

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 6(2012)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994* SNL 1994, Chapter E-5.1 (the
3 “EPCA”) and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the “Act”), as amended, and regulations
5 thereunder;

6
7 **AND**

8
9 **IN THE MATTER OF** an application by Newfoundland
10 and Labrador Hydro for the approval of certain rules and
11 regulations pertaining to the supply of electrical power
12 and energy to one of its industrial customers, Vale
13 Newfoundland & Labrador Limited.

14
15
16 **The Application**

17
18 Newfoundland and Labrador Hydro (“Hydro”) filed an application on December 22, 2011
19 seeking the approval of certain rules and regulations pertaining to the supply of electrical power
20 and energy to one of its industrial customers, Vale Newfoundland & Labrador Limited, pursuant
21 to Sections 71 and 75 of the *Act* (the “Application”).

22
23 In the Application Hydro requested an Order:

- 24
25 “a. *...approving the proposed and attached service agreement as negotiated between Hydro*
26 *and its proposed Island Industrial customer, Vale Newfoundland & Labrador Limited;*
27 *and*
28 b. *“...approving on an interim basis that the rates that apply to the provision of electrical*
29 *service by Hydro to Vale Newfoundland & Labrador Limited be the same as those which*
30 *apply as of this date to its other Island Industrial customers, save and except Teck*
31 *Resources Limited, and that have been approved by the Board, pending a final order to*
32 *be made by the Board varying or confirming that rates determination.”*
33

34 The Application was copied to Newfoundland Power Inc. (“Newfoundland Power”), the
35 Consumer Advocate, Mr. Thomas Johnson, Mr. Dean Porter and Mr. Paul Coxworthy
36 representing Corner Brook Pulp and Paper Limited, North Atlantic Refining Limited and Teck
37 Resources Limited (the “Industrial Customers”), and Mr. Darryl Drover representing Vale
38 Newfoundland & Labrador Limited (“Vale”).

1 On December 23, 2011 the Board requested that the Consumer Advocate, Newfoundland Power,
2 the Industrial Customers and Vale provide comments on the Application to the Board by January
3 10, 2012. By letter dated January 9, 2012 the Board extended the filing date for comments on
4 the Application to January 13, 2012 for the other parties and to January 16, 2012 for Hydro. On
5 January 13, 2012 the deadline was further extended to January 16, 2012 for the parties and to
6 January 17, 2012 for Hydro.

7
8 Information Requests were issued to Hydro by the Board on January 4, 2012, by Newfoundland
9 Power on January 6, 2012, and by the Consumer Advocate on January 10, 2012. Hydro
10 responded to the Board's and to Newfoundland Power's Information Requests on January 10,
11 2012, and to the Consumer Advocate's requests on January 11, 2012 and January 12, 2012.

12
13 Comments on the Application were received from Newfoundland Power and Vale on January 13,
14 2012, from the Consumer Advocate and the Industrial Customers on January 16, 2012 and from
15 Hydro on January 18, 2012.

16 **Background**

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18 In Order No. P.U. 7(2002-2003) the Board approved, *inter alia*, the "Service Agreements" for
19 each of its Island Industrial Customers, which constitute the rules and regulations under which
20 Hydro provides service to them. These Service Agreements were subsequently amended by the
21 Board in Order Nos. P.U. 11(2002-2003), P.U. 12(2002-2003), P.U. 6(2003), P.U. 17(2009),
22 P.U. 6(2011), P.U. 15(2011) and P.U. 4(2012).

23
24
25 In Order No. P. U. 1(2007) the Board approved interim rates and the Service Agreement for the
26 provision of service to Aur Resources Inc. (now "Teck Resources").

27
28 In Order No. P.U. 6(2009) the Board approved on an interim basis the rates, rules and regulations
29 for service by Hydro to its Island industrial Customers.

30
31 In Order No. P.U. 16(2010) the Board approved capital monies to be spent by Hydro, and the
32 final amount of such capital cost to be recovered from Vale Inco (now "Vale"), a new intended
33 Industrial Customer for Hydro, for the construction of a terminal station and the extension of a
34 transmission line to serve the intended customer.

35 **Evidence and Submissions**

36
37
38 Newfoundland Power argues that rates to be approved for Vale should reasonably reflect the cost
39 of serving Vale. According to Newfoundland Power "*If the rate charged to Vale does not*
40 *reasonably reflect costs, then a hazard exists that any shortfall may be recovered from other*
41 *customers, including the customers of Newfoundland Power.*" Newfoundland Power submits that
42 the rate proposed by Hydro for Vale includes an energy charge that does not appear to reflect the
43 cost to serve Vale. The proposed rate also provides for Vale's participation in the current Rate
44 Stabilization Plan ("RSP"). According to Newfoundland Power the current RSP balance credit
45 reflects events that occurred prior to Vale becoming a customer of Hydro and has nothing to do

1 with the cost of serving Vale. Newfoundland Power submits that Hydro's proposals for the
2 establishment of an initial rate for Vale do not reflect the cost of serving Vale.

3
4 In his submission the Consumer Advocate states that this Application has significant
5 repercussions for electricity consumers of the Province. He states that the rate proposed by
6 Hydro for Vale is well below the incremental cost of supply, collecting only about 18% of the
7 fuel costs at Holyrood, resulting in a \$14.9 million shortfall over 2012 and 2013, much of which
8 may be transferred to other electricity consumers in the Province. Since Hydro has not filed a
9 cost of service study there is insufficient information available to determine a cost reflective rate
10 for Vale. The Consumer Advocate also notes that, although Hydro has proposed that Vale have
11 the same rate as Corner Brook Pulp and Paper Limited and North Atlantic Refining Limited, the
12 rate it proposes for Vale is not the same in that it provides for the billing demand for firm power
13 to be calculated based upon the highest demand in that month, as opposed to based upon the
14 highest firm demand in that year, but does not take issue with this approach.

15
16 The Consumer Advocate also points out that Hydro has not proposed waiving the RSP
17 component of the rate proposed for Vale even though the current plan balance was accumulated
18 prior to Vale becoming a customer. Waiving the RSP component would, according to the
19 Consumer Advocate, bring Vale's rate closer to "present costs" but will still collect only about
20 23% of costs. Hydro has also proposed that Vale would share in any future RSP adjustments
21 which, the Consumer Advocate states, "*represents a huge potential windfall for Vale at the*
22 *expense of other customers on the island interconnected system*". The Consumer Advocate
23 agrees with Newfoundland Power's submission that the rate approved for Vale should be a cost-
24 based rate and believes that both the Teck Resources rate and the current rates for Corner Brook
25 Pulp and Paper Limited and North Atlantic Refining Limited fall well short of costs. The
26 Consumer Advocate states that, as it is not possible to determine a fair, cost-based rate for Vale
27 without a cost of service study, then regulatory precedence must play a pivotal role in the
28 Board's decision concerning this Application.

