the receivership, it has not been extinguished. Any interpretation that would postpone the Target COD date until the FIS Report is finalized is contrary to the plain language. BC Hydro says it would also create an absurdity because the COD date could be postponed indefinitely.

[43] With regard to the discussions about the appropriate design of the interconnection route, BC Hydro says that it has always remained open to the design suggestions made by Wedgemount, before the appointment of the Receiver, and those made by the Receiver after May 12. BC Hydro maintains that it never agreed

to extend the COD date or provide compensation because of the design complications.

[44] In addition, BC Hydro also says that the Receiver cannot rely on statements made by Messrs. Hefflick and Rempel because they were part of the technical interconnections group and not responsible for the Wedgemount EPA. Ms. McKenna was the individual they should have spoken to about EPA issues.

[45] BC Hydro also maintains that estoppel is not available as a remedy in these circumstances. This is because BC Hydro has not acted in any way that is inconsistent with its earlier representations.

[46] Finally, it says the fact that the loss of the EPA would be detrimental to creditors and to other third parties such as the First Nations and the Province is irrelevant to the issue to be decided on this application.

#### **Issues**

[47] My initial concern in considering the arguments of the parties was whether it is possible to resolve these issues on a summary application based on affidavit evidence. It is evident from my outline of the circumstances and the parties' positions that there is contradictory evidence about what was said at the June 6 meeting. There are also contract interpretation issues that would normally be difficult to resolve on a summary application.

[48] In spite of these concerns, I have decided that it is possible to determine the issues before the Court based on the extensive affidavit evidence. I have arrived at this conclusion in part because of the detailed evidence but also because no party took the position that I could not find the necessary facts or that it would be unjust to resolve the issues on this application. With regard to the latter point, there is urgency to this decision that affects all of the parties. Work needs to be done to protect the project from possible damage by the spring runoff. Further, the parties and affected third parties would like a prompt resolution to these issues. I note as well that Madam Justice Fitzpatrick specifically raised the question as to whether this could

be determined on a summary basis at para. 36 of her reasons. She noted the “potential for delay and costs, depending on whether the issue can be decided on a summary basis” (emphasis added). Based on the submissions of the parties, I assume they have accepted that the issues can be decided summarily.

[49] Accordingly, the issue before the Court is whether it can make the declaration sought by the Receiver. Having heard the arguments of the parties, I will approach this question by considering the two termination rights claimed by BC Hydro separately. In other words, I will consider the following issues:

1. Should the Court declare that BC Hydro may not terminate the EPA because of a breach of s. 8.1(f) on the basis of any existing ground or fact?
2. Should the Court declare that BC Hydro may not terminate the EPA because of a breach of s. 8.1(a) on the basis of any existing ground or fact?

[50] For the reasons that follow, I would answer the first question in the negative. In other words, I will not make a declaration that BC Hydro may not issue a notice of termination pursuant to s. 8.1(f). However, I do make the declaration that BC Hydro may not issue a notice of termination because of a breach of s. 8.1(a).

**Issue 1. Should the Court declare that BC Hydro may not terminate the EPA because of a breach of s. 8.1(f) on the basis of any existing ground or fact?**

[51] The arguments of the Receiver and IA on this issue are founded on two factual matters and on one legal proposition. I will describe each of these.

[52] First, they say that prior to the Order, BC Hydro indicated to Wedgemount that it would not rely on the termination provisions so long as Wedgemount continued to work towards completion of the project. In the spring of 2017, BC Hydro was well aware of Wedgemount’s financial difficulties. Wedgemount wanted to know if BC Hydro might terminate the EPA because of the financial difficulties and the



impending September deadline. BC Hydro's employee, Frank Lin stated in an email on March 31, 2017:

I have received feedback re EPA termination and I want to assure you and the lender that as long as we are working towards a solution, we will not terminate the EPA.

[53] Second, the Receiver and IA say that until very recently BC Hydro has not raised the issue of a potential termination as a result of Wedgemount's insolvency.

[54] Third, IA argues that this Court has a broad discretion to indefinitely or permanently stay provisions in contracts that affect contractual rights: *Pope & Talbot Ltd. (Re)*, 2009 BCSC 1552. It says that this Court should permanently stay BC Hydro's right to rely on s. 8.1(f).

