

1 Q. Please provide a copy of each of the last three tender contracts that Hydro
2 entered for fuel purchases for Holyrood.

3

4

5 A. Attached please find the two most recent contracts entered into in 2002 and
6 1997. The contract predating these was entered into in 1992 and is not
7 readily available.

CA 204 NLH ☐

2006 General Rate Application ☐

Attachment 1 ☐

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**NEWFOUNDLAND AND LABRADOR HYDRO
CONTRACT
FOR
SUPPLY AND DELIVERY
OF
NO. 6 FUEL OIL
TO
HOLYROOD THERMAL GENERATING STATION**

APPROVED BY:



NEWFOUNDLAND AND LABRADOR HYDRO

**CONTRACT: 22484 OQ
DATE: June 10th, 2002**

NEWFOUNDLAND AND LABRADOR HYDRO

CONTRACT

FOR

SUPPLY AND DELIVERY

OF

NO. 6 FUEL OIL

TO

HOLYROOD THERMAL GENERATING STATION

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AGREEMENT

SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION

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AGREEMENT

THIS AGREEMENT made as of the ____ day of _____ A.D. 2002.

BETWEEN: NEWFOUNDLAND AND LABRADOR HYDRO, a corporation constituted by statute and an agent of Her Majesty the Queen in right of the Province of Newfoundland and Labrador and having its head office at Hydro Place, St. John's, in the said Province (hereinafter called "Buyer") of the one part;

AND _____ (hereinafter called "Seller") of the other part.

WHEREAS Buyer is the owner and operator of an oil-fired generating station located at Holyrood in the Province of Newfoundland and Labrador (hereinafter referred to as "Thermal Generating Station");

AND WHEREAS Buyer has invited Tenders for the supply and delivery of a minimum of eighty percent (80%) of the No. 6 fuel oil requirement for the Thermal Generating Station for a term of three (3) years with Buyer's option of a two (2) year extension;

AND WHEREAS Seller has submitted its Tender for supply and delivery of said No. 6 fuel oil and Buyer has accepted that Tender;

AND WHEREAS it is felt desirable to enter into this Agreement in order to prescribe the terms and conditions which shall apply to and in respect of the supply and delivery of the said No. 6 fuel oil;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT the Buyer and Seller in consideration of the premises and of the covenants, agreements and declarations made herein by the other, covenant, agree and declare as follows:-

A 1 Interpretation

.1 In this Agreement and the schedules, unless the context otherwise requires,

- (a) "Barrel" means the quantity of Product which when measured at 60°F equals 42 U.S. gallons;
- (b) "Contract" or "Contract Documents" means this Agreement and includes

SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS
SCHEDULE B - FORM OF TENDER
SCHEDULE C - SPECIAL CONDITIONS

and any Addenda thereto which are incorporated therein by reference;

- (c) "Delivery Point" means the point where Product passes from Seller to Buyer which is the first permanent flange at the Site.
 - (d) "DES" means delivered ex ship as defined and construed in accordance with the provisions of ICC INCOTERMS (1990 edition).
 - (e) "Firm Order" means a request by regular or electronic mail or fax transmission from Buyer to Seller specifying the desired delivery date and desired sulphur content of a quantity of Product.
 - (f) "Lay Time" means the time allowed for the vessel to discharge its cargo and shall commence the earlier of 6 hours after the acceptance of Notice of Readiness given by the marine vessel or when the marine vessel is all fast in berth and shall end when the discharge hoses are disconnected.
 - (g) "Notice of Readiness" means the notice given by the marine vessel to the Buyer that it is ready to discharge its cargo. Such notice cannot be given until the Buyer is in receipt of the Analysis of Product Quality and evidence of insurance as provided in Clauses SC 1.5 and IT 13.4.(c) respectively.
 - (h) "Platt's Monthly Average Price" means the mean cargo posting for a specific sulphur content of fuel listed on the New York/Boston Product Price Assessments for No.6 Fuel Oil rounded to three decimals, as reported in Platt's Oilgram Price Report for a particular month.
 - (i) "Price Variance" means the difference between the Platt's Monthly Average Price for 2.2% sulphur fuel for the month of May, 2002 and the Tendered Selling Price.
 - (j) "Product", written alone, means No. 6 fuel oil having the specifications listed in Article SC 1 - Product Quality of SCHEDULE C - SPECIAL CONDITIONS;
 - (k) "Province" means the Province of Newfoundland and Labrador;
 - (l) "Seller" means the party or parties executing the Agreement with Buyer for the Work, and the successors and permitted assigns of the said party or parties;
 - (m) "Selling Price" means the price of the Product delivered to Buyer DES at the Delivery Point in the currency of the United States of America excluding all Canadian federal, provincial and municipal taxes and Canadian import duties or other Canadian federal and provincial licenses and fees. Where Seller is non-Resident in Canada, it shall be Buyer's obligation to be the importer of record and to pay such taxes, duties or fees as may be applicable as the importer of record and to apply for any Canadian import compensation that may be due Buyer. Where Seller is resident in Canada, Seller shall be the importer of record and shall pay such taxes, duties or fees as may be applicable as the importer of record and to apply for any Canadian import compensation that may be due Seller;
 - (n) "Site" means Buyer's dock at the Thermal Generating Station;
 - (o) "Work" means work to be performed by Seller as described in the Contract.
- .2 Words in the Contract Documents importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.
- .3 Where a word is defined anywhere in the Contract Documents, other parts of speech and tenses of the same word have a corresponding meaning.
- .4 Wherever in the Contract Documents a number of days is prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.

- .5 Whenever the Contract Documents require either a notice to be given or a request to be made, and the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time will continue to run until the next succeeding normal business day.
- .6 In the Contract Documents the headings and any tables of contents and indexes attached thereto are inserted for convenience of reference only and shall not affect the construction or interpretation thereof.
- .7 Any reference in any Contract Document to an article, a clause, a subclause, a paragraph or a schedule shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause, a paragraph or a schedule to that Contract Document.
- .8 This Agreement may be executed in more than one counterpart, each of which when so executed shall be deemed to be an original.
- .9 The Contract embodies the entire agreement between the parties. The Contract Documents are intended to be correlative and complementary and any Work required by one document and not mentioned in another shall be executed as though required by all documents.
- .10 The Contract is intended to cover all the Work to be done by Seller; and, unless expressly excluded in the Contract, any Work not indicated herein but which may be necessary or required to complete any part of the Work in a proper, substantial and workmanlike manner shall be furnished by Seller.
- .11 If Seller, in the course of the Work, discovers any discrepancy between the Specifications and the physical conditions of the Site or finds any error, omission or ambiguity in the Contract Documents, Seller shall immediately apply in writing to Buyer for clarification. Buyer will promptly clarify such matters and so inform Seller.
- .12 In case of conflict between the Contract Documents, the said documents shall be considered in the following order of precedence, unless otherwise provided: this AGREEMENT, SPECIAL CONDITIONS, INSTRUCTIONS AND INFORMATION TO TENDERERS, FORM OF TENDER.

A 2 Execution of the Work

Seller for and in consideration of payment to be made to Seller as hereinafter provided, agrees to supply and deliver the Product required for the performance of the Contract as described in and in strict conformity with the terms and conditions of this Agreement and the other Contract Documents.

A 3 Execution of Contract Documents

Execution by Buyer and by Seller of this Agreement shall constitute acceptance and approval by the parties of all provisions, terms and conditions of all of the Contract Documents as if each had been executed by both parties.

A 4 Payment

- .1 Buyer, in consideration of the performance of the Contract by Seller, agrees to pay Seller in accordance with the Selling Price set forth in the Tender, subject to any changes provided for elsewhere in the Contract. Such payment shall be made in accordance with the procedures set forth in the Contract.
- .2 Terms of payment are net fifteen (15) days after:
 - (a) completion of delivery of Product from Seller's marine vessel; or
 - (b) completion of any other service required to be provided under the Contract;

whichever is applicable, and upon receipt of an acceptable invoice by Buyer, provided that the amounts so billed are correct and properly payable under the Contract. In the case of any disputed invoice due to apparent billing errors contained therein, Buyer shall pay the undisputed portion of any such invoice in accordance with Clause A 4.2. Seller and Buyer shall attempt to reach agreement in respect of any disputed amount within thirty (30) days following Seller's receipt of Buyer's payment of the undisputed amount. If Seller and Buyer fail to agree within such thirty (30) day period, the matter may be referred by either Seller or Buyer for resolution pursuant to Clause SC 9—Governing Law and Forum.

- .3 Where Seller is resident in Canada and is the importer of record, all invoices shall include Seller's Registration Number for the Federal Goods and Services Tax/Harmonized Sales Tax (HST), and shall separately identify the amounts of HST, for which Seller shall be reimbursed.
- .4 If the date payment becomes due and payable falls on a day other than a working day for Buyer then payment shall be made on the first working day thereafter.
- .5 Where delivery occurs fifteen (15) or more days before month end, a provisional invoice shall be submitted to Buyer for payment, using Selling Price as determined in Article IT 7 [Clause IT 7.2].
- .6 Within five (5) working days following a month end in which any provisional invoices have been submitted to Buyer, Seller shall adjust such provisional invoices to reflect the actual Selling Price as determined using Clause IT 7.1 and submit a final invoice to Buyer. Provided the invoice is not in dispute, settlement of this invoice by Buyer payment or Seller refund shall be made within five (5) working days from the date the adjusting invoice is submitted.
- .7 Delay by Buyer in making a payment when it becomes due and payable shall not be deemed to be a breach of the Contract by Buyer, but, except where specifically otherwise provided for, such a delay will, if the delay continues for more than fifteen (15) days beyond the date upon which the payment is due and payable, entitle Seller to interest on the amount overdue at the Prime Lending Rate of the Buyer's Bank.

A 5 Language of Contract

Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

A 6 Notice to and Addresses of Parties

Any notice required or permitted to be given hereunder shall be given in writing, and shall either be given by hand delivery, regular mail return receipt requested, fax transmission or electronic mail addressed to the respective officers of the parties as set forth below:

If notice is by regular or electronic mail or fax transmission it shall be effective upon receipt.

Buyer: Newfoundland and Labrador Hydro
Hydro Place
500 Columbus Drive
P.O. Box 12400
St. John's, Newfoundland and Labrador,
Canada,
A1B 4K7

Attention: Manager of Administration

Fax: 709-737-1795

e-mail: imacpherson@nlh.nf.ca

Seller: _____

FAX: _____

e-mail: : _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under their respective Corporate
Seals as of the day and year first above written.

NEWFOUNDLAND AND LABRADOR HYDRO
(Buyer)

Signed and sealed in the presence of:

BY: _____
(Name)

(Title)

(Witness)

AND: _____
(Name)

(Title)

(Witness)

(SELLER)

Signed and sealed in the presence of:

BY: _____
(Name)

(Title)

(Witness)

AND: _____
(Name)

(Title)

(Witness)

SCHEDULE A

INSTRUCTIONS AND INFORMATION TO TENDERERS

**SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION**

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IT 1 Description of Work

The Work shall comprise the supply and delivery of approximately 2,000,000 to 4,500,000 Barrels of No. 6 fuel oil for the Thermal Generating Station at Holyrood in the Province of Newfoundland and Labrador in any twelve (12) month period for a term of three (3) years with Buyer's option of a two (2) year extension, as is more particularly described in the Contract Documents.

IT 2 Preparation and Submittal of Tenders

- .1 Tenders will be received at the Materials Management Department, Fourth Level, Hydro Place, 500 Columbus Drive, St. John's until 3:00 p.m. local time, St. John's on Wednesday, July 17th, 2002 and opened immediately thereafter at the 2nd Level, Hydro Place.
- .2 The Tender shall be enclosed in a sealed envelope showing Tenderer's name and return address and marked:

TENDER - CONTRACT 22484 OQ

Newfoundland and Labrador Hydro
P.O. Box 12400
Materials Management Department
4th Level, Hydro Place
St. John's, Newfoundland and Labrador
A1B 4K7

Attention: Director of Materials Management

Tenderer may submit its Tender by fax using the fax number shown in Article IT 12 - Communications During Tendering, and such Tender may be considered, subject to:

- (a) proof, satisfactory to Buyer, that original Tender has been forwarded to Buyer and is out of the possession and control of Tenderer prior to the time set for receipt of Tenders;
- (b) its arrival prior to the time set for receipt of Tenders;
- (c) the fax being a duplicate of the completed Schedule of Prices of the original Tender, and
- (d) the receipt by Buyer, prior to the time set for Tender close, of either the required Surety's Consent or a fax copy of same.

In the event of fax delivery of Tender, the original Tender documentation must be received by Buyer not later than 4:00 p.m. on the second working day following the time set in Clause IT 2.1 for receipt of Tenders.

- .3 Tenders shall be prepared in accordance with SCHEDULE B - FORM OF TENDER included herein.
- .4 Tenders shall be properly executed by duly authorized officers of Tenderer. If required by Buyer, proof of authority of the executing officer to bind Tenderer shall be submitted.
- .5 If a partnership or joint venture tenders, it shall submit with its Tender, a Power of Attorney executed by all of the general partners or venturers designating and appointing one of the general partners or venturers as the Management Sponsor, and authorizing the Management Sponsor to sign the Tender on behalf of Tenderer, to act for and bind Tenderer in all matters relating to the Tender and, in particular, to agree that each partner or venturer shall be jointly and severally liable for any and all of the duties and obligations of Tenderer assumed under the Tender and the Contract if awarded. The Tender shall be signed on behalf of the partnership or joint venture in its legal name by the Management Sponsor.

IT 3 Dock Facilities

- .1 The successful Tenderer shall be required to deliver fuel to Buyer DES at the Delivery Point in marine vessels in quantities previously approved by Buyer.
- .2 Buyer will provide a safe berth where a marine vessel with a maximum loaded displacement of 62,000 long tons summer displacement and a maximum draft not exceeding thirty-five (35) feet at mean low water can proceed to, lie at, and depart from, Buyer's berth always safely afloat.

IT 4 Prices

- .1 Tendered prices shall be stated in currency of the United States of America, payable at par in St. John's, Newfoundland and Labrador. Tender prices shall be firm except for any price adjustments specified in the Contract Documents.
- .2 Except for those items specifically identified in the Contract Documents, herein, as being furnished or performed by Buyer, Tenderer shall include, in the prices entered in SCHEDULE B - FORM OF TENDER, amounts to cover the performance of the Work complete in every respect in accordance with the Contract Documents, including the provision of all material, equipment, labour and supervision, and the contingent expenses and risks of every kind necessary to complete the Work in accordance with the Contract Documents.
- .3 Except as otherwise provided in the Contract, if a unit price is not stated in SCHEDULE B - FORM OF TENDER, Schedule of Prices for any item, the unit price shall be determined by dividing the Tender amount for the item by the estimated quantity. Where a unit price only is stated in SCHEDULE B - FORM OF TENDER, Schedule of Prices, or in the case of errors in the extension of the unit price, the Tender amount for the item shall be determined by multiplying the unit price by the estimated quantity. In the case of discrepancy between words and figures, the words shall prevail. In the case of arithmetical error, the correct total shall prevail.