29
30 In terms of the interim rate that should be approved by the Board for Vale the Consumer
31 Advocate proposes the following:

- 32 • As proposed by Hydro, the demand charge should be \$6.68/kW/month (the same base
33 demand charge paid by all other Industrial Customers), but the demand charge should be
34 based on the highest monthly demand rather than the highest annual demand during the
35 "ramp-up period".
- 36 • The specifically-assigned charge should be based on costs as proposed by Hydro.
- 37 • As proposed by Hydro, the base energy charge should be 3.676 cents/kWh.
- 38 • The RSP adjustment in 2012 should be waived; i.e., the RSP adjustment should be set at
39 0.

40
41 The Consumer Advocate also argues that Vale should not share in current RSP balances, but
42 should share in RSP balances from the first time it draws power and that future rates for Vale
43 should reflect results of Board approval following full review and comment by the parties; i.e.,
44 following a general rate application. The Consumer Advocate concludes his submission with the
45 following comments:

1 *“The rate we propose above for power supply to Vale falls well short of the incremental cost of*
2 *supply and, in the opinion of the Consumer Advocate, is unfair to other electricity consumers in*
3 *the Province. However, in the absence of cost of service data and given the very short time frame*
4 *before Vale comes on line, we believe this represents a fairer approach than that proposed by*
5 *Hydro. We suggest that this rate be put in place on an interim basis until such time as the Board*
6 *has been presented evidence that would enable determination of a fair, cost-based rate. The*
7 *Board should consider a rate adjustment following the determination of a cost-based rate, and*
8 *make the adjustment retroactive to the date Vale commences operations in order to avoid*
9 *subsidization of the Vale rate by other electricity consumers in the Province.”*

10
11 The Industrial Customers submit that the record raises issues that go beyond the scope of the
12 Application and which they expect will be addressed in Hydro’s pending General Rate
13 Application. It is the position of the Industrial Customers that the Board’s Order in this
14 Application should be directed to the matter of setting interim rates for Vale, and should not have
15 any effect on issues of cost of service and rate-making affecting all Industrial Customers.
16 According to the Industrial Customers there is also no scope in the present Application to fashion
17 an interim rate for a single customer (Vale) based on cost of service issues as between different
18 classes of customers, as proposed by Newfoundland Power in its submission. The Industrial
19 Customers point out that the adjudication of cost of service issues has been reserved by the
20 Board to general rate applications where the cost of service can be duly tested before the Board.
21 It is also noted that cost of service is only one of several factors to be considered in setting rates.
22 In terms of the relief sought by Hydro in this Application the Industrial Customers point to ss.
23 73(1) of the *Act* which states:

24
25 *“73(1) All tolls, rates and charges shall always, under substantially similar circumstances and*
26 *conditions in respect of service of the same description, be charged equally to all persons and at*
27 *the same rate, and the board may by regulation declare what shall constitute substantially similar*
28 *circumstances and conditions.”*

29
30 According to the Industrial Customers *“...the scope of “persons” that can be considered to be in*
31 *substantially similar circumstances and conditions, in the context of the present Application for*
32 *interim rates, are only the current Industrial Customers and Vale”, and the Board“...should*
33 *direct its mind to achieving as “equal” rates amongst the Industrial Customers as is possible in*
34 *the current circumstances.”* The Industrial Customers point out that, other than the Historical
35 RSP balance component, the rates of current Industrial Customers, which were set based on 2006
36 test year costs, have been in effect frozen since then and are “equal” in that respect. The only
37 difference is the applicability of the Historical RSP balance component. The rates for Corner
38 Brook Pulp and Paper and North Atlantic include this component while the rate for Teck does
39 not, since it was not a customer when the Historical RSP balance accrued. The Industrial
40 Customers state:

41
42 *“The current Industrial Customers accept that Vale is similarly situate to Teck with respect to the*
43 *question of the applicability of the Historical RSP balance component to its rates, and that the*
44 *closest to “equal” rates amongst Industrial Customers that can be achieved in the present*
45 *circumstances would be to order, as submitted by Vale, an interim rate for Vale equal to the*
46 *interim Teck rate, and equal in all respects other than the Historical RSP balance component to*
47 *the interim rates paid by the other Industrial Customers.”*

1 The Industrial Customers further state that it would be arbitrary and unfair to establish a third
2 “interim” Industrial Customer rate for Vale, as proposed by Newfoundland Power. The Industrial
3 Customers submit that *“It would also amount to the establishment of an unequal rate, as any
4 third interim rate for Vale as an Industrial Customer would manifestly not be based on (sic) the
5 2006 forecast costs on which the rates paid by the other Industrial Customers are based.”*
6

7 In its comments Vale submits that it supports the Application with the exception of Clause 9(b)
8 which deals with the rates charged. Vale’s position is that it should receive the same interim rate
9 as that charged to Teck Resources Limited as provided for in Order No. P.U. 1(2007).
10 According to Vale, given the similar circumstances to that of Teck Resources, at this point in
11 time any rate charged to Vale other than the interim rate charged to Teck Resources would be
12 unfair and unjustly discriminatory.

13 In its reply submission Hydro states that a number of issues pertaining to industrial rates are
14 unsettled and will remain so pending a decision as to the Board’s jurisdiction by the Court of
15 Appeal and also the outcome of a general rate application. Hydro agrees that rates should be set
16 based on costs and notes that the existing rates charged to the Industrial Customers under the
17 interim order of the Board were designed originally on cost-based principles. Hydro also points
18 out that it is the norm for customers of utilities in this jurisdiction to be charged the rate that is
19 charged to other customers in their class and that these rates remain in place until changed for
20 that customer class. Hydro argues that, in the present case, *“...there is no perfect rates outcome
21 based upon current cost causality that can be arrived at easily so the Board must use its
22 judgment to determine the better choice between the two existing alternatives or it must devise a
23 new method of setting the rate to be charged Vale.”* It is Hydro’s position that the Board should
24 choose between the two rates that are charged to Industrial Customers and should use its
25 judgment as to which of these rates gives the fairest outcome, but submits that Vale should pay
26 the current interim rates set for Corner Brook Pulp and Paper Limited and North Atlantic
27 Refining.
28

29 **Discussion**

30
31 Hydro is requesting approval of a service agreement and approval of interim rates to be charged
32 to Vale. The Board will deal with each separately.
33