[55] I do not accept that the factual matters relied upon are sufficient to create an estoppel. While the assurance granted by Mr. Lin was undoubtedly of assistance to the lender as it was deciding in the spring whether to continue funding Wedgemount, it cannot be said that BC Hydro waived reliance on its contractual rights or that IA relied upon Mr. Lin's comments to its detriment. Indeed, shortly after that assurance, IA commenced this action and appointed the Receiver. This changed the circumstances dramatically. There can be no suggestion that Mr. Lin's comment contemplated or was directed at what might happen in the event of a receivership. Further, the fact that BC Hydro has not purported to rely on the insolvency termination provision is not surprising. Once the Order was issued, the stay was imposed and it could not rely on that provision.

[56] Of equal importance is the fact that BC Hydro, Wedgemount and Travellers Capital Corporation, as agent for Wedgemount's lenders (including IA), entered into a lender consent agreement (the "LCA") that specifically deals with the rights of BC Hydro and the lenders in the event of a termination event.

[57] Section 5 of the LCA provides that BC Hydro:

(b) shall not exercise any right it may have to terminate the EPA until the later of: (i) the date that is 45 days after the date on which the Buyer

delivered to the Agent Default or Termination Notice entitling the Buyer to terminate the EPA; and (ii) the date on which the buyer is entitled to terminate the EPA;

(c) shall not, provided that there is no other Buyer termination event under the EPA, terminate the EPA based on [Wedgemount]... becoming Bankrupt or Insolvent if the Agent is promptly and diligently prosecuting to completion enforcement proceedings under the Agent Security until 30 days after the expiry of any court order period restricting the termination of the EPA.

[58] In other words, the LCA contemplated the event of a termination for insolvency and BC Hydro agreed to defer its rights under the EPA.

[59] When I consider all of these circumstances, I conclude there is no basis on any existing ground or fact to issue the declaration sought by the Receiver.

[60] I am also not prepared at this time to consider the argument that the Court should issue a permanent stay of BC Hydro's right of termination under s. 8.1(f). The cases relied upon by IA in advancing that argument are generally based on the broad discretion that the court exercises in a restructuring situation. At this time there is no proposal or restructuring before the Court.

[61] Further, I note that the stay imposed by the Order is still in place. BC Hydro's application to lift the stay was dismissed. Accordingly, at the present time, BC Hydro is not able to rely on that termination provision. There is no basis or need for this Court to make the order sought by the Receiver with regard to s. 8.1(f).

**Issue 2. Should the Court declare that BC Hydro may not terminate the EPA because of a breach of s. 8.1(a) on the basis of any existing ground or fact?**

[62] The first issue I must consider is whether BC Hydro made the representations alleged by the Receiver. I conclude that those representations were made at the June 6 meeting by Mr. Hefflick and Mr. Rempel. I arrive at this conclusion for the following reasons:

- The evidence of the Receiver's representatives is, as the Receiver argues, clearer, more direct and, ultimately, more credible. Ms. McKie and Mr.

Chambers' assertions are specific and directly on point about the issues they would have been primarily focused on at that meeting.

- By contrast, the contrary evidence of Mr. Hefflick and Mr. Rempel is couched in statements about their usual practice or approach. They both say they do not recall making the statements about the COD deadline and assert that "the interconnections group does not speak to the interpretation of the EPA or its specific terms."
- I resolve this conflict by considering the circumstances and interests of the participants involved in that meeting. The Receiver had been advised in the telephone conference of May 18 of the two-year deadline set out in the EPA. From its perspective, the purpose of the meeting of June 6 was to resolve an unresolved issue arising in part from the apparent ambiguity in the EPA: whether the deadline was impending or would be extended. Without some assurance that the deadline would not be relied upon by BC Hydro, it is very unlikely the Receiver would have embarked on the effort to conclude the project, particularly when they were advised at the meeting that there were technical difficulties that made completion by the end of September problematic.
- I accept that the BC Hydro representatives were focused on the technical issues. However, this does not mean that they did not make the representations; indeed, it provides an explanation for their failure to recall or appreciate the significance of their statements about the COD deadline.
- BC Hydro's assertion that the discussions only involved technical issues is disingenuous. Ms. McKie and Mr. Chambers were not participating as technical representatives. They were new to the project, new to BC Hydro and were representatives of the newly appointed Receiver. BC Hydro's suggestion that it was "generally aware" of the receivership is also disingenuous. The Order dramatically changed the situation and BC Hydro

would have been acutely aware of that. The BC Hydro representatives knew or must have known that the Receiver was attempting to decide what to do with the nearly-complete project.