IT 5 Scope of Work

The successful Tenderer shall supply a minimum of eighty percent (80%) of the Product requirement for the Thermal Generating Station for the period noted in Article IT 1 - Description of Work.

Tenderer should note that Buyer's requirement for Product is based upon quantities required for Thermal Generating Station operations and these quantities may vary. Buyer does not guarantee or commit itself to any minimum quantity within a specified time period. The estimated quantity of product to be delivered over the three (3) year term of the Contract is 10,000,000 barrels.

IT 6 Validity of Tender and Performance Security

- .1 The Tender shall remain open for acceptance by Buyer and irrevocable for a period of sixty (60) days after the closing date for receipt of Tenders, and Buyer may accept a Tender whether any other Tender has been previously accepted or not.
- .2 Tender shall be accompanied by a Surety's Consent for a Ten Million Dollar (\$10,000,000.00) Performance Bond in the form set out in SCHEDULE B - FORM OF TENDER, and forming part thereof and entitled Surety's Consent.
- .3 The successful Tenderer shall within fourteen (14) days from receipt of notification of acceptance of its Tender, furnish a Ten Million Dollar (\$10,000,000.00) Performance Bond in the form set out in SCHEDULE B - FORM OF TENDER included herein, and forming part of these Contract Documents and entitled, Form of Performance Bond.

- .4 After receipt of notification in writing of the acceptance of its Tender and subject to compliance with Clause IT 6.3, the successful Tenderer shall commence performance of the Work and shall complete the Work and all parts thereof within the times set out in the Contract Documents.

IT 7 Selling Price and Adjustments

.1 Selling Price

- (a) The Selling Price per Barrel delivered to Buyer DES at the Delivery Point shall be stated in U.S. currency payable at par in St. John's, Newfoundland and Labrador. Selling Price shall be firm except for price adjustments provided for in the Contract Documents. Adjustments provided for in this Article shall be applied in sequence as they appear in this Article.
- (b) The Selling Price shall change from and after May 31st, 2002, up or down, cent for cent with changes in the Platt's Monthly Average Price. For the purposes of computing escalation no account shall be taken of temporary entitlement allowances or temporary voluntary allowances or other discounts or surcharges set forth in footnotes thereto. For greater certainty, the Platt's Monthly Average Price is understood to be determined by averaging the daily mean prices for each day during the month for which a price is published in Platt's Oilgram Price Report.
- (c) For each cargo, the Platt's Monthly Average Price that shall be used in the determination of the price of the cargo shall be the Platt's Monthly Average Price for the month of the delivery date requested in the cargo's Firm Order.

.2 Selling Price for Provisional Invoices used where deliveries occur more than fifteen days before month end.

Where delivery occurs fifteen (15) or more days before month end, a provisional invoice shall be submitted to Buyer for payment. The Selling Price used shall be computed in a similar manner to that prescribed in Clause IT 7.1 except that the number of days used in computing the provisional monthly price shall be the number of days for which a price is published up to and including date of invoice preparation and as a minimum, the first fourteen (14) days of the month.

.3 Adjustment for Vanadium Content

The Selling Price for each Barrel delivered under the Contract shall be subject to a deduction of \$0.01 U.S. for each 5 parts per million or major fraction thereof that the vanadium content for each delivery is in excess of the specified maximum for vanadium in this Contract.

.4 Higher Heating Value Adjustment

When the Higher Heating Value content of the Product delivered is less than the Guaranteed Higher Heating Value the Selling Price for that delivery shall be adjusted in accordance with the following ratio:

Adjusted Price for Product is:

$$\frac{\text{BTU/Barrel delivered}}{\text{Guaranteed Higher Heating Value tendered BTU/Barrel}} \times \text{Selling Price}$$

IT 8 Discrepancies, Omissions and Clarifications

- .1 Should Tenderer find discrepancies in, or omissions from, the Contract Documents, or have any doubt as to the meaning or intent of any part thereof, Tenderer shall at once notify Buyer in writing.

- .2 Buyer shall not be responsible for oral instructions and no corrections or interpretations shall be binding unless issued in the form of Addenda.

IT 9 Changes Prior to Closing of Tender

- .1 Changes in the Work or corrections to or interpretations of the Contract Documents, as may be issued by Buyer during the tendering period, shall be in the form of Addenda. Such Addenda shall become part of the Contract Documents.
- .2 Tenderer shall promptly acknowledge receipt in writing of any and all Addenda and shall confirm in its Tender that the information contained in such Addenda has been considered in preparing the Tender.

IT 10 Rejection of Tender

- .1 Buyer reserves the right to reject any or all Tenders or parts thereof. The lowest Tender or part thereof will not necessarily be accepted.
- .2 A Tender which is incomplete, conditional, unbalanced or obscure or which contains additions not called for, erasures, alterations or irregularities of any kind, may be rejected.

IT 11 Qualification of Tenderer

- .1 If required by Buyer before a contract is awarded, Tenderer shall furnish evidence satisfactory to Buyer that it has the necessary ability, experience and capital to perform the Work involved and to complete the Work within the times set out in the Contract Documents. Tenderer in order to be qualified as an acceptable Seller shall have previously and successfully completed undertakings of comparable nature and scope and shall provide evidence satisfactory to Buyer to this effect.
- .2 The successful Tenderer shall be authorized to do business in the Province of Newfoundland and Labrador prior to commencement of the Work under the Contract. Where the Tenderer is a corporation, it shall be registered to carry on business in compliance with the laws of the Province of Newfoundland and Labrador and shall be registered in good standing.

IT 12 Communications During Tendering

All communications during the period of tendering shall be addressed to:

Newfoundland and Labrador Hydro
P.O. Box 12400
Hydro Place
St. John's, Newfoundland and Labrador
A1B 4K7

Fax: 709-737-1795

Attention: Manager of Administration

IT 13 Insurance

.1 Liability - General

Seller shall provide comprehensive general liability insurance covering premises, operations, products and completed operations. Extensions of coverage shall include broad form property

damage on an occurrence basis, blanket contractual liability, contingent employer's liability, contractor's contingency liability with respect to the operations of sub-contractors, cross liability and employees as additional insured.

Minimum limits shall be \$1 million combined for any one occurrence involving property damage or loss or bodily injury or loss of life. Such insurance shall state that it is primary insurance and that any other insurance carried by the Buyer shall be excess and not contributing therewith.

.2 Liability - Automobile

Seller shall provide automobile liability insurance on all licensed vehicles, which will be used in connection with the Contract and which are owned, leased or rented by the Seller or its agents.

Minimum limits shall be One Million Canadian Dollars (\$Cdn1,000,000) combined for any one occurrence involving property damage or loss, bodily injury or loss of life.

.3 Liability - Marine

Seller shall provide or cause to have provided protection and indemnity insurance including oil pollution coverage for each vessel with a minimum limit of Seven Hundred and Fifty Million U.S. Dollars (\$US 750,000,000.) or equivalent currency. Seller shall declare the name of the protection and indemnity club.

.4 Insurance Conditions

- (a) Premiums for all necessary insurance policies shall be included in the Selling Price. No special payments shall be made to Seller in respect of such premiums.
- (b) Newfoundland and Labrador Hydro shall be shown on all insurance policies as an additional Named Insured with a cross-liability clause. This requirement shall not apply to the pollution coverage insurance required in Clause IT 13.3.
- (c) Seller shall provide Buyer with evidence of insurance by notifying Buyer of name of marine vessel, name of protection and indemnity club of which the marine vessel is a member and confirming to Buyer that vessel has a minimum limit of Seven Hundred and Fifty Million US Dollars (\$US 750,000,000.) oil pollution coverage prior to delivery of the Product to Site and the issuance of the Notice of Readiness.
- (d) All insurance obtained by Seller shall include the following clause:

"Thirty (30) days advance notice shall be given in writing to Newfoundland and Labrador Hydro, P.O. Box 12400, St. John's, Newfoundland and Labrador, A1B 4K7 Attention: Manager of Corporate Affairs and Risk Management of any cancellation, termination or reduction in the scope of coverage provided or as evidenced herein".
- (e) Seller shall defend, indemnify and hold harmless Buyer against any liability for damages, cost, legal fees and expenses on account of:
 - (i) Injury to, or death of, any person, or damage or loss to any property, including Buyer's employees and property, occurring as a result of fault or negligence or from other causes of the Seller, the Seller's subcontractors, agents, servants or employees.
 - (ii) Injury to any employee of Seller, its subcontractor or agent during the performance of such Work and any death resulting therefrom, except to the extent occurring as a result of fault or negligence or from other causes of Buyer or its agents, servants, employees or independent contractors.

- (iii) Any claim made against Buyer for contribution in general average with respect to any Product to be delivered hereunder.

.5 General Average Waiver Clause

Notwithstanding anything to the contrary contained herein and in addition to other collectible claims for which underwriters would be held liable hereunder, this policy shall also pay in full for hull and machinery, etc., and cargoes' proportion of general average even though the sum hereunder insured may be less than the contributing value or actual value of hull and machinery, etc., and cargo without right of subrogation against cargo interest.

IT 14 Environmental Responsibility During Deliveries

- .1 The transfer of Product from Seller's marine tanker to Buyer's storage facilities at Site shall be done in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada, including, but not limited to, the Environmental Protection Act, Statutes of Newfoundland, 2002, Chapter E – 14.2, the Storage and Handling of Gasoline and Associated Products Regulations, 1996, Newfoundland Regulation 775/96 and the Oil Pollution Prevention Regulations, SOR/93-3, as amended. Seller's personnel shall supervise any and all such transfers of Product and shall be in a position to immediately shut off the flow of Product in order to prevent any overflows, ruptures or leaks which might occur.
- .2 Seller shall ensure that marine tankers used in the delivery of Product comply with section 660.2(2) of the Canada Shipping Act, Revised Statutes of Canada, 1985, Chapter S-9, as amended. In the event of a spill of Product prior to the transfer of Product to Buyer's storage facility, Seller shall initiate the shipboard Oil Pollution Emergency Plan required under section 660.2(2), and shall be responsible for all reporting and clean-up requirements associated with such a spill.
- .3 In the event of a spill of Product during the transfer of Product to Buyer's storage facilities, Seller shall immediately notify Buyer of the spill and shall take all reasonable action to immediately shut off the flow of Product and minimize the amount of Product spilled. Buyer will be responsible for reporting the spill and implementing containment and clean-up procedures as required by law. Seller shall comply with all reasonable requests of Buyer's representative related to implementation of spill containment and clean-up procedures. Such clean-up shall be undertaken by Buyer without regard to whom is responsible for the spill. The party responsible for the spill shall be ultimately liable for all reasonable costs and damages resulting therefrom.

IT 15 Public Disclosure of Proprietary Tender Information

Reasonable precautions shall be taken to safeguard against disclosure of proprietary Tender information to unauthorized persons. Except to the extent required by law, Buyer shall not disclose proprietary Tender information to third parties. Buyer shall give Tenderer notice of any request or suit to obtain such information and permit Tenderer to resist or defend against any such disclosure.

IT 16 Tender Evaluation

- .1 Buyer's evaluation will take into account all legal, technical, financial and other considerations relevant to the most cost-effective completion of the Work as described in the Contract.
- .2 Should a Tenderer, in its opinion, have any other considerations which might appear relevant in the initial evaluation of tenders, it shall indicate same in its Tender.
- .3 Tendered prices shall be evaluated on the basis of adjustment of tendered Selling Price to a Higher Heating Value content of 6,300,000 BTU's per Barrel, and for payment fifteen (15) days after date of delivery.

- .4 Security of supply is an important consideration. Tenderer should indicate the strength of its position in maintaining continuity of supply to Buyer as a public utility.

IT 17 Post-Tender Meeting

If required by Buyer before a Tender is accepted, Tenderer shall, at its cost, attend a Post-Tender Meeting to review its Tender submission, and such meeting shall be held at Buyer's offices.

**SCHEDULE B
FORM OF TENDER**

SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION

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Tender by _____ Page 20 of 39

a Company duly incorporated under the laws of _____

or:

a partnership, joint venture or consortium carrying on business under the firm name and style above stated, the names, addresses and places of incorporation, if any, of all the partners or members of the firm being the following:

and having its head office at _____

to:

Newfoundland and Labrador Hydro
Materials Management Department
P.O. Box 12400
Hydro Place
St. John's, Newfoundland and Labrador
A1B 4K7

Attention: **Director of Materials Management**

CONTRACT 22484 OQ

NAME AND ADDRESS OF TENDERER

(Name of TENDERER)

(Address of TENDERER)

POSTAL CODE: _____

TELEPHONE: _____

FAX: _____

GST/HST REGISTRATION NO. _____

(Telephone Number) (Fax Number)

- (a) Tenderer has carefully examined the Contract Documents, including the following addenda:

Addenda Numbers: _____ dated _____
_____ dated _____
_____ dated _____
_____ dated _____ ;

relating to a Contract for supply and delivery of No. 6 fuel oil for Buyer's Thermal Generating Station at Holyrood, Newfoundland and Labrador and Tenderer hereby accepts and agrees to the same as forming inter alia, part and parcel of the said Contract and agrees that Buyer shall not be responsible for any errors or omissions in this Tender.

- (b) Tenderer hereby tenders and offers to enter into a Contract, being the Contract hereinbefore referred to, to do all of that which is set out or called for in the Contract Documents, on the terms and conditions and under the provisions set out or called for in the Contract Documents, at the price hereunder and entered in the Schedule of Prices.
- (c) Tenderer agrees that this Tender is open to acceptance and irrevocable for sixty (60) days and that Buyer may, at any time within sixty (60) days from the date and time specified in the Contract Documents for the receipt of Tenders, accept this Tender whether any other Tender has been previously accepted or not.
- (d) Tenderer agrees that upon receipt of notification of acceptance of this Tender, it shall within fourteen (14) days execute an Agreement substantially in the form of the draft Agreement and, subject to the requirements of SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS, provide a Performance Bond in accordance with the requirements of the Contract Documents.

Tenderer hereby proposes:

(Name of Bonding Company)

which is willing to become bound with Tenderer in the amount designated in the said Contract Documents for the due performance and fulfillment of the said Contract, and all matters or things required by the Contract Documents.

- (e) Tenderer agrees that the Guaranteed Higher Heating Value is:- _____ BTU / Barrel,
- (f) Tenderer agrees that the Tendered Selling Price per Barrel, for the supply of the specified Product, in effect during the month of May, 2002, is:-

\$ US _____ / Barrel,

and the stated price excludes the Canadian federal Goods and Services Tax or Harmonized Sales Tax and other Canadian federal and provincial taxes, customs duties, licenses and fees.