34 Service Agreement

35
36 The service agreement proposed by Hydro is essentially the same as that in place for other
37 Industrial Customers. Hydro notes that there are some differences arising from the need to avoid
38 operational constraints or unexpected demand charges for Vale during its commissioning stages
39 for its processes. Vale requested, in consultations with Hydro, that during the “ramp-up” period
40 while Vale is adding, testing, and commissioning processing facilities, its firm power billing be
41 changed from the standard annual ratcheted demand to a monthly demand determinant.
42 According to Hydro this will allow Vale to use a new process at high capacity and to back-off
43 that new process in a following month while physical or process adjustments or changes are
44 made, without incurring a high demand charge in that following month based on an earlier
45 month’s maximum demand. A similar provision was requested and approved by the Board in

1 Order No. P.U. 1(2006) with respect to Aur Resources (now Teck Resources). No issues were
2 raised by any intervenors with respect to the proposed service agreement for Vale.
3

4 The Board is satisfied that the service agreement for Vale should be approved as proposed.
5 Other than the temporary suspension of the annual demand charge during startup, which is
6 reasonable in the view of the Board, the service agreement is consistent with those in place for
7 other Industrial Customers.
8

9 Rates

10
11 Section 73 of the *Act* states that all customers under substantially similar circumstances and
12 conditions should be charged equal rates. The Board has established that the Island Industrial
13 customers are a class of customers, which means that the rates for this customer class are
14 designed to recover the costs that rate class imposes on the system as a group. In the normal
15 course this means that all customers in that rate class would pay the cost-based rate.
16

17 Rates for Industrial Customers were made interim by the Board in Order No. P.U. 34(2007).
18 These rates were originally based on cost-of-service and, as such, were designed to recover the
19 appropriately allocated costs of providing service to the Industrial Customer class, including
20 amounts related to the RSP. These rates continue to be interim.
21

22 All parties, including Hydro, acknowledge that the present rates for all Industrial Customers,
23 including Teck Resources, do not recover the costs of providing service. Hydro's position in this
24 Application is that Teck Resources should be paying the same rates as other Island Industrial
25 Customers. This was the basis of applications filed with the Board on December 11, 2008 and
26 June 30, 2009, which were not approved. Hydro does not agree that the Teck Resources rate
27 should be extended to other customers.
28

29 The Board agrees that rates should be designed, wherever possible, on a cost-of-service
30 approach. However, in the present circumstances there is no basis for the Board to determine the
31 appropriate cost-based rate for Vale. The Board acknowledges the position of Newfoundland
32 Power and the Consumer Advocate with respect to the appropriate rate for Vale but does not
33 accept that the Board should establish a new rate at this time that is different than either the Teck
34 Resources interim rate, which does not include the RSP Historical Plan balance, or the interim
35 rate for Corner Brook Pulp and Paper Limited and North Atlantic Refining Limited.
36

37 The Board notes that, at present, neither of the existing interim Industrial rates recovers the cost
38 of providing service. There is also no proposed rate before the Board which is a true cost-based
39 rate. The Board is satisfied that the Teck Resources rate would be most representative of the
40 conditions under which Hydro will be providing service to Vale, as this rate was established
41 under similar circumstances. The Board will make no determination at this time with respect to
42 the participation of Vale in the RSP, except in respect of the interim rate approval herein.

1 **IT IS THEREFORE ORDERED THAT:**
2

- 3 1. The Service Agreement for Vale Newfoundland & Labrador Limited as per Schedule "A"
4 is approved.
5
6 2. The rates that apply as of this date to Teck Resources Limited, pending a final Order to
7 be made by the Board varying or confirming that rates determination, shall apply to
8 electrical service provided by Hydro to Vale Newfoundland & Labrador Limited,
9 effective from the date that Vale Newfoundland & Labrador Limited first begins
10 receiving power under the approved Service Agreement.
11
12 3. Hydro shall file an interim rate schedule reflecting the rates approved in this Order and
13 indicating the effective date.
14
15 4. Hydro shall pay all expenses of the Board arising from this Application.

DATED at St. John's, Newfoundland and Labrador, this 9th day of March, 2012.

Darlene Whalen, P.Eng.
Vice-Chair

Dwanda Newman, LL.B.
Commissioner

James Oxford
Commissioner

G. Cheryl Blundon
Board Secretary

Schedule A

ORDER No. P.U. 6(2012)

Service Agreement

ISSUED: MARCH 9, 2012

Power Service Agreement

THIS SERVICE AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador on the day of .

BETWEEN:

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation and an agent of the Crown constituted by statute, renamed and continued by the Hydro Corporation Act, 2007, Statutes of Newfoundland and Labrador 2007, Chapter H-17, (hereinafter called "Hydro") of the first part;

AND

VALE NEWFOUNDLAND & LABRADOR LIMITED, a company organized under the laws of the Province of Newfoundland and Labrador (hereinafter called the "Customer") of the second part.

WHEREAS Hydro has agreed to sell electrical Power and Energy to the Customer and the Customer has agreed to purchase the same from Hydro according to the rates set by the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador and by the terms of this Agreement;

THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

ARTICLE 1
INTERPRETATION

- 1.01 In this Agreement, including the recitals, unless the context otherwise requires,
- (a) "**Amount of Power on Order**" means the Power contracted for in accordance with Article 2;
 - (b) "**Billing Demand**" means the components of the Customer's monthly Power consumption for which Demand charges apply as determined in accordance with Articles 3 and 10;
 - (c) "**Board**" means the Board of Commissioners of Public Utilities for Newfoundland and Labrador;

- (d) **“Construction Period”** means the time required for construction, commissioning and other activity of the Customer’s facilities at Long Harbour to the commencement of the Ramp-Up Period;
- (e) **“Demand”** means the amount of Power averaged over each consecutive period of fifteen minutes duration, commencing on the hour and ending each fifteen minute period thereafter and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (f) **“Electricity”** includes Power and Energy;
- (g) **“Energy”** means the amount of electricity delivered in a given period of time and measured in kilowatt hours;
- (h) **“Firm Energy”** means the Energy associated with the Firm Power;
- (i) **“Firm Power”** means, except as varied by paragraph 3.02(a) and subject to Clause 3.03, the Demand normally associated with the Amount of Power on Order;
- (j) **“Hydro Delivery Points”** means the 13,800 volt load side bushings of the 230,000/13,800 volt transformers at the VBN Terminal Station located near the Customer's premises, or at such other location or locations that Hydro and the Customer mutually agree in writing;
- (k) **“Interruptible Demand”** means, that part of a Customer’s Demand which exceeds its Power on Order, which may be interrupted, in whole or in part, at the discretion of Hydro, and which is supplied to the Customer in accordance with Clause 5.01;
- (l) **“Interruptible Energy”** means the Energy associated with Interruptible Demand determined as that Energy taken in each fifteen-minute interval in which Interruptible Demand is taken and it shall be deemed that in such cases Firm Energy is taken at 100 per cent load factor;
- (m) **“Maximum Demand”** means the greatest amount of Power during the appropriate Month or part of a Month, as the case may be, averaged over each consecutive period of fifteen minutes duration commencing on the hour and ending each fifteen minute period thereafter , and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (n) **“Month”** means a calendar month;