- I also reject BC Hydro's reliance on s. 10.7 of the EPA as a basis for its position that the statements made by Mr. Hefflick and Mr. Rempel cannot amount to representations made by BC Hydro. They knew they were dealing with the Receiver to resolve issues arising from the EPA as well as the interconnection. The representations were not made solely with respect to an interconnection agreement.
- As I indicated earlier in these reasons, the perceived uncertainty in May 2017 about the impending COD arises from an ambiguity in the EPA. The deadline of two years from the Target COD is set out in s. 8.1(a) but s. 3.9 provides that the deadline may be altered. However, the mechanism for that alteration is not clear and, in the circumstances that existed in June 2017, it was very unclear. The power generating facilities were substantially complete but the interconnection work had run into problems caused in no small part by BC Hydro. The parties had been working to finalize the Estimated Interconnection Facilities Completion Date, but there was no mechanism to make that happen other than to continue the work. The meeting of June 6 was the Receiver's opportunity to find out if the September deadline was firm or would be extended so the work could continue. They received their answer from the BC Hydro representatives.
- The suggestion that the Receiver's representatives misunderstood the comments made or took the statements out of context again ignores the circumstances and the position of the Receiver. BC Hydro made it clear that it would be difficult to finish the work in the fall even though that was the Receiver's intent. BC Hydro cannot rely on an alleged assumption the work would be done before the deadline to explain the statements made by its representatives.

- I also note that the statements made by Ms. Lui at the June 14 meeting are consistent with the statements made to the Receiver on June 6.
- The final point is that it is evident from the material before the Court that BC Hydro decided in the fall of 2017 that it no longer needed the power to be generated by this project. I conclude that its change in policy has coloured its perception of the statements and representations it made to Wedgemount and the Receiver.

[63] Having concluded that BC Hydro made the representations, the next question is whether it is estopped from relying on s. 8.1(a) as a result of those representations. I conclude that it is. In *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50 at 57, Mr. Justice Sopinka, writing for the Court, set out the elements of promissory estoppel:

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position.

[64] Here, there is no question that the Receiver relied on the representations. It is of some significance that throughout, the Receiver was acting in its role as an officer of the court with the obligation to take into account the interests of all parties. As set out above, it spent in excess of \$1.5 million and paid BC Hydro \$105,000 to continue with the work. BC Hydro requested and accepted those funds. The Receiver had no obligation to continue the work. Indeed, its duty was to achieve the best return on the assets of the insolvent party, taking into account all of the other interests. If the Receiver had been advised that BC Hydro was relying on the September deadline (or that it did not need the power generated by the project), it would not have taken those steps.

[65] I conclude that BC Hydro's representation that it would not rely on the September 30, 2017 COD deadline was intended to affect the legal relationship and be acted upon. The Receiver relied on the representation to change its position.

[66] I also reject BC Hydro's argument that it did not act inconsistently with its earlier representations, promises or actions, for the reasons I have given above.

[67] In arriving at this conclusion, I have considered *Erickson v. Jones*, 2008 BCCA 379, in which the court discussed the so-called modern approach to estoppel. The court quoted with approval from *Trethewey-Edge Dyking District v. Coniagas Ranches Ltd.*, 2003 BCCA 197, in which Madam Justice Newbury accepted the following statement in Halsbury's:

... the true test is that the facts must be such that the owner of the legal right has done something beyond mere delay to encourage the wrongdoer to believe that he does not intend to rely on his strict rights, and the wrongdoer must have acted to his prejudice in that belief. The modern approach is a broad one and the tendency is to reject any classification of equitable estoppel into exclusive and defined categories. [Emphasis of Madam Justice Newbury.]