- (g) In the event the Buyer is required during any year to use a fuel meeting the Specifications for Product in all respects except for having a maximum sulphur content less than 2.2%, Tenderer agrees, upon Buyer's request and with Buyer providing at least twenty-eight (28) days written notice in advance, to substitute such fuel for the Product.
- (h) The Selling Price of Product with a maximum sulphur content less than 2.2% as calculated for the month of the delivery date requested in a Firm Order shall be the straight line interpolated price between that month's monthly average Platt's mean cargo posting for 1.0% sulphur content and 2.2% sulphur content New York/Boston Product Price Assessments for No.6 Fuel Oil, rounded to three decimals, as reported in Platt's Oilgram Price Report. For example, the interpolated price for 1.8% product shall be calculated as $((0.667 \times 2.2\% \text{ Platts}) + (0.333 \times 1.0\% \text{ Platts}))$.
- (i) The resulting Selling Price of Product with a maximum sulphur content of 1.8% shall be adjusted by the Price Variance and each such stated price:
- shall exclude the Canadian federal Goods and Services Tax or Harmonized Sales Tax and other Canadian federal and provincial taxes, customs duties, licenses and fees; and
 - shall be subject to price adjustments computed as provided for in Article SC 16 - Substitution of Lower-Sulphur Fuel
- Tenderer also confirms and agrees that the Guaranteed Higher Heating Value stated above shall remain in effect in the event of usage of lower sulphur content fuel.
- (j) The Tender deposit, the forms of Performance Security and all Appendices accompanying this Tender form part and parcel thereof.

(FOR EXECUTION BY A CORPORATION)

Signed and sealed on behalf of _____
_____, Tenderer.

(Signatures of Signatories)

(Signature of Witness)

(Offices of Signatories)

(Corporate Seal to be affixed)

Dated at _____ this _____ day of _____ 2002.

(FOR EXECUTION OTHER THAN BY A CORPORATION)

Signed and sealed on behalf of _____
_____, Tenderer.

(Signatures of Signatories)

(Signature of Witness)

(Offices of Signatories)

Dated at _____ this _____ day of _____ 2002.

Appendix I: Surety's Consent

We, _____,

hereinafter called "SURETY", hereby undertake on behalf of Tenderer, _____

(Name of Tenderer)

hereinafter called "PRINCIPAL", of _____ to become bound to
(Place)

Newfoundland and Labrador Hydro as SURETY for PRINCIPAL in a Performance Bond as quoted on below should the Tender of PRINCIPAL be accepted for Supply and Delivery of No. 6 Fuel Oil to Holyrood Thermal Generating Station and the execution of other Work relating to such Contract and we understand that the said Performance Bond shall be given in the form included in the Form of Tender and shall remain in effect until the expiration of ninety (90) days from the date on which final payment under the Contract falls due.

The rate per thousand dollars (\$1,000.00) to be charged by us for the said Bond is \$ _____

If the aforesaid Tender is accepted, application for the said Performance Bond must be made to SURETY within fourteen (14) days of the execution of the Contract awarded to PRINCIPAL.

For the purpose of this undertaking the terms "Contract" and "Selling Price" shall have the meanings assigned to those terms in the AGREEMENT.

IN WITNESS WHEREOF SURETY has hereunto its hand and Seal subscribed and set this _____ day

of _____, 2002.

BY _____

AND _____

(Witness)

SURETY's Address

Appendix II: Form of Performance Bond

No. _____

\$ 10,000,000.00

KNOW ALL MEN BY THESE PRESENTS THAT _____

_____, hereinafter called "PRINCIPAL", and _____
a corporation created and existing under the laws of _____ and duly authorized to transact the
business of Suretyship in _____, hereinafter called "SURETY", are held and firmly bound unto
Newfoundland and Labrador Hydro, hereinafter called "OBLIGEE", in the amount of Ten Million Dollars
(\$ 10,000,000.00) lawful money of Canada, for the payment of which sum, well and truly to be made,
PRINCIPAL and SURETY, jointly and severally, bind themselves and each of them and their and each of their
heirs, executors, administrators, successors and assigns firmly by these presents.

WHEREAS, PRINCIPAL has submitted a written Contract to OBLIGEE, dated the ____ day of _____,
2002, for Contract _____ in accordance with the Specifications submitted
therefor which Contract and Specifications are by reference made part hereof and hereinafter referred to as the
Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if PRINCIPAL shall promptly and
faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

Whenever PRINCIPAL shall be, and declared by OBLIGEE to be, in default under the Contract, OBLIGEE
having performed OBLIGEE's obligations up to the time of default thereunder, SURETY may promptly remedy
the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a bid or bids for submission to OBLIGEE for completing the Contract in accordance with its terms
and conditions, and upon determination by OBLIGEE and SURETY of the lowest responsible bidder,
arrange for a contract between such bidder and OBLIGEE and make available as work progresses (even
though there should be a default, or a succession of defaults, under the contract or contracts of
completion, arranged under this paragraph) sufficient funds to pay the cost of completion less the balance
of the Contract price; but not exceeding, including other costs and damages for which SURETY may be
liable hereunder, the amount hereinbefore set forth. The term "balance of the Contract Price", as used in
this paragraph, shall mean the total amount payable by OBLIGEE to PRINCIPAL under the Contract,
less the amount properly paid by OBLIGEE to PRINCIPAL.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final
payment under the Contract is due.

SURETY shall not be liable for a greater sum than the specified amount of this Bond.

No right of action shall accrue on this Bond to, or for the use of, any person or corporation other than OBLIGEE
named herein, or the heirs, executors, administrators or successors of OBLIGEE.

PROVIDED, HOWEVER, that no variation or alteration which may be made in the said Contract, or in the extent, nature, or method of performance of the Work to be performed thereunder, and no extension of time given by **OBLIGEE** for the performance of the said Contract, nor any waiver, forbearance or forgiveness on the part of either **PRINCIPAL** or **OBLIGEE** to the other shall in any way release **PRINCIPAL** and **SURETY**, or either of them, their heirs, executors, administrators, successors and assigns from their liability hereunder; notice to **SURETY** of such variation, alteration, extension, waiver, forbearance or forgiveness being hereby expressly waived.

AND IT IS HEREBY DECLARED AND AGREED that **SURETY** shall be liable under this obligation as fully as if it were **PRINCIPAL** and that nothing of any kind or nature whatsoever that will not discharge **PRINCIPAL** shall operate as a discharge or a release of liability to **SURETY**, any law, rule or equity or usage relating to the liability of sureties to the contrary notwithstanding.

IN TESTIMONY, WHEREOF, PRINCIPAL has hereto set its hand and affixed its seal, and **SURETY** has caused its corporate seal to be affixed hereto, in accordance with its regulations and in the presence of its duly

authorized officers this _____ day of _____ 2002.

(
(
(By _____

THE COMMON SEAL of PRINCIPAL
was hereon affixed in the presence of:

(
(
(And _____ (Seal)
(PRINCIPAL)

(Witness)

(
(
(By _____

THE COMMON SEAL of SURETY
was hereon affixed in the presence of:

(
(
(And _____ (Seal)
(SURETY)

(Witness)

SURETY's Address

Appendix III: Tender Information

(A) Statement of Financial Standing

Include name(s) and address(es) of Chartered Bank(s) or Financial Firm(s), or both, for reference(s).

(B) Insurance Summary

Pursuant to SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS the following is a list of insurance coverage Tenderer proposes to maintain over the life of the Contract:

(C) Previous Experience

Complete the following statement of work Tenderer has undertaken during the past five (5) years similar to that on which it is tendering. (Attach company brochures and other relevant material to fully illustrate the experience, ability, plant and resources to be made available for the Work):

Description of the Work	Client	Location	Completion Date	Value of Completed Work

(D) Work in Progress

Complete the following statement of work which Tenderer is presently engaged in completing and which is similar in character to that described in this Contract.

Description of the Work	Client	Period of Contract	Tendered Value

**SCHEDULE C
SPECIAL CONDITIONS**

**SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION**

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SC 1 Product Quality

- .1 The Product to be supplied shall be No. 6 fuel oil with properties as determined by the most current edition of the stated ASTM test methods, conforming to the specification limits as follows:

<u>Property</u>	<u>Value</u>	<u>Test Methods</u>
API at 15°C (Min.)	5	ASTM D-1298
Higher heating value (Min) *	40.3 MJ/kg (6,300,000 BTU/barrel)	ASTM D-4868-90 or ASTM D-240
Flash Point (Min.)	66 °C	ASTM D-93
Pour Point (Max.) (Low Pour)	15 °C	ASTM D-97
Sodium (Max)	50 ppm	ASTM D-5863
Kinematic Viscosity @51°C (Max) for 2.2% sulfur	700 cSt	ASTM D-445/ ASTM D-2161
Sulphur (Max.) **	2.2% by weight	ASTM D-4294 or ASTM D-129
Vanadium (Max.)	275 ppm as Vanadium	ASTM D-5863
Ash (Max)	0.1% by weight	ASTM D-482
Sediment (Max)	0.2% by weight	ASTM D-473 or ASTM D-4870
Water (Max acceptable = 1.0% by volume) ***	0.50% by volume	ASTM D-95
Cleanliness	1	ASTM D-4740
Asphaltenes % weight (Max)	11	IP 143

* For price adjustment purposes as outlined in Clause IT 7.4, Seller must specify a Guaranteed Higher Heating Value in Form of Tender Item (e).

** Sulphur content maximum value is subject to change as per Clause SC 16.

*** If the average of the results of Water testing by the First Analyst and Second Analyst exceeds 0.50% water by volume, for purposes of calculating payment, the quantity of Product received will be reduced by the percentage calculated by subtracting 0.50% from the average of the results of Water testing by the First Analyst and Second Analyst.

- .2 Seller warrants and guarantees to Buyer that Product shall be of the quality specified in this Contract and, in the event that Product is blended, no compartment of delivering vessel shall have an API gravity value (at 15 degrees C) of less than 5.0.
- .3 Vessels discharging at Holyrood Generating Station shall be capable of maintaining a minimum discharge pressure of 700 kPa at marine vessel's discharge manifold and a minimum discharge temperature of 38° C.

- .4 In the event that Product delivered hereunder does not meet specifications as set forth in this Contract:
- (a) Buyer shall give Seller an opportunity to bring such Product into compliance with the Contract within a reasonable period of time; or
 - (b) Seller shall pay to Buyer a mutually agreed upon sum as compensation for the noncompliance of the Product; or
 - (c) Seller shall, within a reasonable period of time, remove the Product not in compliance with the specifications in this Contract at Seller's expense.

Buyer agrees to exercise option (c) only after giving full consideration to options (a) and (b).

- .5 Seller shall provide Buyer with an Analysis of Product Quality from an independent inspection service, mutually agreed upon by Buyer and Seller, prior to delivery of Product to Site and the issuance of the Notice of Readiness. The analysis shall contain the results of the independent inspector's analysis of the Product loaded aboard the marine vessel, shall identify the inspector and shall contain Inspector's certification that such Product meets the contractual specifications.

SC 2 Vanadium Content

If for any delivery the Analysis of Product Quality issued by Seller's supplier at the point of loading shows vanadium in the cargo to be in excess of 275 ppm such cargo shall not be shipped to Buyer without prior consultation and approval of Buyer.

SC 3 Delivery and Schedules

- .1 Seller shall deliver Product to the Site in marine vessels in quantities as previously approved by Buyer. Seller shall deliver Product at not less than 38° C discharge temperature.
- .2 Buyer will provide a safe berth where a marine vessel with a maximum loaded displacement of 62,000 long tons summer displacement and a maximum draft of 35 feet at mean low water can proceed to, lie at and depart from Buyer's berth always safely afloat.
- .3 Buyer warrants and guarantees to Seller that its oil handling facilities at the Thermal Generating Station are, under normal operating conditions, capable of accepting the discharge of Product from Seller's marine vessel at pressures of up to 860 kPa through two (2) Class 125 nominal twelve inch diameter (2 @ 12" dia.) flanges. Seller shall deliver Product at a minimum discharge pressure of 700 kPa measured at the last permanent hose flange of Seller's marine vessel at Buyer's dock.
- .4 Buyer shall furnish a Firm Order to Seller at least twenty-eight (28) days in advance of the requested delivery date. In addition, by the fifth working day of each month Buyer shall furnish Seller an estimate, subject to change, for quantity and delivery of Product for the following three (3) months. Seller shall promptly acknowledge receipt of each such notice.
- .5 Seller shall, within five (5) working days of receipt of a Firm Order, confirm or deny in writing the desired delivery date and quantity. If denied, the parties will negotiate in good faith to establish a mutually satisfactory delivery date and quantity. Buyer will not unreasonably reject Seller's suggested alternate delivery date or quantity, however, Seller agrees that its suggested alternative date and quantity shall not be more than five (5) days later than the date denied nor so far in advance of Buyer's desired arrival date or quantity such that the delivery cannot be handled in Buyer's 840,000 Barrels Holyrood storage facility.

- .6 Once Seller has confirmed in writing the desired delivery date and quantity, if delivery is more than three (3) days after the desired delivery date, Seller shall compensate Buyer for such delay by paying to the Buyer an amount equal to five cents (\$0.05) per barrel shipped for each day or part of a day beyond the desired delivery date that the delivery is late. Buyer will not unreasonably reject an alternative quantity or advance delivery date suggested by Seller, so long as the quantity and date can be accommodated by the Buyer's 840,000 Barrels storage facility at Site.
- .7 Buyer will advise Seller on a weekly basis of its current inventory level of Product in Buyer's Thermal Generating Station tank farm and its best estimate of anticipated consumption for the following week.

SC 4 Quantity Measurement and Quality Testing

.1 Inspection Services

The services of independent testing companies shall be used to:

- (a) measure the quantity of Product delivered and received in each cargo; and
- (b) perform tests and analyses on Product quality; and

to provide any other quality and quantity testing services as provided for within this Article.

The selection of independent testing companies shall be jointly agreed to in writing by Buyer and Seller, and at any one time there shall be a minimum of three (3) such companies approved.

For each cargo received, three (3) independent testing companies, from a jointly approved list of independent testing companies, shall be used. Buyer and Seller shall jointly agree in writing to the designation of which of such independent testing companies shall function in the capacities as provided for later in this Article. The designations shall be made prior to delivery of the Product and prior to the issuance of the Notice of Readiness and in sufficient time to enable the independent testing companies to perform their duties.

For purposes of this Article references to any one of the selected independent testing companies shall use the applicable reference as defined in following paragraphs.

One of the independent testing companies shall be nominated as the Inspector, to perform the functions provided for in Clauses SC 4.2 and SC 4.3.

The independent testing company nominated as the Inspector shall also serve as the First Analyst to perform the functions provided for in Clause SC 4.3.

Another independent testing company shall be nominated as the Second Analyst, to perform the functions provided for in Clause SC 4.3.

One of the independent testing companies shall be nominated as the Referee, to perform the functions provided for in Clause SC 4.4, if required. Such company shall not be one of the companies nominated as First Analyst or Second Analyst.

Seller shall notify each of the selected companies of their nomination for their respective assignments, and shall advise the Inspector which independent testing company is the Second Analyst.

Services performed by inspection companies shall follow the procedure outlined herein.

.2 Inspector

The Inspector shall measure the quantity of Product delivered and received into Buyer's shore tanks, based on Buyer's shore tank gauges and corrected to that quantity at 15°C in accordance with ASTM D-1250 Table 6B.