- (o) **“Non-Firm Energy”** means Energy associated with Interruptible Demand;
 - (p) **“Power”** means the amount of electrical power delivered at any time and measured in kilowatts;
 - (q) **“Project Schedule”** means a schedule provided to Hydro by the Customer which states the dates of commencement and durations of Construction Period and Ramp-up activities ;
 - (r) **“Province”** means the the Province of Newfoundland and Labrador;
 - (s) **“Ramp-Up Period”** means the time required from the start of processing of ore concentrate to the time that the Customer’s Long Harbour facilities meets its full capacity as determined in accordance with Article 2.06 (c) and (f).
 - (t) **“Rate Schedules”** means the schedules of rates that are approved by the Board for the sale and purchase of Power and Energy;
 - (u) **“Secondary Energy”** means that Energy Hydro is willing to sell, according to Clause 4.01, at a rate approved by the Board and which, if not sold, would be surplus to its needs and likely to result in spillage at one or more of Hydro’s hydraulic generating stations;
 - (v) **“Specifically Assigned Charge”** means the payment made by the Customer in each Month, calculated according to a method approved by the Board, for the use of Specifically Assigned Plant;
 - (w) **“Specifically Assigned Plant”** means that equipment and those facilities which are owned by Hydro and used to serve the Customer only;
- 1.02 Hydro and the Customer agree that they are bound by this Agreement and by the agreements and covenants contained in the Rates Schedules. In the event of a conflict between this Agreement and the Rates Schedules, the Rates Schedules shall have priority.
- 1.03 In this Agreement all references to dollar amounts and all references to any other money amounts are, unless specifically otherwise provided, expressed in terms of coin or currency of Canada which at the time of payment or determination shall be legal tender herein for the payment of public and private debts.
- 1.04 Words in this Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.

- 1.05 Where a word is defined anywhere in this Agreement, other parts of speech and tenses of the same word have corresponding meanings.
- 1.06 Wherever in this Agreement a number of days is prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.
- 1.07 The headings of all the articles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.08 Any reference in this Agreement to an Article, a Clause, a subclause or a paragraph shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause or a paragraph of this Agreement.
- 1.09 This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.

ARTICLE 2
AMOUNT OF FIRM POWER

- 2.01 Subject to this Agreement, Hydro agrees to deliver to the Customer and the Customer agrees to purchase from Hydro the Amount of Power on Order.
- 2.02 Subject to paragraph 2.06 (d) the Customer shall declare to Hydro in writing, not later than October 1 of each calendar year, its Amount of Power on Order for the following calendar year. Such declarations may provide for an Amount of Power on Order to apply throughout the calendar year, or may provide for one or more successive increases at specified times during the calendar year, but subject to Clause 2.05, may not provide for a decrease other than a decrease to take effect on January 1st of that following calendar year. The Amount of Power on Order shall in no event be greater than 100,000 kilowatts.
- 2.03 Hydro will supply all future Power requirements requested by the Customer additional to the 100,000 kilowatts provided, however, that the Customer's requests for such additional Power be made upon adequate notice in order that Hydro may make suitable extensions or additions to its system.
- 2.04 If Hydro cannot fully comply with a declaration of Amount of Power on Order made in accordance with Article 2.02 it will, as soon as practicable and in any event not later than November 1 of the year in which the declaration was made, advise the Customer of the extent to which it can comply. If more than one industrial customer requests an increase in their Amount of Power on Order and Hydro cannot in its judgment provide enough Power to satisfy all of the timely requests it has received, Hydro will offer additional Amounts of Power on Order to the industrial customers who made those requests in such amounts as are

prorated in accordance to the quantity of additional Amounts of Power on Order in the timely requests it has received from those customers.

- 2.05 If the Customer obtains a new source of electric generation such that it can decrease or eliminate the amount of Power it requires from Hydro, then, provided the Customer gives Hydro thirty-six Month's written notice of the reduction, the Customer may reduce or eliminate its Amount of Power on Order and its Billing Demand effective on the date that the new generation is to go into service as indicated in that written notice.
- 2.06 (a) At the commencement of this Agreement, the Customer shall provide to Hydro a Project Schedule which includes the dates for the Construction Period and the Ramp-Up Period for the purposes of this Agreement. Updated Project Schedules shall be provided to Hydro on a quarterly basis commencing January 1, 2012.
- (b) The Construction Period shall commence from the date of implementation of this Agreement and shall end at the commencement of the Ramp-Up Period as described in Clause 2.06(c). During this period, the Customer shall declare the Amount of Power on Order in the manner set forth in Clause 2.02.
- (c) The Ramp-Up Period shall be deemed to commence at the earlier of:
- (i) The Customer's written declaration to Hydro that the Ramp-Up Period has commenced, or
 - (ii) The introduction of ore concentrate into the Customer's processes at its Long Harbour facility.
- (d) During the Ramp-Up Period the Customer shall declare the Amount of Power on Order for the following Month by giving written notice to that effect to Hydro's Energy Control Center not later than noon of the first working day of each Month. Such declarations shall provide for an Amount of Power on Order that shall apply throughout the following Month. As of the commencement of the Ramp-Up Period, the Amount of Power on Order shall in no event be less than 5,000 kilowatts.
- (e) During the Ramp-Up Period, the Customer's Billing Demand for Firm Power shall be the greater of the Customer's Maximum Demand in that Month less its maximum Interruptible Demand in that Month, and the Amount of Power on Order declared under paragraph (d) of this Clause. In the event that the Customer does not declare an Amount of Power on Order for any Month pursuant to this clause, then, subject to paragraph (d) of this clause, the Billing Demand for Firm Power for that Month shall be the Customer's Maximum Demand in that Month less its maximum Interruptible Demand in that Month except that as of the

commencement of the Ramp-Up Period, in no event shall the Billing Demand for Firm Power be less than 5,000 kilowatts.

- (f) The Ramp-Up Period shall be deemed to end at the earlier of:
- (i) The Customer's written declaration to Hydro that the Ramp-Up Period has ended, or
 - (ii) The Customer's Billing Demand, subject to Clause 10.02(11), exceeds 78,000 kilowatts for a period of three (3) consecutive Months, or
 - (iii) Thirty-six (36) Months following the date of commencement of the Ramp-Up Period as outlined in paragraph (c).

2.07 During the Ramp-Up Period, not later than noon of the first working day of the last month of every quarter, the Customer shall provide forecasts of monthly peak demand for the following quarter by giving written notice to that effect to Hydro's Energy Control Centre.