[68] That accurately describes what happened here. BC Hydro's statements allowed the Receiver to believe that BC Hydro either did not have a right to terminate the EPA as of September 30, 2017 or would not rely on such a right. The Receiver in its court-appointed role acted on that significant representation. It was not until late September that BC Hydro changed its position and re-asserted a right of termination because of a failure to meet the September 30, 2017 COD deadline. It would be inequitable to allow BC Hydro to rely on such a termination right.

[69] I should note for completeness that in arriving at this conclusion, I have not determined whether the EPA, properly construed, gives BC Hydro the right to terminate on September 30, 2017, absent the representation. I need not decide that contractual interpretation issue given my decision on the estoppel argument.

[70] In summary, I make the following declaration: BC Hydro may not terminate the EPA because of a breach of s. 8.1(a) on the basis of any existing ground or fact.

[71] That concludes my ruling.

"Butler J."

THIS IS EXHIBIT "Q" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec city, QC, THIS 15 DAY  
OF JUNE, 2018.

Vainqueur Hounsi Notary (M1133)  
A Notary for taking Affidavits within the Province of Quebec



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**File No. 544441/001726**

May 30, 2018

**Delivered by Email**

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Dear Sirs / Mesdames:

**Re: Industrial Alliance Insurance and Financial Services Inc. v.  
Wedgemount Power LP et al, Vancouver Registry Action No. S-174308  
(the "Receivership Proceeding")**

We are writing in connection with the Electricity Purchase Agreement dated March 6, 2015 (the "EPA") between Wedgemount LP ("Wedgemount") and BC Hydro, related to Wedgemount's run of river power project located near Whistler, BC (the "Project").

BC Hydro is disappointed by the May 4 ruling dismissing BC Hydro's application under Section 15 of the Arbitration Act, and by the May 18 ruling in which the Court concluded that BC Hydro was estopped from terminating the EPA under Section 8.1(a) thereof, and is of the view that the Court made errors of fact and law in rendering those judgements. BC Hydro has therefore instructed us to appeal those judgements.

In the meantime, we hereby put the Receiver and IA on notice that:

1. BC Hydro will exercise any termination rights that it has (and that are not estopped) at its earliest opportunity;
2. In the meantime, the Receiver must strictly comply with all terms of the EPA, and verbal statements made by BC Hydro employees will not constitute a representation or waiver in

respect of any term or condition of the EPA, without the express written confirmation thereof from BC Hydro; and

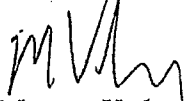
3. If the Receiver proceeds with completion or sale of the Project, it does so at its own risk, and to the extent that BC Hydro continues to work with the Receiver to advance the interconnection of the Project, this is not an indication that BC Hydro has waived or abandoned its intention to terminate.

Notwithstanding all of the foregoing, we are instructed that BC Hydro is prepared to meet with the Receiver in an effort to resolve the issues between our clients, provided that the Receiver and IA agree beforehand that the occurrence of such meetings, and the content, conversations and information exchanged at all those meetings, or as a result of those meetings, will be on a without prejudice basis, and kept strictly confidential as between the parties.

If the Receiver is interested in meeting with representatives of BC Hydro on those terms, we look forward to hearing from you.

Yours Truly,

**Borden Ladner Gervais LLP**

  
Magnus Verbrugge

THIS IS EXHIBIT "R" REFERRED TO IN THE  
AFFIDAVIT OF **STÉFANIE LEDUC #1**, SWORN BEFORE  
ME AT Quebec city, QC, THIS 15 DAY  
OF JUNE, 2018.

Vainky Marin Gibout, notary (H113)  
A Notary for taking Affidavits within the Province of Quebec



Michèle Hay #2  
Sworn: March 27, 2018

No. S174308  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.,  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDINGS LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

**AFFIDAVIT**

I, **MICHÈLE HAY**, Legal Assistant, of 2300 – 550 Burrard Street, Vancouver, British Columbia, **SWEAR THAT:**

1. I am employed with the law firm of Gowling WLG (Canada) LLP, counsel for the Plaintiff, Industrial Alliance Insurance and Financial Services Inc., and as such, I have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be based on information and belief, and where so stated I verily believe them to be true.
2. Attached hereto and marked as Exhibit "A" to this my Affidavit, is a copy of an Article from the Victoria Times Colonist dated March 14, 2018.

3. Attached hereto and marked as Exhibit "B" to this my Affidavit is a copy of an Article from The Vancouver Sun dated February 6, 2018.