The Inspector shall make a volumetric composite sample of the Product in accordance with ASTM D-4057 standards. The Inspector shall divide the sample into three lots and place each lot into a sealed container.

The Inspector shall send one lot, for analysis, to each of the First Analyst and the Second Analyst, as instructed by Seller. The other lot shall be retained by Inspector for a minimum period of ninety (90) days as a referee sample.

.3 Analysis

The First Analyst and Second Analyst shall each analyze their respective samples for the properties of the Product stated in Article SC 1 - Product Quality, in accordance with the most current edition of the stated ASTM test methods.

In addition, each sample shall be analyzed by the First Analyst (unless prior approval of Buyer and Seller is obtained to have the tests performed by another laboratory) as follows:

- for metals content using Inductivity Coupled Plasma (ICP) test method as prescribed by the Canadian Association of Environmental Analytical Laboratories (CAEAL),
- an Ultimate Analysis test (carbon, hydrogen, nitrogen and oxygen) of the storage tanks into which the Product was discharged,
- A test for Sulphur (ASTM D-4294) and a test for Ash Content (ASTM D-482) of the storage tanks into which the Product was discharged.

The metals content, ultimate analysis and tests for sulphur and ash content results may be forwarded under separate cover.

First Analyst and Second Analyst shall each provide to Buyer and to Seller written notification of the results of their respective analyses.

.4 Reproducibility

If Higher Heating, Vanadium or Water Values as determined by First Analyst and Second Analyst do not demonstrate reproducibility within ASTM standard limits, the Inspector, upon written notice from either Buyer or Seller, shall send the referee sample to the Referee.

The Referee shall perform analysis upon the referee sample to determine the Higher Heating, Vanadium or Water Values using the test methods stated in Clause SC 4.3

Referee shall provide to Buyer and to Seller written notification of the results of its analysis.

.5 Sampling and Analysis Costs

Sampling and Analysis Costs shall be borne equally by Buyer and Seller.

.6 Determination of Values of Analyzed Properties

For purposes of the Contract, for each cargo delivered, the value assigned to each of the properties analyzed shall be deemed to be the average of the values determined by the First Analyst and the Second Analyst except as provided for in the following paragraph..

Where the Referee has performed an analysis in accordance with the requirements of Clause SC 4.4, the Higher Heating, Vanadium or Water Value resulting from the Referee's analysis shall be averaged with whichever value, as determined by the First Analyst or the Second Analyst, is closer to the value

determined by the Referee, and the resultant average shall be deemed the Higher Heating, Vanadium or Water Value of the specific cargo of the Product.

SC 5 Ownership

Ownership of the Product sold and delivered hereunder and all risks of loss and damage caused by or resulting from such Product or the sale or delivery thereof shall pass from Seller to Buyer upon passage through the Delivery Point at Site.

SC 6 Demurrage

- .1 Laytime of thirty-six (36) hours shall be permitted Buyer for receiving discharge of cargo. Such laytime shall commence the earlier of:
- six (6) hours after acceptance of Notice of Readiness given by the marine vessel; or
 - when the marine vessel is all fast in berth;
- whichever first occurs, and shall end when discharge hoses are disconnected.

Delays caused to the vessel getting into berth after giving Notice of Readiness for any reason over which Buyer has no control, or before or after berthing due to:-

- the marine vessel's condition; or
- marine vessel breakdown; or
- inability of the marine vessel's facilities to discharge within the time allowed; or
- a stoppage in discharge resulting from a spill of Product before passage through the last permanent hose flange of Seller's marine vessel; or
- strike, lockout, stoppage or restraint of labour of the master, officers or crew of the marine vessel or any tugboats;

shall not count as used laytime for the calculation of demurrage. For each hour or portion thereof that the vessel exceeds the allowed laytime for discharge Buyer shall pay Seller demurrage calculated as follows:

- (a) for vessels chartered by Seller on a single voyage charter party, at the actual rate applicable to that voyage, or
 - (b) for vessels owned by Seller or term chartered by Seller, at the prevailing single voyage market rate current on the date of commencement of loading of the voyage concerned for a vessel of similar type and size. Such market rate shall be expressed in points of the Worldscale tanker nominal freight rate scale as amended from time to time or such other freight scale as may be issued in replacement thereof and applied to the demurrage rate quoted in U.S. dollars appropriate to the size of the vessel provided for in the aforementioned freight scale. In default of agreement between Buyer and Seller, the market rate shall be determined by shipping brokers nominated by agreement between Buyer and Seller, or, in default of such agreement, by the Chairperson of the London Tanker Broker's Panel.
- .2 If, however, demurrage shall be incurred by reason of:-
- fire; or
 - explosion, or
 - a stoppage in discharge resulting from a spill of Product after passage through the last permanent hose flange of Seller's marine vessel; or
 - a strike, lockout, stoppage or restraint of labour; or
 - breakdown of machinery or equipment;

in Buyer's receiving facility, the rate of demurrage shall be one-half of that stated above.

Except as otherwise provided in Clause SC 6.3, if demurrage shall be incurred by reason of storm or other adverse weather condition, Buyer shall pay to Seller one-half of the amount paid by Seller as demurrage as a result of such storm or condition.

- .3 Notwithstanding anything otherwise contained in this Contract, where demurrage is incurred by Seller by reason of Buyer's dock at Thermal Generating Station being inaccessible owing to ice conditions, then:
- (a) demurrage time shall not begin for Buyer's account until notification by Seller to Buyer of such inaccessibility;
 - (b) when Seller has given notice to Buyer under item (a) of this Clause, Buyer shall exercise one of the following options:
 - (i) direct that the vessel proceed to another port or point of discharge free from ice and containing facilities for the reception of the cargo in bulk, or
 - (ii) direct that the vessel remain in the vicinity of the vessel's position when it was determined that Buyer's dock was inaccessible, or
 - (iii) direct that Seller attempt to identify a third party purchaser for the cargo, on the most favourable available terms, and if Seller proposes a third party purchaser that is accepted by Buyer, Buyer shall reimburse Seller to the degree that Seller fails to realize the equivalent to the then effective Selling Price to Buyer subject to adjustment to cover any change in cost incurred by Seller in making such delivery and Seller shall promptly comply with such direction;
 - (c) On the vessel reaching the point of discharge, the provisions of Clauses SC 6.1 and SC 6.2 hereof, including the allowance of six (6) hours before commencement of laytime, shall apply;
 - (d) the rate for demurrage to be paid by Buyer to Seller for demurrage payable under this Clause SC 6.3 shall be computed at fifty percent (50%) of the demurrage rate provided for in Clause SC 6.1 hereof, any payment at such rate computed against the time provided for in this Clause shall be the only charge by Seller to Buyer for demurrage with respect to the period prior to commencement of laytime pursuant to Clause SC 6.1 hereof;
 - (e) Subsequent to discharge and where, owing to adverse ice conditions at the Thermal Generating Station, the vessel is unable to leave Buyer's dock or after leaving Buyer's dock the vessel's progress is restricted by the said adverse ice conditions, Buyer agrees to reimburse Seller for 50% of demurrage occasioned by the adverse ice conditions payable under this Article .
 - (f) Buyer agrees to reimburse Seller for fifty percent (50%) of charges paid by Seller with respect to extra fuel consumed by the vessel as a consequence of complying with Buyer's election under paragraph (b) of Clause SC 6.3.

SC 7 Importation License

- .1 Buyer's obligation to purchase and receive the Product, or any delivery thereof, is subject to its holding the requisite licenses to import heavy fuel oil under the National Energy Board Act, Revised Statutes of Canada, 1985, Chapter N-7, as amended, or any Act passed in substitution thereof.
- .2 Buyer shall diligently take all reasonable steps to obtain and hold in place the licenses referred to in this Contract.

SC 8 Successors and Assigns

This Contract shall be binding upon and shall enure to the benefit of successors of the parties hereto. Neither party shall assign this Contract without the prior written consent of the other party. If Seller assigns this Contract to an affiliate of the Seller, Seller shall guarantee, and shall be deemed to have guaranteed, the performance of the obligations hereunder by the affiliate to which this Contract is assigned. For purposes of this Article, Seller's affiliates include companies controlled by, in control of, or under common control with Seller. In the event of assignment to such an affiliate;

- (a) such affiliate shall be relieved of an obligation pursuant to Article SC 10 - Force Majeure only if, and only to the extent that, the act, omission or circumstance affecting the affiliate would have affected Seller in the same manner, and relieved Seller of such obligation, if such assignment had not taken place; and
- (b) such affiliate shall be at liberty to reduce deliveries pursuant to Article SC 3 - Delivery and Schedules only when, and to the extent that, such reduction would have occurred from Seller if no such assignment had taken place; and
- (c) Seller, without restricting its obligations to Buyer, set out above or otherwise, guarantees that the availability of Product to Buyer, or the price of Product to Buyer, shall not be adversely affected by reason of any assignment made pursuant to this Article.

SC 9 Governing Law and Forum

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

SC 10 Force Majeure

- .1 Neither party shall be considered to have breached its obligations (except as to Buyer's obligation to pay for residual fuel oil delivered by Seller and Buyer's obligation, if any, to pay demurrage as provided in Article SC 6 - Demurrage) by reason of any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of public enemy, wars, fire, epidemic, earthquakes, floods, explosions, orders of governmental authority or any other cause, whether of the kind enumerated or otherwise not within the control of such party nor any act, omissions or circumstances which such party is unable to prevent or overcome by the exercise of due diligence, including as to Seller, its suppliers of residual fuel oil or crude oil.
- .2 If, by reason of any of the causes described in Clause SC 10.1, there is a shortage of residual fuel oil resulting in a decrease in the quantity or quantities of residual fuel oil available to Seller from its affiliates and under its contracts for the purchase or other acquisition of such residual fuel oil (such decrease not being willfully caused by Seller or its affiliates) other than by expiration of the term of existing contracts, or failure to renew or replace contracts as they expire, so that Seller is unable to fully comply with all of its obligations to Buyer and others to whom it is bound under then existing contracts, Seller shall be at liberty to reduce deliveries under this Contract to such extent as it in its judgment may see fit, as part of its prorating of available supplies and shall not be required to purchase supplies to make good any shortages resulting therefrom. Buyer shall be free to purchase from other suppliers any deficiencies hereunder caused by the operation of this Article. However, Seller agrees to assist Buyer, if so requested, in purchasing efforts to fulfill any such deficiencies.

Furthermore, should prorating of available supplies be necessary, Seller undertakes not to reduce deliveries to Buyer to a greater proportionate extent than the reduction applied to public utilities supplied by Seller with Product of similar grade and quality in Canada or elsewhere.

SC 11 Modification

This Contract sets forth the entire understanding of the parties and supersedes all prior understandings and agreements between the parties with respect to the purchase and sale of the Product to be sold hereunder, and may not be modified or terminated orally. No claimed modification or waiver of any of its provisions shall be valid unless in writing and signed by both parties.

SC 12 Laws and Regulations

- .1 Seller shall observe and keep itself fully informed of, and shall comply with, all laws and regulations in effect or which may become effective in any manner affecting those engaged or employed in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having jurisdiction or authority over the same. If any discrepancy or inconsistency should be discovered in the Contract in relation to any such law, Seller shall forthwith report the same in writing to Buyer.
- .2 Seller shall protect and indemnify Buyer from and against any and all liability from or based on the violation by Seller, Seller's subcontractors, agents, servants or employees of any such law or regulation.

SC 13 Performance of Work

Seller has entered into the Contract and shall perform the Work as an independent seller and not as an employee or agent of Buyer. Seller shall have exclusive and complete control over its employees or agents, and shall be solely responsible for their acts and omissions.

SC 14 Hazardous or Controlled Products

- .1 Seller shall not use or deliver a hazardous or controlled product, as defined by the Hazardous Products Act, Revised Statutes of Canada 1985; Chapter H-3 as amended, for the purposes of this Contract without the prior approval of Buyer. If such products are approved by Buyer, Seller shall be familiar with and fully comply with the Hazardous Products Act, and the Workplace Hazardous Materials Information System (WHMIS) Regulations, (Newfoundland Regulation 1149/96) under the Occupational Health and Safety Act, Revised Statutes of Newfoundland, 1990, Chapter O-3, all as amended.
- .2 Seller shall ensure that a hazardous or controlled product is not used, stored or handled for the purposes of the Contract unless all of the requirements of the aforesaid Act and regulations in respect of labels, identifiers, material safety data sheets (MSDS) and worker education are complied with.
- .3 Seller shall ensure that all persons who work with a hazardous or controlled product or work in proximity to a hazardous or controlled product are informed about all hazard information received from the supplier of the said product as well as any other hazard information of which Seller is aware of, or ought to be aware of, concerning the use, storage and handling of the hazardous or controlled product.
- .4 Seller shall ensure that, prior to delivery of the hazardous or controlled product to the Jobsite, it is labeled with the supplier's label or with a label in accordance with requirements of the aforesaid Act and regulations. Seller shall provide Buyer with all such information including MSDS prior to delivery of the hazardous or controlled product to the Site.

SC 15 Environmental Protection

- .1 Seller shall protect the environment of the areas where the Work is located and the Work at all times shall be subject to inspection by Buyer and relevant provincial and federal governments. Any specific matters relating to environmental protection shall be dealt with between Seller and Buyer.
- .2 Seller shall supply Buyer with a copy of a declaration conforming to the requirements of section 660.2(2) of the Canada Shipping Act, Revised Statutes of Canada, 1985, Chapter S-9, as amended.

SC 16 Substitution of Lower-Sulphur Fuel

If, during the term of the Contract, a requirement is imposed upon Buyer to use a fuel with a lower sulphur content, the specification for such fuel shall meet all requirements of Article SC 1 - Product Quality except that the sulphur content shall be specified by the Buyer at the time of giving a Firm Order and will be in the range of 1.0% to 2.2% sulphur by weight. The price paid for such substitute fuel will be as computed in Form of Tender items (h) and (i). All other provisions of the Contract will apply.

SC 17 Termination

Buyer may terminate the Contract upon giving Seller at least sixty (60) calendar days written notice. During the notice period, the terms and conditions of the Contract shall remain in full force and effect and Seller shall meet the identified delivery requirements of the Buyer.

SC 18 Commencement of Contract Deliveries

Contract deliveries will commence upon completion of the existing supply contract, anticipated at the time of tendering call for this document, to provide its final delivery in June, 2002. Seller will be advised, in accordance with the provisions of Clause SC 3.4 of Article SC 3 - Delivery and Schedules, of the first delivery within five (5) working days of award of Contract.

SC 19 Claims

All claims for any cause whatsoever, whether based in contract, negligence or tort, strict liability or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives from Buyer, or Buyer receives from Seller, written notice of such claim not later than one hundred and eighty (180) days after Buyer's receipt of Product as to which such claim is made or not later than one hundred and eighty (180) days from the date fixed for delivery of Product in the case of non-delivery of Product.