ARTICLE 3

PURCHASE AND SALE OF POWER AND ENERGY

3.01 The sale and purchase of Power and Energy shall be at such prices and upon such terms and conditions as are set out in the Rate Schedules and this Agreement.

3.02 Subject to Clauses 2.05, 2.06 and Article 10, the Customer's Billing Demands, which shall each be charged at the applicable rates as approved by the Board, shall comprise the following:

(a) the Billing Demand for Firm Power, which in each Month shall be either

(i) the Amount of Power on Order,

(ii) the lesser of 75% of the Amount of Power on Order for the prior calendar year and, the Amount of Power on Order for the prior calendar year less 20,000 kW,

or

(iii) the Maximum Demand taken up to that time in that calendar year less any Interruptible Demand, if applicable,

whichever is greatest; and

(b) the maximum Interruptible Demand for that Month.

- 3.03 Notwithstanding that the Billing Demand for Firm Power shall have, by operation of Clause 3.02, exceeded the Power on Order declared for that calendar year in accordance with Article 2, Hydro is not obliged to provide any amount of Power in excess of the Power on Order.
- 3.04 Notwithstanding anything to the contrary herein, the Customer shall pay in each Month its Specifically Assigned Charge, applicable Demand charges, and Energy charges. Its Energy charges shall comprise its Firm Energy and Non-Firm Energy taken in that Month.

ARTICLE 4 **SECONDARY ENERGY**

- 4.01 If Hydro has surplus Energy capability and the Customer desires to purchase it, and provided that appropriate metering is in place, Hydro will deliver Secondary Energy to the Customer for use in its electric boilers. The quantity and availability of Secondary Energy shall be determined by Hydro in its sole discretion, however, once declared to be available, Secondary Energy shall remain available for a period of not less than 72 hours. The rate to be paid for Secondary Energy shall be determined by the Board.

ARTICLE 5 **INTERRUPTIBLE DEMAND**

- 5.01 The Customer may in any Month take an amount of Interruptible Demand and Energy in addition to the Amount of Power of Order which shall be billed at the Non-Firm Demand and Energy rates approved by the Board. Provided the Amount of Power on Order is equal to or greater than 20,000 kW, the amount of Interruptible Demand and Energy available shall be the greater of 10% of the Amount of Power on Order and 5,000 kW. If the Amount of Power on Order is less than 20,000 kW, the Amount of Interruptible Demand and Energy available shall be 25% of the Amount of Power on Order. If Hydro is willing and able to serve the Customer's Interruptible Demand, then the following shall apply:
- (a) The Customer shall, if practicable, make a prior request for, or otherwise as soon as practicable notify Hydro of its requirement, specifying the amount and duration of its Interruptible Demand requirements. Such request or notification may be made by telephone and confirmed by facsimile transmission to Hydro's officials at its Energy Control Centre, who shall advise the Customer if such Interruptible Power will be made available.

- (b) If serving the Customer's Interruptible Demand would result in Hydro generating from, or increasing or prolonging generation from a standby or emergency energy source, then Hydro will so advise the Customer. If the Customer wishes to purchase Interruptible Demand and Energy at such a time or times, that Power and Energy shall be charged for as calculated by the method or formula approved by the Board.
- (c) Notwithstanding anything contrary herein, if service of the Interruptible Demand is disrupted by Hydro or is curtailed by the Customer as a decision to reject the more expensive standby or emergency energy source (which for the purposes of this clause shall be deemed to be a reduction of Hydro of Interruptible Demand), the Billing Demand for Interruptible Power for the Month shall be determined as follows:
- (i) If there is a total interruption of Interruptible Demand and Interruptible Energy by Hydro for a whole Month, the Customer shall not be required to make any payment for Interruptible Demand and Energy that Month.
- (ii) If there is a total interruption of Interruptible Demand for part of a Month, the Billing Demand for that Interruptible Demand for that Month shall be reduced by a number of kilowatts bearing the same ratio to that Billing Demand as the number of hours during which the interruption occurs bears to the total number of hours in that Month.
- (iii) If Hydro requires a reduction of Interruptible Demand for a whole Month, then, the reduced Billing Demand for Interruptible Demand for that Month shall be substituted for the Billing Demand for Interruptible Demand for the same Month, when determining the price of Power and Energy for that Month.
- (iv) If Hydro requires the reduction of Interruptible Demand for part of a Month, then, subject to subparagraph (v) of this paragraph 4.01(c), there shall, when determining the price of Interruptible Power and Energy for the Months in which the reduction occurs, be substituted for the Billing Demand for Interruptible Demand for that Month, the number of kilowatts obtained by adding
- (a) the reduced Billing Demand for Interruptible Demand for the part of the month during which the reduction was made, averaged over the whole of that Month;

to

(b) the Billing Demand for Interruptible Demand for the part of the Month during which no reduction was made, averaged over the whole of that Month.

(v) In any case arising under subparagraph (iii) or subparagraph (iv) of this paragraph 4.01(c), where a reduction of Interruptible Demand is made for a whole Month or part thereof and the Maximum Demand for Interruptible Demand over that same period is greater than the reduced Billing Demand for Interruptible Demand for that same period, then, instead of that reduced Billing Demand, that Maximum Demand for such period shall be substituted for the Billing Demand for Interruptible Demand for that period when determining the price of Power and Energy for the Month in which the reduction occurs, but, if in any period during which a reduction occurs, the Maximum Demand for Interruptible Demand is less than the reduced Billing Demand for Interruptible Demand, no account shall be taken of that Maximum Demand.

ARTICLE 6

CHARACTERISTICS OF POWER SERVICE AND POINTS OF DELIVERY

- 6.01 The Power and Energy to be supplied under this Agreement will be delivered to the Customer at three (3) phase alternating current having a normal frequency of sixty (60) cycles and at a voltage of approximately 13,800 volts and delivery will be made at the Hydro Delivery Points.
- 6.02 Hydro will exercise its best endeavours to limit variation from the normal frequency and voltage to tolerable values.

ARTICLE 7

POWER FACTOR

- 7.01 The Customer agrees to take and use the Power contracted for in this Agreement at a power factor of not less than ninety percent (90%) lagging at the point of delivery specified in this Agreement.
- 7.02 Should the power factor be consistently less than ninety percent (90%) lagging, the Customer, upon written notification from Hydro, agrees to install suitable corrective equipment to bring the power factor to a minimum of ninety percent (90%) lagging.

- 7.03 If the Customer should install static condensers to correct the lagging power factor, the equipment shall be so installed that it can be completely disconnected at the request of Hydro.