**SWORN BEFORE ME** at the City of  
Vancouver, in the Province of British  
Columbia, this 21 day of March, 2018.

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A Commissioner for Affidavits in and for  
the Province of British Columbia

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*Michele Hay*  
**MICHELE HAY**

**COLIN BROUSSON**  
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THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF MICHÈLE HAY, SWORN BEFORE ME  
AT VANCOUVER BC, THIS 27 DAY OF MARCH,  
2018.

A Commissioner for taking Affidavits in British Columbia

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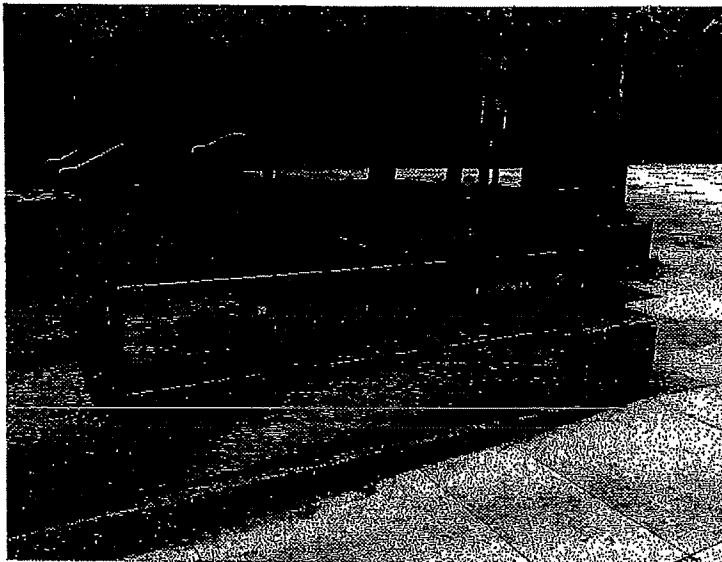
## B.C. Hydro halts new independent power project deals, pending review

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Rob Shaw / Vancouver Sun

MARCH 14, 2018 06:01 PM

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B.C. Hydro says it won't sign any new agreements for independent power projects until it gets the results of a review into its operations by the new NDP government.

B.C. Hydro says it won't sign any new agreements for independent power projects until it gets the results of a review into its operations by the provincial government.

The Crown power corporation announced five small-scale First Nations clean energy projects Wednesday and said it would not finalize any more deals with private energy providers until it receives government direction.

"B.C. Hydro supports the government's decision to take a closer look at energy procurement to ensure it provides the best value for its customers through their review of B.C. Hydro this year," the corporation said in a statement.

"As a result, there are no plans at this time to issue any additional electricity purchase agreements until the review is complete."

Independent power production has been a contentious issue within B.C. Hydro for years.

In opposition, the NDP frequently complained that B.C. Hydro had been forced by government to enter into deals in which it was contractually obligated to buy unnecessarily expensive privately generated power that it did not need.

Private-power proponents countered that such projects provide smaller, less intrusive, clean sources of energy that confer benefits to B.C. Hydro beyond what it earns through its large-scale hydroelectric dams and other power-generating sources.

The NDP government is conducting an operational review after the independent British Columbia Utilities Commission ruled this month that B.C. Hydro could not afford to freeze rates for a year, as the government had wanted.

Energy Minister Michelle Mungall has described B.C. Hydro's finances as "a mess."

The five new First Nations independent power projects are described as small or micro energy deals:

- Tsilhqot'in Solar — a one-megawatt solar power project led by Tsilhqot'in National Government near Hanceville.
- Siwash Creek — a 500-kilowatt hydroelectric project in partnership with Kanaka Bar Indian Band near Boston Bar.
- Sarita River — a five-megawatt hydroelectric project led by Huu-ay-



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ahst First Nation near Bamfield.

- Sukunka Wind — a 15-megawatt wind power project led by the Saulteau First Nations near Chetwynd.
- Zonnebeke Wind — a 15-megawatt wind power project with West Moberly First Nations near Chetwynd.

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THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF MICHÈLE HAY, SWORN BEFORE ME  
AT VANCOUVER BC, THIS 27 DAY OF MARCH,  
2018.