NEWFOUNDLAND AND LABRADOR HYDRO

CONTRACT

FOR

SUPPLY AND DELIVERY

OF

NO. 6 FUEL OIL

TO

HOLYROOD GENERATING STATION

APPROVED BY:


NEWFOUNDLAND AND LABRADOR HYDRO

CONTRACT: 1997-165
DATE: 9 December 1997

NEWFOUNDLAND AND LABRADOR HYDRO

CONTRACT

FOR

SUPPLY AND DELIVERY

OF

NO. 6 FUEL OIL

TO

HOLYROOD GENERATING STATION

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AGREEMENT

**SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION**

AGREEMENT

THIS AGREEMENT made as of the 9th day of December A.D. 1997.

BETWEEN: **NEWFOUNDLAND AND LABRADOR HYDRO**, a corporation constituted by statute and an agent of Her Majesty the Queen in right of the Province of Newfoundland and having its head office at Hydro Place, St. John's, in the said Province (hereinafter called "Buyer") of the one part;

AND **ENRON LIQUID FUELS, INC.** (hereinafter called "Seller") of the other part.

WHEREAS Buyer is the owner and operator of an oil-fired generating station located at Holyrood in the Province of Newfoundland (hereinafter referred to as "Thermal Generating Station");

AND WHEREAS Buyer has invited Tenders for the supply and delivery of approximately 10,000,000 Barrels of No. 6 fuel oil for the Thermal Generating Station;

AND WHEREAS Seller has submitted its Tender for supply and delivery of said No. 6 fuel oil and Buyer has accepted that Tender;

AND WHEREAS it is felt desirable to enter into this Agreement in order to prescribe the terms and conditions which shall apply to and in respect of the supply and delivery of the said No. 6 fuel oil;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT the Buyer and Seller in consideration of the premises and of the covenants, agreements and declarations made herein by the other, covenant, agree and declare as follows:-

A 1 Interpretation

.1 In this Agreement and the schedules, unless the context otherwise requires,

- (a) "Barrel" means the quantity of Product which when measured at 60°F equals 42 U.S. gallons;
- (b) "Contract" or "Contract Documents" means this Agreement and includes

SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS
SCHEDULE B - FORM OF TENDER
SCHEDULE C - SPECIAL CONDITIONS

and any Addenda thereto which are incorporated therein by reference;

- (c) "Delivery Point" means delivery of Product shall pass from Seller to Buyer upon passage into the first permanent hose flange at Buyer's dock at the Thermal Generating Station.
- (d) "DES" means delivered ex ship as defined and construed in accordance with the provisions of ICC INCOTERMS (1990 edition).
- (e) "Lay Time" means the time allowed for the vessel to discharge its cargo and shall commence the earlier of 6 hours after the acceptance of Notice of Readiness given by the marine vessel or when the marine vessel is all fast in berth and shall end when the discharge hoses are disconnected;
- (f) "Notice of Readiness" means the notice given by the marine vessel to the Buyer that it is ready to discharge its cargo. Such notice cannot be given until the Buyer is in receipt of the Analysis of Product Quality and evidence of insurance as provided in Clauses SC 1.5 and IT 13.4.(c) respectively.
- (g) "Product", written alone, means No. 6 fuel oil having the specifications listed in Article SC 1 - Product Quality of SCHEDULE C - SPECIAL CONDITIONS;
- (h) "Province" means the Province of Newfoundland;
- (i) "Seller" means the party or parties executing the Agreement with Buyer for the Work, and the successors and permitted assigns of the said party or parties;
- (j) "Selling Price" means the price of the Product delivered to Buyer DES at the Delivery Point in the currency of the United States of America excluding all Canadian federal, provincial and municipal taxes and Canadian import duties or other Canadian federal and provincial licenses and fees. Where Seller is non-Resident in Canada, it shall be Buyer's obligation to be the importer of record and to pay such taxes, duties or fees as may be applicable as the importer of record and to apply for any Canadian import compensation that may be due Buyer. Where Seller is resident in Canada, Seller shall be the importer of record and shall pay such taxes, duties or fees as may be applicable as the importer of record and to apply for any Canadian import compensation that may be due Seller;
- (k) "Site" means Buyer's dock at the Thermal Generating Station;
- (l) "Work" means work to be performed by Seller as described in the Contract.

.2 Words in the Contract Documents importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.

A 1 Interpretation (cont'd.)

- .3 Where a word is defined anywhere in the Contract Documents, other parts of speech and tenses of the same word have a corresponding meaning.
- .4 Wherever in the Contract Documents a number of days is prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.
- .5 Whenever the Contract Documents require either a notice to be given or a request to be made, and the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time will continue to run until the next succeeding normal business day.
- .6 In the Contract Documents the headings and any tables of contents and indexes attached thereto are inserted for convenience of reference only and shall not affect the construction or interpretation thereof.
- .7 Any reference in any Contract Document to an article, a clause, a subclause, a paragraph or a schedule shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause, a paragraph or a schedule to that Contract Document.
- .8 This Agreement may be executed in more than one counterpart, each of which when so executed shall be deemed to be an original.
- .9 The Contract embodies the entire agreement between the parties. The Contract Documents are intended to be correlative and complementary and any Work required by one document and not mentioned in another shall be executed as though required by all documents.
- .10 The Contract is intended to cover all the Work to be done by Seller; and, unless expressly excluded in the Contract, any Work not indicated herein but which may be necessary or required to complete any part of the Work in a proper, substantial and workmanlike manner shall be furnished by Seller.
- .11 If Seller, in the course of the Work, discovers any discrepancy between the Specifications and the physical conditions of the Site or finds any error, omission or ambiguity in the Contract Documents, Seller shall immediately apply in writing to Buyer for clarification. Buyer will promptly clarify such matters and so inform Seller.
- .12 In case of conflict between the Contract Documents, the said documents shall be considered in the following order of precedence, unless otherwise provided: this AGREEMENT, SPECIAL CONDITIONS, INSTRUCTIONS AND INFORMATION TO TENDERERS, FORM OF TENDER.

A 2 Execution of the Work

Seller for and in consideration of payment to be made to Seller as hereinafter provided, agrees to supply and deliver the Product required for the performance of the Contract as described in and in strict conformity with the terms and conditions of this Agreement and the other Contract Documents.

A 3 Execution of Contract Documents

Execution by Buyer and by Seller of this Agreement shall constitute acceptance and approval by the parties of all provisions, terms and conditions of all of the Contract Documents as if each had been executed by both parties.

A 4 Payment

- .1 Buyer, in consideration of the performance of the Contract by Seller, agrees to pay Seller in accordance with the Selling Price set forth in the Tender, subject to any changes provided for elsewhere in the Contract. Such payment shall be made in accordance with the procedures set forth in the Contract.
- .2 Terms of payment are net fifteen (15) days after:
 - (a) completion of delivery of Product from Seller's marine vessel; or
 - (b) completion of any other service required to be provided under the Contract;

whichever is applicable, and upon receipt of an acceptable invoice by Buyer, provided that the amounts so billed are correct and properly payable under the Contract. In the case of any disputed invoice due to apparent billing errors contained therein, Buyer shall pay the undisputed portion of any such invoice in accordance with Clause A 4.2. Seller and Buyer shall attempt to reach agreement in respect of any disputed amount within thirty (30) days following Seller's receipt of Buyer's payment of the undisputed amount. If Seller and Buyer fail to agree within such thirty (30) day period, the matter may be referred by either Seller or Buyer for resolution pursuant to Clause SC 9 - Governing Law and Forum.
- .3 Where Seller is resident in Canada and is the importer of record, all invoices shall include Seller's Registration Number for the Federal Goods and Services Tax/Harmonized Sales Tax (HST), and shall separately identify the amounts of HST, for which Seller shall be reimbursed.
- .4 If the date payment becomes due and payable falls on a day other than a working day for Buyer then payment shall be made on the first working day thereafter.
- .5 Delay by Buyer in making a payment when it becomes due and payable shall not be deemed to be a breach of the Contract by Buyer, but, except where specifically otherwise provided for, such a delay will, if the delay continues for more than fifteen (15) days beyond the date upon which the payment is due and payable, entitle Seller to interest on the amount overdue at the Prime Lending Rate of the Buyer's Bank. If Buyer fails to make any late payments within forty-five (45) days after notice of late payment from the Seller, Seller shall have the right to suspend all of Seller's obligations under this Contract without penalty or liability until Buyer provides Seller reasonably satisfactory assurances of Buyer's financial responsibility. If Seller does not receive satisfactory assurances of Buyer's financial responsibility within sixty (60) days after Seller's written request for such assurances, then Seller shall have the right to terminate this Contract at any time thereafter without penalty or liability to Seller.

A 5 Language of Contract

Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

A 6 Notice to and Addresses of Parties

Any notice required or permitted to be given hereunder shall be given in writing, and shall either be given by hand delivery or by regular mail return receipt requested or by fax transmission addressed to the respective officers of the parties as set forth below:

If notice is by mail or fax transmission it shall be effective upon receipt.

Buyer: Newfoundland and Labrador Hydro
Hydro Place
500 Columbus Drive
P.O. Box 12400
St. John's, Newfoundland,
Canada,
A1B 4K7

Attention: Manager of Administration
Fax: 709-737-1795

Seller: Enron Liquid Fuels, Inc.
1400 Smith Street
Houston
Texas 77002-7361
U.S.A.

Attention: Dana R. Gibbs
Vice-President
Fax: 713-646-4820

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under their respective Corporate
Seals as of the day and year first above written.

**NEWFOUNDLAND AND LABRADOR HYDRO
(Buyer)**

Signed and sealed in the presence of:

BY: P. A. Hickman (sgd)
(Name)

Marlene Walsh (sgd)
(Witness)

Asst. Corporate Secretary
(Title)

AND: Maurice P. Greene (sgd)
(Name)

Marlene Walsh (sgd)
(Witness)

Vice-Pres. H. R. General Counsel
(Title) & Corp Sec.

**ENRON LIQUID FUELS INC
(SELLER)**

Signed and sealed in the presence of:

BY: ? (sgd)
(Name)

Geneva H. Hironaka (sgd)
(Witness)

Vice President
(Title)

AND: _____
(Name)

(Witness)

(Title)

SCHEDULE A

INSTRUCTIONS AND INFORMATION TO TENDERERS

**SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION**

SCHEDULE A

INSTRUCTIONS AND INFORMATION TO TENDERERS

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IT 1 Description of Work

The Work shall comprise the supply and delivery of approximately 10,000,000 Barrels of No. 6 fuel oil for the Thermal Generating Station at Holyrood in the Province of Newfoundland, as is more particularly described in the Contract Documents.

IT 2 Preparation and Submittal of Tenders

- .1 Tenders will be received at the Materials Management Department, Fourth Level, Hydro Place, 500 Columbus Drive, St. John's until 3:00 p.m. local time, St. John's on Wednesday, October 22, 1997 and opened immediately thereafter at the 2nd Level, Hydro Place.
- .2 The Tender shall be enclosed in an envelope showing Tenderer's name and return address and marked:

TENDER - CONTRACT 1997-165

Newfoundland and Labrador Hydro
P.O. Box 12400
Materials Management Department
4th Level, Hydro Place
St. John's, Newfoundland
A1B 4K7

Attention: Manager of Materials Management

Tenderer may submit its Tender by fax using the fax number shown in Article IT 12 - Communications During Tendering, and such Tender may be considered, subject to:

- (a) proof, satisfactory to Buyer, that original Tender has been forwarded to Buyer and is out of the possession and control of Tenderer prior to the time set for receipt of Tenders;
- (b) its arrival prior to the time set for receipt of Tenders;
- (c) the fax being a duplicate of the completed Schedule of Prices of the original Tender, and
- (d) the receipt by Buyer, prior to the time set for Tender close, of either the required Surety's Consent or a fax copy of same.

In the event of fax delivery of Tender, the original Tender documentation must be received by Buyer not later than 4:00 p.m. on the second working day following the time set in Clause IT 2.1 for receipt of Tenders.

IT 2 Preparation and Submittal of Tenders (cont'd.)

- .3 Tenders shall be prepared in accordance with SCHEDULE B - FORM OF TENDER included herein.
- .4 Tenders shall be properly executed by duly authorized officers of Tenderer. If required by Buyer, proof of authority of the executing officer to bind Tenderer shall be submitted.
- .5 If a partnership or joint venture tenders, it shall submit with its Tender, a Power of Attorney executed by all of the general partners or venturers designating and appointing one of the general partners or venturers as the Management Sponsor, and authorizing the Management Sponsor to sign the Tender on behalf of Tenderer, to act for and bind Tenderer in all matters relating to the Tender and, in particular, to agree that each partner or venturer shall be jointly and severally liable for any and all of the duties and obligations of Tenderer assumed under the Tender and the Contract if awarded. The Tender shall be signed on behalf of the partnership or joint venture in its legal name by the Management Sponsor.

IT 3 Dock Facilities

- .1 The successful Tenderer shall be required to deliver fuel to Buyer DES at the Delivery Point in marine vessels in quantities previously approved by Buyer.
- .2 Buyer will provide a safe berth where a marine vessel with a maximum loaded displacement of 62,000 long tons summer displacement and a maximum draft not exceeding thirty-five (35) feet at mean low water can proceed to, lie at, and depart from, Buyer's berth always safely afloat.

IT 4 Prices

- .1 Tendered prices shall be stated in currency of the United States of America, payable at par in St. John's, Newfoundland. Tender prices shall be firm except for any price adjustments specified in the Contract Documents.
- .2 Except for those items specifically identified in the Contract Documents, herein, as being furnished or performed by Owner, Tenderer shall include, in the prices entered in SCHEDULE B - FORM OF TENDER, amounts to cover the performance of the Work complete in every respect in accordance with the Contract Documents, including the provision of all material, equipment, labour and supervision, and the contingent expenses and risks of every kind necessary to complete the Work in accordance with the Contract Documents.
- .3 Except as otherwise provided in the Contract, if a unit price is not stated in SCHEDULE B - FORM OF TENDER, Schedule of Prices for any item, the unit price shall be determined by dividing the Tender amount for the item by the estimated quantity. Where a unit price only is stated in SCHEDULE B - FORM OF TENDER, Schedule of Prices, or in the case of errors in the extension of the unit price, the Tender amount for the item shall be determined by multiplying the unit price by the estimated quantity. In the case of discrepancy between words and figures, the words shall prevail. In the case of arithmetical error, the correct total shall prevail.

IT 5 Scope of Work

The successful Tenderer shall supply the quantity of Product as noted in Article IT 1 - Description of Work. The forecast annual delivery requirements of the Product is estimated to be as follows:

1998	3,175,000 Barrels
1999	3,250,000 Barrels
2000	3,575,000 Barrels

Tenderer should note that these are estimated quantities and are based on forecast requirements and Buyer reserves the right to increase or decrease quantities as may be required for plant operation. Buyer does not guarantee or commit itself to any minimum quantity within a specified time period.