ARTICLE 8
METERING

- 8.01 The metering equipment and meters to register the amount of Demand and Energy to be taken by the Customer under this Agreement shall be furnished by Hydro and if required to be located on the Customer's premises will be installed by Hydro in a suitable place satisfactory to Hydro and provided by the Customer, and in such manner as to register accurately the total amount of Demand and Energy taken by the Customer under this Agreement.
- 8.02 If the metering is installed on the low voltage side of transformers that are Specifically Assigned Plant or owned by the Customer, an appropriate adjustment will be made to account for losses in the transformers.
- 8.03 To determine the Customer's monthly Demand and Energy amounts for billing, the metered quantities shall be adjusted to net out the consumption of another Hydro customer connected and metered separately at the Customer's 13,800 volt bus. Transformer losses, as outlined in Clause 8.02, will be assigned to the other Hydro customer on a prorated basis.
- 8.04 The Customer shall have the right, at its own expense, to install, equip and maintain check meters adjacent to the meters of Hydro.
- 8.05 Authorized employees of Hydro shall have the right of access to all such meters at all reasonable times for the purpose of reading, inspecting, testing, repairing or replacing them. Should any meter fail to register accurately, Hydro may charge for the Demand and Energy supplied during the period when the registration was inaccurate, either,
- (a) on the basis of the amount of Demand and Energy charged for
 - (i) during the corresponding term immediately succeeding or preceding the period of alleged inaccurate registration, or
 - (ii) during the corresponding term in the previous calendar year; or
 - (b) on the basis of the amount of Demand and Energy supplied as established by available evidence,

whichever basis appears most fair and accurate.

ARTICLE 9
LIABILITY FOR SERVICE

- 9.01 Subject to the provisions of the Rate Schedules and this Agreement, the Power and Energy herein contracted for will be made available for use by the Customer during twenty-four (24) hours on each and every day of the term of this Agreement.
- 9.02 The obligation of Hydro to furnish Power and Energy under this Agreement is expressly subject to all accidents or causes that may occur at any time and affect the generation or transmission of such Power and Energy, and in any such event, but subject to Clause 9.03, Hydro shall have the right in its discretion to reduce or, if necessary, to interrupt the supply of Power and Energy under this Agreement.
- 9.03 Hydro agrees to take all reasonable precautions to prevent any reduction or interruption of the supply of Power and Energy or any variation in the frequency or voltage of such supply, and whenever any such reduction, interruption or variation occurs, Hydro shall use all reasonable diligence to restore its service promptly.
- 9.04 (1) Subject to Clause 9.04(2) hereof, Hydro shall be liable for and in respect of only that direct loss or damage to the physical property of the Customer caused by any negligent act or omission of Hydro its servants or agents. Customer agrees that for the purpose of this Clause 9.04, "direct loss or damage to the physical property of the Customer" shall not be construed to include damages for inconvenience, mental anguish, loss of profits, loss of earnings or any other indirect or consequential damages or losses.
- 9.04 (2) Hydro's liability under sub-clause 9.04(1) applies only when the direct loss or damage to the Customer arising from a single occurrence exceeds the sum of \$100,000.00. In no event shall the liability of Hydro exceed the sum of \$1,000,000.00 for any single occurrence.
- 9.04 (3) Customer further agrees that any damages to which it may be entitled pursuant to clause 9.04(1) shall be reduced to reflect the extent to which such losses or damages could reasonably have been reduced if the Customer had taken reasonable protective measures.
- 9.05 Hydro shall have the right, temporarily to interrupt its service hereunder in order to maintain or make necessary changes to its system, but, except in cases of emergency or accident, the service shall be interrupted only at such time or times as will be least inconvenient to the Customer, and Hydro shall use all reasonable diligence to complete promptly such repairs or necessary changes.

ARTICLE 10
REDUCED BILLING DEMAND

- 10.01 If at any time during the term of this Agreement the operation of the works of either party is suspended in whole or in part by reason of war, rebellion, civil disturbance, strikes, serious epidemics, fire or other fortuitous event, then, such party will not be liable to the other party to purchase or, as the case may be, to supply Power and Energy hereunder until the cause of such suspension has been removed and in every such event, the party whose operations are so suspended shall use all reasonable diligence to remove the cause of the suspension.
- 10.02 (1) For the purposes of this Clause 10.02 the expression “reduced Billing Demand” means the number of kilowatts to which the Billing Demand is reduced in any of the circumstances referred to in sub-clauses (2) or (3) of this Clause 10.02.
- (2) If the Customer is prevented from taking an amount of Power because of a suspension of its operations due to a reason listed in Clause 10.01, and any such interruption or reduction lasts for one hour or longer, then Hydro shall, on the request of the Customer, allow a proportionate reduction of the Billing Demand as calculated pursuant to sub-clauses (4) through (9) of this Clause 10.02, provided however that, except for reduced Billing Demands that occur pursuant to paragraphs 10.02(4)(b) or (c), in no such case shall the Billing Demand be reduced below 0.85 of the Amount of Power on Order unless Hydro is unable to deliver Power and Energy in accordance with this Agreement.
- (3) If the supply of Power and Energy by Hydro is interrupted or reduced for any of the reasons referred to in Clause 9.02, 9.05 or 10.01, and any such interruption or reduction lasts for one hour or longer, then Hydro shall, on the request of the Customer, allow a proportionate reduction of the payment as calculated pursuant to sub-clauses (4) through (9) of this Clause 10.02.
- (4) For those times when the Customer is prevented from taking an amount of Power because the Customer’s Long Harbour facility operations or its mining and milling operations in Labrador are suspended or curtailed due to a strike by the employees of the Customer, the Customer’s Billing Demand shall be calculated as follows:
- (a) for the first 15 days of the strike and for that portion of the strike which exceeds 120 days, the Billing Demand shall be determined in the manner set out in sub-clauses (5) to (9) of this clause 10.02;
- (b) for those whole Months during the period that commences following the first 15 days of the strike and ends not later than 120

days after the strike began, the reduced Billing Demand shall be the Customer's Maximum Demand in those Months;

- (c) for those part Months that comprise periods that include;
 - (i) a period that commences following the first 15 days of the strike and ends not later than 120 days after the strike began,

together with one or both of

- (ii) a period when the Customer is not affected by a strike or other suspension of its operations due to a reason listed in Clause 10.01,

and

- (iii) a period where a strike has continued in excess of 120 days, or where the Customer is affected by any other suspension of its operations due to a reason listed in Clause 10.01,

the Customer's Billing Demand shall be determined by adding

- (iv) the Maximum Demand for the part of the Month described in subparagraph (i) averaged over the whole of the Month,
- (v) the greater of the Maximum Demand for Firm Power and the Amount of Power on Order for the part of the Month described in subparagraph (ii), if any, averaged over the whole of the Month

and

- (vi) the reduced Billing Demand applicable to the period described in subparagraph (iii) averaged over the whole of the Month.