A Commissioner for taking Affidavits in British Columbia

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6

# Innergex becomes biggest seller to B.C. Hydro with \$1.1 billion deal

**DERRICK PENNER**

More from [Derrick Penner](http://vancouver.sun.com/author/dpenner) (HTTP://VANCOUVERSUN.COM/AUTHOR/DEPENNER)

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UNDATED - VANCOUVER, BC - Submitted July 13, 2011 - Alterra's Dokle wind project in northeastern BC. (For Fiona Anderson.) handout [PNG Merlin Archive] VANCOUVER SUN

In a \$1.1 billion deal, Quebec-based Innergex Renewable Energy Inc. has bought Vancouver headquartered Alterra Power Corp. to make itself British Columbia's single largest private-power producer selling electricity to B.C. Hydro.

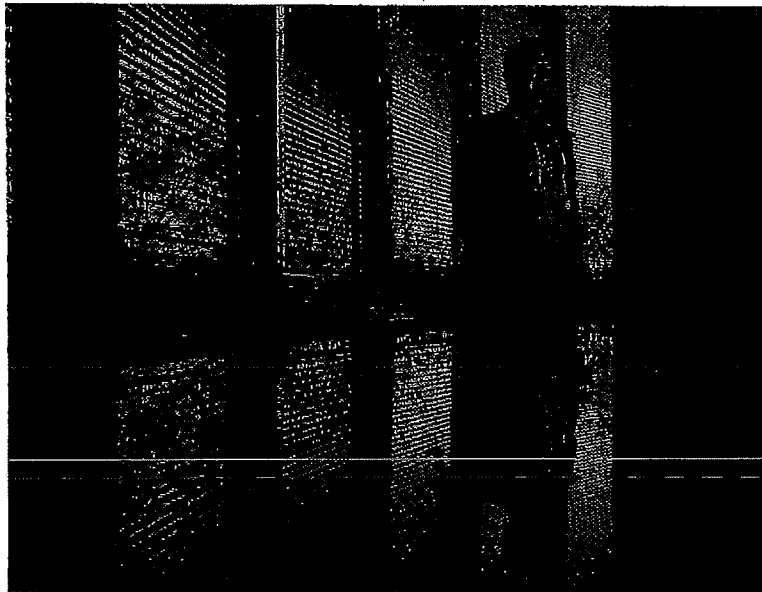
With the completion, Innergex CEO Michel Letellier said the combined company will operate 1,200 megawatts of electric generating capacity in B.C., on average, which is about 10 per cent of B.C. Hydro's overall generating capacity.

"It's nice to be the biggest IPP in B.C.," Letellier said in an interview, "and with this acquisition, it is reaffirming that B.C. is a place we want to be for the long term."

The companies struck the deal last October and on Tuesday announced they had completed the transaction, that creates a company with a combined 22 independent power projects in B.C. supplying power to B.C. Hydro in what has become a \$1-billion-per-year business for the utility.

Innergex holds a stake in 18 run-of-river hydro facilities, many of them held in partnership with First-Nation communities in the province, with its ownership in projects ranging from 18 per cent to 100 per cent.

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Michel Letellier, President & CEO of Innergex at his office, Friday May 02/08. Longueuil company that builds and runs small hydro-electric projects and wind farms. PHIL CARPENTER / THE GAZETTE

With Alterra, Innergex is adding that firm's big run-of-river hydro projects on Toba Inlet on B.C.'s central coast as well as its Dokie wind farm, B.C.'s second-largest wind-driven power facility, to its portfolio.

In an emailed statement, B.C. Hydro spokeswoman Susie Rieder said the utility had no issue with the change in ownership of the three independent power projects that hold contracts with B.C. Hydro.

"Under the terms of these agreements, any time there is an assignment of an electricity purchase agreement arising from an indirect change of control of the seller, B.C. Hydro's consent is required," Rieder wrote. "We were notified of the proposed change of control, undertook due diligence and consented."

For its fiscal 2017, B.C. Hydro documents show that the utility paid entities related to Alterra's facilities \$112.8 million, according to the utility's public reports. Those reports also showed that B.C. Hydro paid at least \$140.7 million to partnerships related to Innergex.