IT 6 Validity of Tender and Performance Security

- .1 The Tender shall remain open for acceptance by Buyer and irrevocable for a period of sixty (60) days after the closing date for receipt of Tenders, and Buyer may accept a Tender whether any other Tender has been previously accepted or not.
- .2 Tender shall be accompanied by a Surety's Consent for a Ten Million Dollar (\$10,000,000.00) Performance Bond in the form set out in SCHEDULE B - FORM OF TENDER, and forming part thereof and entitled Surety's Consent.
- .3 The successful Tenderer shall within fourteen (14) days from receipt of notification of acceptance of its Tender, furnish a Ten Million Dollar (\$10,000,000.00) Performance Bond in the form set out in SCHEDULE B - FORM OF TENDER included herein, and forming part of these Contract Documents and entitled, Form of Performance Bond.
- .4 After receipt of notification in writing of the acceptance of its Tender and subject to compliance with Clause IT 6.3, the successful Tenderer shall commence performance of the Work and shall complete the Work and all parts thereof within the times set out in the Contract Documents.

IT 7 Selling Price and Adjustments

.1 Selling Price

Selling Price per Barrel delivered to Buyer DES at the Delivery Point shall be stated in U.S. currency payable at par in St. John's, Newfoundland. Selling Price shall be firm except for price adjustments provided for in the Contract Documents. Adjustments provided for in this Article shall be applied in sequence as they appear in this Article.

.2 Daily Mean Adjustment using Platt's Oilgram U.S. Marketscan

- (a) The Selling Price adjustment mechanism for No. 6 fuel oil 2.2% sulphur content shall be Platt's Oilgram U.S. Marketscan daily mean "U.S. SPOT CARGOES - NEW YORK" price for No. 6 fuel oil 2.2% sulphur content.

IT 7 Selling Price and Adjustments (cont'd.)

.2 Daily Mean Adjustment using Platt's Oilgram U.S. Marketscan (cont'd.)

- (b) The Selling Price will change from and after October 15, 1997, up or down, cent for cent with changes in the daily mean of the cargo prices for No. 6 fuel oil 2.2% sulphur content maximum as determined in Clause IT 7.2 under the heading "U.S. SPOT CARGOES - NEW YORK" as published from time to time in Platt's Oilgram U.S. Marketscan and for the purposes of computing escalation no account shall be taken of temporary entitlement allowances or temporary voluntary allowances or other discounts or surcharges set forth in footnotes thereto. The prices used for any day shall be prices shown in Platt's Oilgram U.S. Marketscan as in effect for that day. If delivery is made on a Saturday, Sunday or U.S. Holiday, the Platt's Oilgram U.S. Marketscan prices used shall be the prices most recently in effect on the last business day.

For each cargo, the point in time for computing the change shall be either:-

- (i) the time the vessel transporting such cargo reaches her end of sea passage. The end of sea passage shall be when the vessel reaches:
- (1) the Holyrood pilot station (47° 27' 48" N 53° 7' 30" W); or
 - (2) the St. John's pilot station (47° 33' 42" N 52° 37' 54" W); or
 - (3) an alternative location recommended or designated by either officials of the Atlantic Pilotage Authority or by the Canadian Coast Guard; or
- (ii) where the Buyer has exercised an option pursuant to Clause SC 6.3 of SCHEDULE C - SPECIAL CONDITIONS hereof, 0001 hours on the ninth day following the FOB Bill of Lading date, such times shall be determined after reference to the ship agent's port log or Statement of Facts or the Bill of Lading or the Abstract of the Captain's Log Book; or
- (iii) such date as is mutually agreed upon by Buyer and Seller.

.3 Adjustment for Vanadium Content

The Selling Price for each Barrel delivered under the Contract shall be subject to a deduction of \$0.01 U.S. for each 5 parts per million or major fraction thereof that the vanadium content for each delivery is in excess of the specified maximum for vanadium in this Contract.

.4 Higher Heating Value Adjustment

The Selling Price for each delivery shall be adjusted for Higher Heating Value content of the Product, in accordance with the following ratio:

Adjusted Price for Product is:

$$\frac{\text{BTU/Barrel delivered}}{\text{Guaranteed Higher Heating Value tendered BTU/Barrel}} \times \text{Selling Price}$$

Positive and negative adjustments shall be made when, but only when, Higher Heating Value content varies by more than 21,000 BTU/Barrel from the Guaranteed Higher Heating Value tendered. Where Higher Heating Value adjustments are made, they shall be made with respect to the whole variation, including the first 21,000 BTUs.

IT 7 Selling Price and Adjustments (cont'd.)

.4 Higher Heating Value Adjustment (cont'd.)

The positive or negative Selling Price adjustment multiplied by the Barrels delivered shall be calculated for each delivery providing a monetary Higher Heating Value credit or debit. At the conclusion of each twelve (12) month period, a reconciliation of the Higher Heating Value credits or debits for each delivery in such twelve (12) month period shall be made. The party, Buyer or Seller, to whom a monetary settlement is due shall invoice the other party, which shall be paid within fifteen (15) days of receipt of an acceptable invoice. Failure by Seller to make such payment shall entitle Buyer to offset the settlement amount against the payment of the next delivery invoice, and payment, together with interest as provided in Clause A 4.4 of the Agreement.

IT 8 Discrepancies, Omissions and Clarifications

- .1 Should Tenderer find discrepancies in, or omissions from, the Contract Documents, or have any doubt as to the meaning or intent of any part thereof, Tenderer shall at once notify Buyer in writing.
- .2 Buyer shall not be responsible for oral instructions and no corrections or interpretations shall be binding unless issued in the form of Addenda.

IT 9 Changes Prior to Closing of Tender

- .1 Changes in the Work or corrections to or interpretations of the Contract Documents, as may be issued by Buyer during the tendering period, shall be in the form of Addenda. Such Addenda shall become part of the Contract Documents.
- .2 Tenderer shall promptly acknowledge receipt in writing of any and all Addenda and shall confirm in its Tender that the information contained in such Addenda has been considered in preparing the Tender.

IT 10 Rejection of Tender

- .1 Buyer reserves the right to reject any or all Tenders or parts thereof. The lowest Tender or part thereof will not necessarily be accepted.
- .2 A Tender which is incomplete, conditional, unbalanced or obscure or which contains additions not called for, erasures, alterations or irregularities of any kind, may be rejected.

IT 11 Qualification of Tenderer

- .1 If required by Buyer before a contract is awarded, Tenderer shall furnish evidence satisfactory to Buyer that it has the necessary ability, experience and capital to perform the Work involved and to complete the Work within the times set out in the Contract Documents. Tenderer in order to be qualified as an acceptable Seller shall have previously and successfully completed undertakings of comparable nature and scope and shall provide evidence satisfactory to Buyer to this effect.
- .2 The successful Tenderer shall be authorized to do business in the Province of Newfoundland prior to commencement of the Work under the Contract. Where the Tenderer is a corporation, it shall be registered to carry on business in compliance with the laws of the Province of Newfoundland and shall be registered in good standing.

IT 12 Communications During Tendering

All communications during the period of tendering shall be addressed to:

Newfoundland and Labrador Hydro
P.O. Box 12400
Hydro Place
St. John's, Newfoundland
A1B 4K7

Fax: 709-737-1795

Attention: Manager of Administration

IT 13 Insurance

.1 Liability - General

Seller shall provide comprehensive general liability insurance covering premises, operations, products and completed operations. Extensions of coverage shall include broad form property damage on an occurrence basis, blanket contractual liability, contingent employer's liability, contractor's contingency liability with respect to the operations of sub-contractors, cross liability and employees as additional insured.

Minimum limits shall be \$1 million combined for any one occurrence involving property damage or loss or bodily injury or loss of life. Such insurance shall state that it is primary insurance and that any other insurance carried by the Buyer shall be excess and not contributing therewith.

.2 Liability - Automobile

Seller shall provide automobile liability insurance on all licensed vehicles, which will be used in connection with the Contract and which are owned, leased or rented by the Seller or its agents.

Minimum limits shall be \$1 million combined for any one occurrence involving property damage or loss, bodily injury or loss of life.

.3 Liability - Marine

Seller shall provide or cause to have provided protection and indemnity insurance including oil pollution coverage for each vessel with a minimum limit of Five Hundred Million U.S. Dollars (\$US 500,000,000.) or equivalent currency. Seller shall declare the name of the protection and indemnity club.

.4 Insurance Conditions

- (a) Premiums for all necessary insurance policies shall be included in the Selling Price. No special payments shall be made to Seller in respect of such premiums.
- (b) Newfoundland and Labrador Hydro shall be listed as an additional insured on the insurance policies listed in Sections IT13.1 - Liability-General, IT 13.2 - Liability-Automobile and IT13.3 - Liability-Marine to the extent of the indemnities assumed by Enron Liquid Fuels, Inc. "Seller" under this agreement.

.4 Insurance Conditions (cont'd.)

(c) Seller shall provide Buyer with evidence of insurance by notifying Buyer of name of marine vessel, name of protection and indemnity club of which the marine vessel is a member and confirming to Buyer that vessel has a minimum limit of Five Hundred Million US Dollars (\$US 500,000,000.) oil pollution coverage prior to delivery of the Product to Site and the issuance of the Notice of Readiness.

(d) All insurance obtained by Seller shall include the following clause:

"Thirty (30) days advance notice shall be given in writing to Newfoundland and Labrador Hydro, P.O. Box 12400, St. John's, Newfoundland, A1B 4K7 Attention: Manager of Risk Management of any cancellation, termination or reduction in the scope of coverage provided or as evidence herein".

(e) Seller shall defend, indemnify and hold harmless Buyer against any liability for damages, cost, legal fees and expenses on account of:

- (i) Injury to, or death of, any person, or damage or loss to any property, including Buyer's employees and property, occurring as a result of fault or negligence or from other causes of the Seller, the Seller's subcontractors, agents, servants or employees.
- (ii) Injury to any employee of Seller, its subcontractor or agent during the performance of such Work and any death resulting therefrom, except to the extent occurring as a result of fault or negligence or from other causes of Buyer or its agents, servants, employees or independent contractors.
- (iii) Any claim made against Buyer for contribution in general average with respect to any Product to be delivered hereunder.

.5 General Average Waiver Clause

Notwithstanding anything to the contrary contained herein and in addition to other collectible claims for which underwriters would be held liable hereunder, Seller's insurance coverage shall also pay in full for hull and machinery, etc., and cargoes' proportion of general average even though the sum hereunder insured may be less than the contributing value or actual value of hull and machinery, etc., and cargo without right of subrogation against cargo interest.

IT 14 Deliveries

- .1 The transfer of Product from Seller's marine tanker to Buyer's storage facilities at Site shall be done in accordance with the laws of the Province of Newfoundland and the laws of Canada, including, but not limited to, the Environment Act, Statutes of Newfoundland, 1995, Chapter E - 13.1, the Storage and Handling of Gasoline and Associated Products Regulations, 1996, Newfoundland Regulation 775/96 and the Oil Pollution Prevention Regulations, 1992, SOR/93-3, as amended. Seller's personnel shall supervise any and all such transfers of Product and shall be in a position to immediately shut off the flow of Product in order to prevent any overflows, ruptures or leaks which might occur.

IT 14 Deliveries (cont'd.)

- .2 Seller shall ensure that marine tankers used in the delivery of Product comply with section 660.2(2) of the Canada Shipping Act, Chapter 36. In the event of a spill of Product prior to the transfer of Product to Buyer's storage facility, Seller shall initiate the shipboard Oil Pollution Emergency Plan required under section 660.2(2), and shall be responsible for all reporting and clean-up requirements associated with such a spill.
- .3 In the event of a spill of Product during the transfer of Product to Buyer's storage facilities, Seller shall immediately notify Buyer of the spill and shall take all reasonable action to immediately shut off the flow of Product and minimize the amount of Product spilled. Buyer will be responsible for reporting the spill and implementing containment and clean-up procedures as required by law. Seller shall comply with all reasonable requests of Buyer's representative related to implementation of spill containment and clean-up procedures. Such clean-up shall be undertaken by Buyer without regard to whom is responsible for the spill. The party responsible for the spill shall be ultimately liable for all reasonable costs and damages resulting therefrom.

IT 15 Public Disclosure of Proprietary Tender Information

Reasonable precautions shall be taken to safeguard against disclosure of proprietary Tender information to unauthorized persons. Except to the extent required by law, Buyer shall not disclose proprietary Tender information to third parties. Buyer shall give Tenderer notice of any request or suit to obtain such information and permit Tenderer to resist or defend against any such disclosure.

IT 16 Tender Evaluation

- .1 Buyer's evaluation will take into account all legal, technical, financial and other considerations relevant to the most cost-effective completion of the Work as described in the Contract.
- .2 Should a Tenderer, in its opinion, have any other considerations which might appear relevant in the initial evaluation of tenders, it shall indicate same in its Tender.
- .3 Tendered prices shall be evaluated on the basis of adjustment of tendered Selling Price to a Higher Heating Value content of 6,300,000 BTU's per Barrel, and for payment fifteen (15) days after date of delivery.
- .4 Security of supply is an important consideration. Tenderer should indicate the strength of its position in maintaining continuation of supply to Buyer as a public utility.

IT 17 Post-Tender Meeting

If required by Buyer before a Tender is accepted, Tenderer shall, at its cost, attend a Post-Tender Meeting to review its Tender submission, and such meeting shall be held at Buyer's offices.

**SCHEDULE B
FORM OF TENDER**

16.00
20.00

SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION

SCHEDULE B

FORM OF TENDER

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FORM OF TENDER - 1
CONTRACT 1997-165

Page 22 of 46

Tender by Enron Liquid Fuels, Inc.

a Company duly incorporated under the laws of Delaware

or:

a partnership, joint venture or consortium carrying on business under the firm name and style above stated, the names, addresses and places of incorporation, if any, of all the partners or members of the firm being the following:

and having its head office at 1400 Smith Street, Houston, Texas 77002-7361.

to:

Newfoundland and Labrador Hydro
Materials Management Department
P.O. Box 12400
Hydro Place
St. John's, Newfoundland
A1B 4K7

Attention: **Manager of Materials Management**

CONTRACT 1997-165

NAME AND ADDRESS OF TENDERER

Enron Liquid Fuels, Inc.

(Name of TENDERER)

1400 Smith Street

(Address of TENDERER)

Houston, Texas

POSTAL CODE: 77002-7361

TELEPHONE: (713) 853-5291

FAX: (713) 646-3393

GST/HST REGISTRATION NO. _____

(Telephone Number)

(Fax Number)

TENDER (cont'd.)

- (a) Tenderer has carefully examined the Contract Documents, including the following addenda:

Addenda Numbers: N/A dated _____
_____ dated _____
_____ dated _____
_____ dated _____ ;

relating to a Contract for supply and delivery of approximately 10,000,000 Barrels of No. 6 fuel oil for Buyer's Thermal Generating Station at Holyrood, Newfoundland and Tenderer hereby accepts and agrees to the same as forming inter alia, part and parcel of the said Contract and agrees that Buyer shall not be responsible for any errors or omissions in this Tender.