- (5) If there is a total interruption of the supply of Power and Energy by Hydro for a whole Month, the Customer shall not be required to make any payment for that Month.
- (6) If there is a total interruption of Power for part of a Month, the Billing Demand for that Month shall be reduced by a number of kilowatts bearing the same ratio to that Billing Demand as the number of hours during

which the interruption occurs bears to the total number of hours in that Month.

- (7) If the reduction of Power is made for a whole Month, then, subject to clause (9) of this Clause 10.02, the reduced Billing Demand for that Month shall be substituted for the Billing Demand for the same Month, when determining the price of Power and Energy for that Month.
- (8) If the reduction of Power is made for part of a Month, then, subject to sub-clause (9) of this Clause 10.02, there shall, when determining the price of Power and Energy for the Months in which the reduction occurs, be substituted for the Billing Demand for that Month, the number of kilowatts obtained by adding
 - (a) the reduced Billing Demand for the part of the month during which the reduction was made, averaged over the whole of that Month;to
 - (b) the Billing Demand for the part of the Month during which no reduction was made, averaged over the whole of that Month.
- (9) In any case arising under sub-clause (7) or sub-clause (8) of this Clause 10.02, where a reduction of Power is made for a whole Month or part thereof and the Maximum Demand for that same period is greater than the reduced Billing Demand for that same period, then, instead of the reduced Billing Demand, the Maximum Demand for such period shall be substituted for the Billing Demand for that period when determining the price of Power and Energy for the Month in which the reduction occurs, but, if in any period during which a reduction occurs, the Maximum Demand is less than the reduced Billing Demand no account shall be taken of that Maximum Demand.
- (10) Where a Billing Demand, a reduced Billing Demand or a Maximum Demand for a part of a Month is to be averaged for the whole of that Month in accordance with sub-clause (8) of this Clause 10.02, the averaging shall be done by dividing the Billing Demand, the reduced Billing Demand or the Maximum Demand, as the case may be, by the total number of hours in the whole of that Month and multiplying the result by the number of hours to which the Billing Demand, the reduced Billing Demand or the Maximum Demand relates.

- (11) In addition to the reductions in Billing Demand that may be made in accordance with this Article 10, Hydro may, in its sole judgment and discretion, make other Billing Demand adjustments from time to time to decrease the Customer's bill to reflect unusual or unanticipated conditions or to facilitate the testing of equipment or processes by the Customer.

ARTICLE 11
CONSTRUCTION OR INSTALLATION OF
TRANSMISSION LINES OR APPARATUS

- 11.01 For the consideration aforesaid, the Customer hereby grants to Hydro the right to construct transmission lines and accessory apparatus on locations approved by the Customer on, under or over the property of the Customer for the purpose of serving the Customer and other customers of Hydro operating at the Customer's Long Harbour facility, together with the right of access to the property of the Customer at all times for the construction of such lines and apparatus and for the repair, maintenance and removal thereof, provided that nothing in this clause shall entitle Hydro to construct transmission lines and accessory apparatus on or over the Customer's property if such transmission lines are not directly connected with the Customer's premises or some part thereof.
- 11.02 The Customer shall not erect any building, structure or object on or over any right-of-way referred to in Clause 11.01 without the written approval of Hydro, but subject to that limitation the Customer shall be entitled to make fair and reasonable use of all lands subjected to the said right-of-way.
- 11.03 Any changes that the Customer may request Hydro to make in the location of any lines or apparatus constructed pursuant to Clause 11.01 shall be made by Hydro, but the Customer shall bear the expense of any such changes to the extent that such lines or apparatus supply Power to the Customer.
- 11.04 All transmission lines and apparatus of Hydro furnished and installed by it on the Customer's premises shall remain the property of Hydro, and Hydro shall be entitled to remove such transmission lines and apparatus on the expiry or termination of this Agreement.
- 11.05 For the purpose of using the power service of Hydro, the Customer shall install properly designed and suitable apparatus in accordance with good engineering practice, and shall at all times operate and maintain such apparatus so as to avoid

causing any undue disturbance on the system of Hydro, and so that the current shall be approximately equal on all three of its phases.

- 11.06 If, at any time, the unbalance in current between any two of its phases is, in the judgment of Hydro, excessive to a degree that the power supply system of Hydro and/or the electrical equipment of any other customer of Hydro is adversely affected, then it shall be the responsibility of the Customer to take such reasonable remedial measures as may be necessary to reduce the unbalance to an acceptable value.
- 11.07 If, at any time during the term of this Agreement, Hydro desires to improve the continuity of power service to any of its customers, Hydro and the Customer will co-operate and use their best endeavours to carry out the improvements either by changes to existing equipment or additions to the original installations of either Hydro or the Customer.
- 11.08 The Customer shall not proceed with the construction of or major alterations of its equipment associated with any terminal substation or structures associated with any terminal substation at which Power and Energy is being delivered until Hydro is satisfied that the proposals for such construction or alteration are in accordance with good engineering practice and the laws and regulations of the Province, provided that any examination of the Customer's proposals by Hydro shall not render Hydro responsible in any way for the construction or alteration proposed, even if electrical connection is made by Hydro, whether or not any changes suggested by Hydro shall have been made by the Customer.

ARTICLE 12 **RESPONSIBILITY FOR DAMAGES**

- 12.01 Beyond the point of delivery, the Customer shall indemnify and hold Hydro harmless with respect to any and all claims that may be made for injuries or damages to persons or property caused in any manner by electric current or by the presence or use on the Customer's premises of electric circuits or apparatus, whether owned by Hydro or by the Customer, unless and to the extent that such injuries or damages are caused by negligence on the part of the employees of Hydro.
- 12.02 Up to the point of delivery, Hydro shall indemnify and hold the Customer harmless with respect to any and all claims that may be made for injuries or damages to persons or property caused in any manner by electric current or by the

presence or use on the Customer's premises of electric circuits or apparatus owned by Hydro and resulting from or arising out of the negligence of Hydro's employees or other persons for whom Hydro would in law be liable, unless and to the extent that such injuries or damages are caused by negligence on the part of the employees of the Customer.

- 12.03 If any of the transmission lines or apparatus installed by Hydro on the Customer's premises should be destroyed or damaged by the negligence of the Customer, its servants or agents, the Customer shall reimburse Hydro for the cost of their replacement or repair.