In the bigger picture, Letellier said Innergex was attracted to Alterra's interests in renewable energy projects in the United States, where Innergex sees better growth opportunities and wants to expand.

In B.C., Letellier said Innergex will expand its Vancouver office and the additional facilities it is taking over will allow the firm to use their combined maintenance crews more efficiently.

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IPP's were enabled by former B.C. premier Gordon Campbell's policies on energy self sufficiency, which required B.C. Hydro to commission large blocks of power from private producers.

Critics pointed to IPPs as expensive surplus sources of power built without being reviewed by the B.C. Utilities Commission. The previous government pressured B.C. Hydro to jettison a number of IPPs under development and cut costs on IPP power upon renewal of contracts.

However, Colleen Giroux-Schmidt, Innergex's vice-president of corporate affairs, said the company sees a longer game in providing renewable power to help B.C. meet its goals set under the Paris Climate Accord to reduce greenhouse gas emissions.

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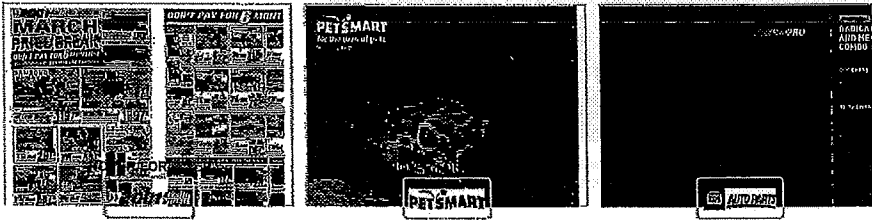
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**Markko Caldo**

Usual crap in this Howe St run rag.

It's actually 485 MW average for \$1B. Note not of word of comment from Keith/Vaughn/Smyth that the acquisition is the same size as Site C for 8% the price.

Note as well that, that annual rate of return is 14% - nice that the taxpayers are financing power projects at credit card rates.

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**Tam Hagen**

Wasn't the 1.1 Billion deal just for Alterra's assets? Which, when ...added... to Innergex's already huge holdings, will make a total average capacity of 485MW, of which the added assets are just a small part?

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**Tam Hagen**

The Toba Inlet project: "Partnership has started construction on the Toba River energy development located 100 km North of Powell River, British Columbia, Canada. Construction services for the 196 MW run of river project is overseen by Peter Klewit Inc. a subsidiary of the Klewit Corporation and will produce 745 GWh/a of electricity and at an approximate cost of \$660,000,000.[6] Once complete it will be the largest private funded renewable energy project in British Columbia history." (Wikipedia)

So 660 million for 745GWH which is an apples to apples measurement, not gwh capacity. And Site C is 5100 GWH estimated production. So 6.85 times more power multiplied by \$660 million makes about 4.5 billion for the same capacity as the Hydro Dam that lasts a century, and can be also used to store power by reverse pumping water into it.

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**Tam Hagen**

If Toba comes in anywhere near budget its 50%, not 8%, and its not likely to come in under budget.

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Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.**

**PLAINTIFF**

**AND:**

**WEDGEMOUNT POWER LIMITED PARTNERSHIP  
WEDGEMOUNT POWER (GP) INC.  
WEDGEMOUNT POWER INC.  
THE EHRHARDT 2011 FAMILY TRUST  
POINTS WEST HYDRO POWER LIMITED PARTNERSHIP  
by its general partner POINTS WEST HYDRO (GP) INC.  
CALAVIA HOLDINGS LTD.  
SWAHEALY HOLDING LIMITED  
BRENT ALLAN HARDY  
DAVID JOHN EHRHARDT  
28165 YUKON INC.  
PARADISE INVESTMENT TRUST  
SUNNY PARADISE INC.**

**DEFENDANTS**

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**AFFIDAVIT**

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**File No. L67090009**

**CDB/msh**

Court of Appeal File No. CA45324

**COURT OF APPEAL**

BETWEEN:

INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL  
SERVICES INC.

RESPONDENT  
(PLAINTIFF)

AND:

WEDGEMOUNT POWER LIMITED PARTNERSHIP,  
WEDGEMOUNT POWER (GP) INC. and  
WEDGEMOUNT POWER INC.

RESPONDENTS  
(DEFENDANT)

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

APPELLANT  
(APPLICANT)

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