- (b) Tenderer hereby tenders and offers to enter into a Contract, being the Contract hereinbefore referred to, to do all of that which is set out or called for in the Contract Documents, on the terms and conditions and under the provisions set out or called for in the Contract Documents, at the price hereunder and entered in the Schedule of Prices.
- (c) Tenderer agrees that this Tender is open to acceptance and irrevocable for sixty (60) days and that Buyer may, at any time within sixty (60) days from the date and time specified in the Contract Documents for the receipt of Tenders, accept this Tender whether any other Tender has been previously accepted or not.
- (d) Tenderer agrees that upon receipt of notification of acceptance of this Tender, it shall within fourteen (14) days execute an Agreement substantially in the form of the draft Agreement and, subject to the requirements of SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS, provide a Performance Bond in accordance with the requirements of the Contract Documents.

Tenderer hereby proposes:

Canadian General Insurance Company

(Name of Bonding Company)

which is willing to become bound with Tenderer in the amount designated in the said Contract Documents for the due performance and fulfillment of the said Contract, and all matters or things required by the Contract Documents.

TENDER (cont'd.)

(e) Tenderer agrees that the Guaranteed Higher Heating Value is:- 152,500 BTU / Barrel,

(f) Tenderer agrees that the Tendered Selling Price per Barrel, for the supply of the specified Product, in effect on October 15, 1997, is:-

\$ US 18.112 / Barrel,

(as shown in Appendix IV - Schedule of Prices) and the stated price excludes the Canadian federal Goods and Services Tax or Harmonized Sales Tax and other Canadian federal and provincial taxes, customs duties, licenses and fees.

(g) In the event of a requirement being imposed upon Buyer during the term of the Contract to use a fuel meeting the Specifications for Product in all respects except for having a lower sulphur content of 2.0%, Tenderer agrees, upon Buyer's request to exercise an option, in Buyer's sole discretion, to substitute such fuel for the Product, for a Tendered Option Selling Price (as shown in Appendix IV - Schedule of Prices), in effect on October 15, 1997, for the applicable circumstance as follows:-

Balance of contract quantity outstanding, as of date of requirement being imposed, of approximately:

4 to 6 million barrels \$ US 18.35 / Barrel, or

2 to 4 million barrels \$ US 18.30 / Barrel, or

under 2 million barrels \$ US 18.22 / Barrel,

and each such stated price:

- excludes the Canadian federal Goods and Services Tax or Harmonized Sales Tax and other Canadian federal and provincial taxes, customs duties, licenses and fees; and
- is subject to price adjustments computed as provided for in Article SC 16 - Substitution of Lower-Sulphur Fuel

Tenderer also confirms and agrees that the Guaranteed Higher Heating Value stated above shall remain in effect in the event of usage of lower sulphur content fuel.

(h) The Tender deposit, the forms of Performance Security and all Appendices accompanying this Tender form part and parcel thereof.

FORM OF TENDER - 4
CONTRACT 1997-165

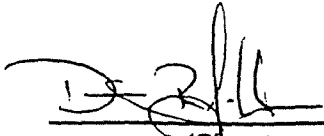
Page 25 of 46

TENDER (cont'd.)

(For execution by a Corporation)

Signed and sealed on behalf of Enron Liquid Fuels, Inc.

_____, Tenderer.




(Signatures of Signatories)
Dana R. Gibbs

Vice President

(Offices of Signatories)



(Signature of Witness)

Dated at Houston, Tx this 20th day of Oct 19 97.


(Corporate Seal to be affixed)

(For execution other than by a Corporation)

Signed and sealed on behalf of _____

_____, Tenderer.

(Signatures of Signatories)

(Signature of Witness)

(Offices of Signatories)

Dated at _____ this _____ day of _____ 19 ____.

**FORM OF TENDER - 6
CONTRACT 1997-184****Appendix I: Surety's Consent**

BOND NO. 83-9000-0150-97 Page 26 of 46

We, CANADIAN GENERAL INSURANCE COMPANY

hereinafter called "Surety", hereby undertake on behalf of Tenderer, _____

ENRON LIQUID FUELS, INC.

(Name of Tenderer)

hereinafter called "Principal", of HOUSTON, TEXAS

(Place)

is become bound to

Newfoundland and Labrador Hydro as Surety for Principal in a Performance Bond as quoted on below should the Tender of Principal be accepted for Supply and Delivery of No. 8 Fuel Oil to Halstead Thermal Generating Station and the execution of other Work relating to such Contract and we understand that the said Performance Bond shall be given in the form included in the Form of Tender and shall remain in effect until the expiration of sixty (60) days from the date on which final payment under the Contract is due.

The rate per thousand dollars (\$1,000.00) to be charged by us for the said Bond is 2.50/THOUSAND/YEAR X 3 YEARS

If the aforesaid Tender is accepted, application for the said Performance Bond must be made to Surety within fourteen (14) days of the execution of the Contract awarded to Principal.

For the purposes of this undertaking the terms "Contract" and "Bidding Price" shall have the meanings assigned to those terms in the AGREEMENT.

IN WITNESS WHEREOF Surety has hereunto its hand and Seal subscribed and set this 20th day

OCTOBER 97

of 18

CANADIAN GENERAL INSURANCE COMPANY

BY David E. Hurling
DAVID E. HURLING
ATTORNEY-IN-FACT

AND _____

(Witness)

Appendix II: Form of Performance Bond

No. _____

\$ 10,000,000.00

KNOW ALL MEN BY THESE PRESENTS THAT _____
_____, hereinafter called "**PRINCIPAL**", and _____ a
corporation created and existing under the laws of _____ and duly authorized to transact the
business of Suretyship in _____, hereinafter called "**SURETY**", are held and firmly bound unto
Newfoundland and Labrador Hydro, hereinafter called "**OBLIGEE**", in the amount of **Ten Million Dollars**
(\$ 10,000,000.00) lawful money of Canada, for the payment of which sum, well and truly to be made,
PRINCIPAL and **SURETY**, jointly and severally, bind themselves and each of them and their and each of their
heirs, executors, administrators, successors and assigns firmly by these presents.

WHEREAS, PRINCIPAL has submitted a written Contract to **OBLIGEE**, dated the ____ day of _____,
19__, for Contract _____ in accordance with the Specifications and Drawings
submitted therefor which Contract, Specifications and Drawings, are by reference made part hereof and
hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if **PRINCIPAL** shall promptly and
faithfully perform the Contract then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

Whenever **PRINCIPAL** shall be, and declared by **OBLIGEE** to be, in default under the Contract, **OBLIGEE**
having performed **OBLIGEE**'s obligations up to the time of default thereunder, **SURETY** may promptly remedy
the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a bid or bids for submission to **OBLIGEE** for completing the Contract in accordance with its terms
and conditions, and upon determination by **OBLIGEE** and **SURETY** of the lowest responsible bidder,
arrange for a contract between such bidder and **OBLIGEE** and make available as work progresses (even
though there should be a default, or a succession of defaults, under the contract or contracts of
completion, arranged under this paragraph) sufficient funds to pay the cost of completion less the balance
of the Contract price; but not exceeding, including other costs and damages for which **SURETY** may be
liable hereunder, the amount hereinbefore set forth. The term "balance of the Contract Price", as used in
this paragraph, shall mean the total amount payable by **OBLIGEE** to **PRINCIPAL** under the Contract,
less the amount properly paid by **OBLIGEE** to **PRINCIPAL**.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final
payment under the Contract is due.

SURETY shall not be liable for a greater sum than the specified amount of this Bond.

No right of action shall accrue on this Bond to, or for the use of, any person or corporation other than **OBLIGEE**
named herein, or the heirs, executors, administrators or successors of **OBLIGEE**.

Appendix II: Form of Performance Bond (cont'd.)

PROVIDED, HOWEVER, that no variation or alteration which may be made in the said Contract, or in the extent, nature, or method of performance of the Work to be performed thereunder, and no extension of time given by OBLIGEE for the performance of the said Contract, nor any waiver, forbearance or forgiveness on the part of either PRINCIPAL or OBLIGEE to the other shall in any way release PRINCIPAL and SURETY, or either of them, their heirs, executors, administrators, successors and assigns from their liability hereunder; notice to SURETY of such variation, alteration, extension, waiver, forbearance or forgiveness being hereby expressly waived.

AND IT IS HEREBY DECLARED AND AGREED that SURETY shall be liable under this obligation as fully as if it were PRINCIPAL and that nothing of any kind or nature whatsoever that will not discharge PRINCIPAL shall operate as a discharge or a release of liability to SURETY, any law, rule or equity or usage relating to the liability of sureties to the contrary notwithstanding.

IN TESTIMONY, WHEREOF, PRINCIPAL has hereto set its hand and affixed its seal, and SURETY has caused its corporate seal to be affixed hereto, in accordance with its regulations and in the presence of its duly

authorized officers this _____ day of _____ 19____.

(
(
(By _____

THE COMMON SEAL of PRINCIPAL
was hereon affixed
in the presence of:

(
(
(And _____ (Seal)
(PRINCIPAL)

(Witness)

(
(
(By _____

THE COMMON SEAL of SURETY
was hereon affixed
in the presence of:

(
(
(And _____ (Seal)
(PRINCIPAL)

(Witness)

Appendix III: Tender Information

(A) Statement of Financial Standing

Include name(s) and address(es) of Chartered Bank(s) or Financial Firm(s), or both, for reference(s).

Please see the attached Statement of Financial Standing.

(B) Insurance Summary

Pursuant to SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS the following is a list of insurance coverage Tenderer proposes to maintain over the life of the Contract

Please see the attached Insurance Summary.

FORM OF TENDER**APPENDIX III****(B) Insurance Summary**

Pursuant to SCHEDULE A - INSTRUCTIONS AND INFORMATION TO TENDERERS the following is a list of insurance coverage Tenderer proposes to maintain over the life of the Contract:

General Liability Insurance

General Liability insurance, endorsed to provide coverage for: explosion, collapse, and underground damage to property of others; Contractual Liability, Products and Completed Operations, Contingent Employers' Liability, Contractor's Contingent Liability and Employees added as additional Insureds.

Bodily Injury	\$1,000,000 Each Occurrence (Minimum)
Property Damage	\$1,000,000 Each Occurrence (Minimum)
OR	
Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit Each Occurrence (Minimum)

Automobile Liability Insurance

Automobile Liability Insurance which shall include coverage for all owned, non-owned and hired vehicles.

Bodily Injury	\$1,000,000 Each Person (Minimum)
	\$1,000,000 Each Occurrence (Minimum)
Property Damage	\$1,000,000 Each Occurrence (Minimum)
OR	
Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit Each Occurrence (Minimum)

Protection and Indemnity Insurance

Protection and indemnity insurance including Pollution Liability.

P & I	\$500,000,000 Each Occurrence (to be provided by Vessel Owner through Seller)
------------------	--

Seller agrees to waive subrogation against Newfoundland and Labrador-Hydro for all coverage except pollution and where prohibited by law.

Seller agrees to notify Newfoundland and Labrador Hydro in writing at least Thirty (30) days in advance of cancellation, termination or reduction in the scope of coverage provided herein.

FORM OF TENDER - 9
CONTRACT 1997-165
Appendix III: Tender Information (cont'd.)
(C) Previous Experience

Complete the following statement of work Tenderer has undertaken during the past five (5) years similar to that on which it is tendering. (Attach company brochures and other relevant material to fully illustrate the experience, ability, plant and resources to be made available for the Work):

<u>Description of the Work</u>	<u>Client</u>	<u>Location</u>	<u>Completion Date</u>	<u>Value of Completed Work</u>
Supply of 1% Fuel Oil	ENEL	Italy	1996-97	\$66,000,000.
Supply of 1% Fuel Oil	Canal Electric Company	Mass./USA	1996-97	\$130,000,000.

(D) Work in Progress

Complete the following statement of work which Tenderer is presently engaged in completing and which is similar in character to that described in this Contract.

<u>Description of the Work</u>	<u>Client</u>	<u>Period of Contract</u>	<u>Tendered Value</u>
Supply of 1% Fuel Oil	Canal Electric	1996-97	\$130,000,000.

FORM OF TENDER - 10
CONTRACT 1997-165
Appendix IV: Schedule of Prices
PREAMBLE

The unit prices in this Schedule of Prices shall be the full inclusive value of the Work described, including all costs and expenses which may be required in and for the supply of the Product, together with all general risks, liabilities and obligations set forth or implied in the Contract Documents on which the Tender is based.

A unit price shall be entered against each item in this Schedule of Prices. If no price is entered, then the Tender may be considered as incomplete by Buyer.

Prices shall exclude the Canadian federal Goods and Services Tax (GST) or Harmonized Sales Tax (HST), and the applicable HST will be paid as provided for in the Contract Documents.

The Tendered Selling Price is the price in effect on October 15, 1997 and is subject to price adjustments provided for in Article IT 7 - Selling Price and Adjustments.

<u>Item No.</u>	<u>Item Description</u>	<u>Unit of Measure</u>	<u>Estimated Quantity</u>	<u>Unit Price</u> (US Dollars)	<u>Amount</u> (US Dollars)
001	No 6 Fuel Oil (2.2% Sulphur)	Barrel	10,000,000	\$ <u>18.112</u>	\$ <u>181,120,000.00</u>
TOTAL TENDERED SELLING PRICE =					\$ <u>181,120,000.00</u>
(carry over to page 2)					

OPTION PRICES (EXERCISABLE BY BUYER IN ITS SOLE DISCRETION)

In the event of a requirement being imposed upon Buyer during the term of the Contract to use a fuel meeting the Specifications for Product in all respects except for having a lower sulphur content of 2.0%, Buyer has the right to exercise, in its sole discretion, the use of such fuel, replacing the specified Product, at the applicable of the option prices 002, 003 or 004.

Option Prices are prices in effect on October 15, 1997 and are subject to adjustments computed as provided for in Article SC 16 - Substitution of Lower-Sulphur Fuel, for fuel meeting the Guaranteed Higher Heating Value.