ARTICLE 13

PAYMENT OF ACCOUNTS AND NOTICE OF CLAIMS OF CUSTOMER

- 13.01 Hydro will render its accounts monthly and the Customer shall, within twenty (20) days after the date of rendering any such account, make payment in lawful money of Canada at the office of Hydro in St. John's, Newfoundland, or in such other place in the said Province as Hydro may designate, without deduction for any claim or counterclaim which the Customer may have to claim to have against Hydro arising under this Agreement or otherwise.
- 13.02 All amounts in arrears after the expiration of the period of twenty (20) days referred to in Clause 13.01 shall bear interest at the rate of one and one-half (1-1/2%) percent per Month.
- 13.03 If the Customer is in default for more than thirty (30) days in paying any amount due Hydro under this Agreement, then, without prejudice to its other recourses and without liability therefor, Hydro shall, upon ten (10) days written notice to the Customer of its intention so to do, be entitled to suspend the supply of Power and Energy to the Customer until the said amount is paid, and if the supply is so suspended, the Customer shall not be relieved of its obligations under this Agreement.
- 13.04 The Customer and Hydro will submit to the other in writing every claim or counterclaim which each may have or claim to have against the other arising under this Agreement within sixty days of the day upon which the Customer or Hydro has knowledge of the event giving rise to such a claim.
- 13.05 The Customer and Hydro shall be deemed to have waived all rights for the recovery of any claim or counterclaim that has not been submitted to the other party pursuant to and in accordance with Clause 13.04.

ARTICLE 14
ARBITRATION

- 14.01 If a settlement of any claim made by the Customer in accordance with Clause 13.04 is not agreed to by both parties, the matters in dispute shall be submitted, within three months from the time the claim was submitted, for decision to a board of arbitrators consisting of three members, one to be named by each party to this Agreement and the third to be named by the two arbitrators so chosen, and the decision of any two members of the board of arbitrators shall be final and binding upon both parties.
- 14.02 The charges of the third member of a board of arbitrators who shall be the chairman of that board, shall be borne by the losing party, and the parties shall bear the costs or charges of their own appointees. Any arbitration hearing commenced under this Article shall be held in St. John's or such other place as the parties mutually agree.
- 14.03 If the two appointees of the parties are unable to agree upon the third arbitrator or chairman, the chairman shall be appointed upon application of either party to the Trial Division of the Supreme Court of Newfoundland and Labrador or a judge of that Division.
- 14.04 The period of delay for appointment by the parties to this Agreement of their respective nominees shall be seven days after notification by the other party to this Agreement of its nominee, and the period for agreement by the two nominees on the chairman shall be ten days.
- 14.05 The provisions of the Arbitration Act, Chapter A - 14 of the Revised Statutes of Newfoundland and Labrador, 1990, as now or hereafter amended shall apply to any arbitration held pursuant to this Article 14.

ARTICLE 15
MODIFICATION OR TERMINATION OF AGREEMENT

- 15.01 Except, where otherwise specifically provided in this Agreement and only to the extent so provided, all previous communications between the parties to this Agreement, either oral or written, with reference to the subject matter of this Agreement, are hereby abrogated and this Agreement shall constitute the sole and complete agreement of the parties hereto in respect of the matters herein set forth.
- 15.02 At any time during the currency of this Agreement, the Customer may terminate it by giving to Hydro two years previous notice in writing of its intention so to do.

- 15.03 Any amendment, change or modification of this Agreement shall be binding upon the parties hereto or either of them only if such amendment, change or modification is in writing and is executed by each of the parties to this Agreement by its duly authorized officers or agents and in accordance with its regulations or by-laws.
- 15.04 Subject to Article 10, if the Customer voluntarily or forcibly abandons its operations, commits an act of bankruptcy or liquidates its assets, then, there shall, forthwith, become due and payable to Hydro by the Customer, as stipulated and liquidated damages without burden or proof thereof, a lump sum equal to:
- (a) 0.85 of its then current Billing Demand for Firm Power, at the Firm Power Demand charge, multiplied by 24
plus
 - (b) the remaining net book value of the Specifically Assigned Plant less its salvage value and net of any contributions towards that value made by the Customer.

ARTICLE 16
SUCCESSORS AND ASSIGNS

- 16.01 This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns, but it shall not be assignable by the Customer without the written consent of Hydro.

ARTICLE 17
GOVERNING LAW AND FORUM

- 17.01 This Agreement shall be governed by and interpreted in accordance with the laws of the Province, and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the Province, subject to the right of appeal to the Supreme Court of Canada where such appeal lies.

ARTICLE 18
ADDRESS FOR SERVICE

- 18.01 Subject to Clauses 18.02 and 18.03, any notice, request or other instrument which is required or permitted to be given, made or served under this Agreement by either of the parties hereto, except for notices or requests pertaining to Interruptible Demand or Secondary Energy, shall be given, made or served in writing and shall be deemed to be properly given, made or served if personally

delivered, or sent by prepaid telegram or facsimile transmission, or mailed by prepaid registered post, addressed, if service is to be made

(a) on Hydro, to

The Secretary
 Newfoundland and Labrador Hydro
 Hydro Place
 P.O. Box 12400
 St. John's, Newfoundland
 CANADA. A1B 4K7
 FAX: (709) 737-1782
 or

(b) on the Customer, to

Suite W200, Bally Rou Place, 280 Torbay Road
 St. John's, NL, Canada
 A1A 3W8
 FAX: (709)758-3353

- 18.02 Any notice, request or other instrument given, made or served as provided in Clause 18.01 shall be deemed to have been received by the party hereto to which it is addressed, if personally served on the date of delivery, or if mailed three days after the time of its being so mailed, or if sent by prepaid telegram or facsimile transmission, one day after the date of sending.
- 18.03 Except for notices for Interruptible Demand or Secondary Energy, whenever this Agreement requires a notice to be given or a request to be made on a Sunday or legal holiday, such notice or request may be given or made on the first business day occurring thereafter, and, whenever in this Agreement the time within which any right will lapse or expire shall terminate on a Sunday or legal holiday, such time will continue to run until the next succeeding business day. Notices or requests pertaining to Interruptible Demand or Secondary Energy may be given and received by and to the appropriate nominees of the respective parties by voice or electronic communication provided that it is confirmed in writing and transmitted or delivered by facsimile, courier or mail as soon as practicable.
- 18.04 Either of the parties hereto may change the address to which a notice, request or other instrument may be sent to it by giving to the other party to this Agreement notice of such change, and thereafter, every notice, request or other instrument

shall be delivered or mailed in the manner prescribed in Clause 18.01 to such party at the new address.

IN WITNESS WHEREOF Newfoundland and Labrador Hydro and the Customer has each executed this Agreement by causing it to be executed in accordance with its by-laws or regulations and by its duly authorized officers or agents, the day and year first above written.

THE CORPORATE SEAL of
**Newfoundland and Labrador
Hydro** was hereunder
affixed in the presence of:

Witness

DULY EXECUTED by
**Vale Newfoundland & Labrador
Limited** in accordance with its
Regulations or By-Laws
in the presence of:

Witness