<u>Item No.</u>	<u>Item Description</u>	<u>Balance of Contract Quantity Outstanding at time of exercise of Option</u>	<u>Unit Price</u> (US Dollars)
002	No 6 Fuel Oil (2.0% Sulphur)	4 to 6 million barrels	<u>18.35</u> / Barrel
003	No 6 Fuel Oil (2.0% Sulphur)	2 to 4 million barrels	<u>18.30</u> / Barrel
003	No 6 Fuel Oil (2.0% Sulphur)	under 2 million barrels	<u>18.22</u> / Barrel

Enron Liquid Fuels, Inc.
(Tenderer)

(GST/HST Registration Number)

**SCHEDULE C
SPECIAL CONDITIONS**

**SUPPLY AND DELIVERY OF NO. 6 FUEL OIL
TO HOLYROOD GENERATING STATION**

SCHEDULE C

SPECIAL CONDITIONS

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SC 1 Product Quality

- .1 The Product to be supplied shall be No. 6 fuel oil conforming to the specification limits, as determined by the most current edition of the stated ASTM test methods, as follows:

<u>Property</u>	<u>Value</u>	<u>Test Methods</u>
API at 15°C (Min.)	5	ASTM D-1298
Higher heating value (Min)	40.3 MJ/kg (6,300,000 BTU/barrel)	ASTM D-4868-90 or ASTM D-240
Flash Point (Min.)	66 °C	ASTM D-93
Pour Point (Max.) (Low Pour)	15 °C	ASTM D-97
Sodium (Max)	50 ppm	ASTM D-5863
Kinematic Viscosity @51°C (Max) for 2.2% sulfur	700 cSt	ASTM D-445/ ASTM D-2161
Sulphur (Max.)	2.2% by weight	ASTM D-4294 or ASTM D-129
Vanadium (Max.)	300 ppm as Vanadium	ASTM D-5863
Ash (Max)	0.1% by weight	ASTM D-482
Sediment (Max)	0.2% by weight	ASTM D-473 or ASTM D-4870
Water (Max)	0.50% by volume	ASTM D-95
Cleanliness	1	ASTM D-4740
Asphaltenes % weight (Max)	11	IP 143
Hydrogen Sulphide (Max)	200 ppm	Draeger **

**Note: Test to be performed by Inspector at Buyer's dock prior to discharge of cargo.

- .2 Seller warrants and guarantees to Buyer that Product shall be of the quality specified in this Contract and, in the event that Product is blended, no compartment of delivering vessel shall have an API gravity value (at 15 degrees C) of less than 5.0.
- .3 Vessels discharging at Holyrood Generating Station shall be capable of maintaining a minimum discharge pressure of 700 kPa at marine vessel's discharge manifold and a minimum discharge temperature of 38° C.

SC 1 Product Quality (cont'd.)

- .4 In the event that Product delivered hereunder does not meet specifications as set forth in this Contract:
- (a) Buyer shall give Seller an opportunity to bring such Product into compliance with the Contract within a reasonable period of time; or
 - (b) Seller shall pay to Buyer a mutually agreed upon sum as compensation for the noncompliance of the Product; or
 - (c) Seller shall, within a reasonable period of time, remove the Product not in compliance with the specifications in this Contract.

Buyer agrees to exercise option (c) only after giving full consideration to options (a) and (b).

- .5 Seller shall provide Buyer with an Analysis of Product Quality from two independent inspection services, mutually agreed upon by Buyer and Seller, prior to delivery of Product to Site and the issuance of the Notice of Readiness. Each analysis shall contain the results of the independent inspector's analysis of the Product loaded aboard the marine vessel, shall identify the inspector and shall contain Seller's certification that such Product meets the contractual specifications.

SC 2 Vanadium Content

If for any delivery the Analysis of Product Quality issued by Seller's supplier at the point of loading shows vanadium in the cargo to be in excess of 300 ppm such cargo shall not be shipped to Buyer until and unless measures have been taken, satisfactory to Buyer, to reduce the vanadium content of the cargo to 300 ppm or less.

SC 3 Delivery and Schedules

- .1 Seller shall deliver Product to the Site in marine vessels in quantities as previously approved by Buyer. Seller shall deliver Product at not less than 38° C discharge temperature.
- .2 Buyer will provide a safe berth where a marine vessel with a maximum loaded displacement of 62,000 long tons summer displacement and a maximum draft of 35 feet at mean low water can proceed to, lie at and depart from Buyer's berth always safely afloat.
- .3 Buyer warrants and guarantees to Seller that its oil handling facilities at the Thermal Generating Station are, under normal operating conditions, capable of accepting the discharge of Product from Seller's marine vessel at pressures of up to 860 kPa through two (2) Class 125 nominal twelve inch diameter (2 @ 12" dia.) flanges. Seller shall deliver Product at a minimum discharge pressure of 700 kPa measured at the last permanent hose flange of Seller's marine vessel at Buyer's dock.
- .4 Buyer shall furnish to Seller by the fifth day of each month, a written schedule of quantity of Product for delivery in the following month and an estimate, subject to change, for quantity and delivery of Product for the next two succeeding months. Seller shall promptly acknowledge receipt of such notice.

SC 3 Delivery and Schedules (cont'd.)

- .5 Seller shall, on or before the fifteenth day of each month, confirm or deny in writing the desired delivery dates for the following month. If denied, the parties will negotiate in good faith to establish mutually satisfactory delivery dates. Buyer will not unreasonably reject Seller's suggested alternate delivery dates, however, Seller agrees that its suggested alternative date shall not be more than fourteen (14) days later than the date denied nor so far in advance of Buyer's desired arrival date such that the delivery cannot be handled in Buyer's 880,000 Barrels Holyrood storage facility.
- .6 In the event that Buyer finds it requires alteration or cancellation of a quantity of Product pursuant to Clause SC 3.5 hereof, Buyer shall provide Seller with notice, at least twenty-eight (28) days prior to the scheduled delivery date, of such alteration or cancellation, and on the giving of such notice Seller shall comply with Buyer's request to so alter or cancel, provided that Seller shall not be obliged, but shall make reasonable efforts, to make a delivery of Product in any month for which Buyer has not, in the nomination made pursuant to Clause SC 3.4 hereof, indicated that it will require delivery of the Product.
- .7 Buyer will advise Seller on a weekly basis of its current inventory level of Product in Buyer's Thermal Generating Station tank farm and its best estimate of anticipated consumption for the following week.
- .8 If the date for giving of any notice under Clause SC 3.6 falls on a day other than a working day for the party giving such notice, such notice shall be given on the first working day thereafter.

SC 4 Quantity Measurement and Quality Testing

.1 Inspection Services

The services of independent testing companies shall be used to:

- (a) measure the quantity of Product delivered and received in each cargo; and
- (b) perform tests and analyses on Product quality; and

to provide any other quality and quantity testing services as provided for within this Article.

The selection of independent testing companies shall be jointly agreed to in writing by Buyer and Seller, and at any one time there shall be a minimum of three (3) such companies approved.

For each cargo received, three (3) independent testing companies, from a jointly approved list of independent testing companies, shall be used. Buyer and Seller shall jointly agree in writing to the designation of which of such independent testing companies shall function in the capacities as provided for later in this Article. The designations shall be made prior to delivery of the Product and prior to the issuance of the Notice of Readiness and in sufficient time to enable the independent testing companies to perform their duties.

For purposes of this Article references to any one of the selected independent testing companies shall use the applicable reference as defined in following paragraphs.

One of the independent testing companies shall be nominated as the "Inspector", to perform the functions provided for in Clauses SC 4.2 and SC 4.3.

SC 4 Quantity Measurement and Quality Testing (cont'd.)

.1 Inspection Services (cont'd.)

One of the independent testing companies shall be nominated as the "First Analyst" to perform the functions provided for in Clause SC 4.3. Such company may be the company nominated as the Inspector.

Another independent testing company shall be nominated as the "Second Analyst", to perform the functions provided for in Clause SC 4.3.

One of the independent testing companies shall be nominated as the "Referee", to perform the functions provided for in Clause SC 4.4, if required. Such company shall not be one of the companies nominated as First Analyst or Second Analyst.

Seller shall notify each of the selected companies of their nomination for their respective assignments, and shall advise the Inspector which independent testing companies are the First Analyst and the Second Analyst.

Services performed by inspection companies shall follow the procedure outlined herein.

.2 Inspector

The Inspector shall measure the quantity of Product delivered and received into Buyer's shore tanks, based on Buyer's shore tank gauges and corrected to that quantity at 15°C in accordance with ASTM D-1250 Table 6B.

The Inspector shall make a volumetric composite sample of the Product in accordance with ASTM D-4057 standards. The Inspector shall divide the sample into three lots and place each lot into a sealed container.

The Inspector shall send one lot, for analysis, to each of the First Analyst and the Second Analyst, as instructed by Seller. The other lot shall be retained by Inspector for a minimum period of ninety (90) days as a referee sample.

.3 Analysis

The First Analyst and Second Analyst shall each analyse their respective samples for the properties of the Product stated in Article SC 1 - Product Quality, in accordance with the most current edition of the stated ASTM test methods.

In addition, each sample shall be analysed for metals content using Inductivity Coupled Plasma Mass Spectrometry test method as prescribed by Canadian Approved Environmental Laboratories (CAEL). This test shall be performed by the First Analyst and Second Analyst unless prior approval of Buyer and Seller is obtained to have the test performed by another laboratory. The metals content analysis results may be forwarded under separate cover.

First Analyst and Second Analyst shall each provide to Buyer and to Seller written notification of the results of their respective analyses.

SC 4 Quantity Measurement and Quality Testing (cont'd.)

.4 Reproducibility

If Higher Heating and API Gravity values as determined by First Analyst and Second Analyst do not demonstrate reproducibility within ASTM standard limits, the Inspector, upon written notice from either Buyer or Seller, shall send the referee sample to the Referee.

The Referee shall perform analysis upon the referee sample to determine the Higher Heating Value and API Gravity properties using the test methods stated in Clause SC 4.3

Referee shall provide to Buyer and to Seller written notification of the results of its analysis.

.5 Sampling and Analysis Costs

Sampling and Analysis Costs shall be borne equally by Buyer and Seller.

.6 Determination of Values of Analysed Properties

For purposes of the Contract, for each cargo delivered, the value assigned to each of the properties analysed shall be deemed to be the average of the values determined by the First Analyst and the Second Analyst except as provided for in the following paragraph.

Where the Referee has performed an analysis in accordance with the requirements of Clause SC 4.4, the Higher Heating Value resulting from the Referee's analysis shall be averaged with whichever value, as determined by the First Analyst or the Second Analyst, is closer to the value determined by the Referee, and the resultant average shall be deemed the Higher Heating Value of the specific cargo of the Product.

SC 5 Ownership

Ownership of the Product sold and delivered hereunder and all risks of loss and damage caused by or resulting from such Product or the sale or delivery thereof shall pass from Seller to Buyer upon passage into the first permanent hose flange at Buyer's dock at the Thermal Generating Station.

SC 6 Demurrage

- .1 Laytime of thirty-six (36) hours shall be permitted Buyer for receiving discharge of cargo. Such laytime shall commence the earlier of:
- six (6) hours after acceptance of Notice of Readiness given by the marine vessel; or
 - when the marine vessel is all fast in berth;
- whichever first occurs, and shall end when discharge hoses are disconnected.

Delays caused to the vessel getting into berth after giving Notice of Readiness for any reason over which Buyer has no control, or before or after berthing due to:-

- the marine vessel's condition; or
- marine vessel breakdown; or
- inability of the marine vessel's facilities to discharge within the time allowed; or
- a stoppage in discharge resulting from a spill of Product before passage through the last permanent hose flange of Seller's marine vessel; or
- strike, lockout, stoppage or restraint of labour of the master, officers or crew of the marine vessel or any tugboats;

shall not count as used laytime for the calculation of demurrage. For each hour or portion thereof

SC 6 Demurrage (cont'd.)

.1 (cont'd.)

that the vessel exceeds the allowed laytime for discharge Buyer shall pay Seller demurrage calculated as follows:

- (a) for vessels chartered by Seller on a single voyage charter party, at the actual rate applicable to that voyage, or
- (b) for vessels owned by Seller or term chartered by Seller, at the prevailing single voyage market rate current on the date of commencement of loading of the voyage concerned for a vessel of similar type and size. Such market rate shall be expressed in points of the Worldscale tanker nominal freight rate scale as amended from time to time or such other freight scale as may be issued in replacement thereof and applied to the demurrage rate quoted in U.S. dollars appropriate to the size of the vessel provided for in the aforementioned freight scale. In default of agreement between Buyer and Seller, the market rate shall be determined by shipping brokers nominated by agreement between Buyer and Seller, or, in default of such agreement, by the Chairperson of the London Tanker Broker's Panel.

.2 If, however, demurrage shall be incurred by reason of:-

- fire; or
- explosion, or
- a stoppage in discharge resulting from a spill of Product after passage through the last permanent hose flange of Seller's marine vessel; or
- a strike, lockout, stoppage or restraint of labour; or
- breakdown of machinery or equipment;

in Buyer's receiving facility, the rate of demurrage shall be one-half of that stated above.

Except as otherwise provided in Clause SC 6.3, if demurrage shall be incurred by reason of storm or other adverse weather condition, Buyer shall pay to Seller one-half of the amount paid by Seller as demurrage as a result of such storm or condition.

.3 Notwithstanding anything otherwise contained in this Contract, where demurrage is incurred by Seller by reason of Buyer's dock at Thermal Generating Station being inaccessible owing to ice conditions, then:

- (a) demurrage time shall not begin for Buyer's account until notification by Seller to Buyer of such inaccessibility;
- (b) when Seller has given notice to Buyer under item (a) of this Clause, Buyer shall exercise one of the following options:
 - (i) direct that the vessel proceed to another port or point of discharge free from ice and containing facilities for the reception of the cargo in bulk, or
 - (ii) direct that the vessel remain in the vicinity of the vessel's position when it was determined that Buyer's dock was inaccessible, or

SC 6 Demurrage (cont'd.)

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.3 (b) (cont'd.)

- (iii) direct that Seller attempt to identify a third party purchaser for the cargo, on the most favourable available terms, and if Seller proposes a third party purchaser that is accepted by Buyer, Buyer shall reimburse Seller to the degree that Seller fails to realize the equivalent to the then effective Selling Price to Buyer subject to adjustment to cover any change in cost incurred by Seller in making such delivery and Seller shall promptly comply with such direction;
- (c) On the vessel reaching the point of discharge, the provisions of Clauses SC 6.1 and SC 6.2 hereof, including the allowance of six (6) hours before commencement of laytime, shall apply;
- (d) the rate for demurrage to be paid by Buyer to Seller for demurrage payable under this Clause SC 6.3 shall be computed at fifty percent (50%) of the demurrage rate provided for in Clause SC 6.1 hereof, any payment at such rate computed against the time provided for in this Clause shall be the only charge by Seller to Buyer for demurrage with respect to the period prior to commencement of laytime pursuant to Clause SC 6.1 hereof;
- (e) Subsequent to discharge and where, owing to adverse ice conditions at the Thermal Generating Station, the vessel is unable to leave Buyer's dock or after leaving Buyer's dock the vessel's progress is restricted by the said adverse ice conditions, Buyer agrees to reimburse Seller for 50% of demurrage occasioned by the adverse ice conditions payable under this Article .
- (f) Buyer agrees to reimburse Seller for fifty percent (50%) of charges paid by Seller with respect to extra fuel consumed by the vessel as a consequence of complying with Buyer's election under paragraph (b) of Clause SC 6.3.

SC 7 Importation License

- .1 Buyer's obligation to purchase and receive the Product, or any delivery thereof, is subject to its holding the requisite licenses to import heavy fuel oil under the National Energy Board Act, or any Act passed in substitution thereof.
- .2 Buyer shall diligently take all reasonable steps to obtain and hold in place the licenses referred to in this Contract.

SC 8 Successors and Assigns

This Contract shall be binding upon and shall enure to the benefit of successors of the parties hereto. Neither party may assign this except for an assignment for purposes of security and except that Seller may assign this Contract to its affiliates, provided that upon any such assignment Seller shall guarantee, and shall be deemed to have guaranteed, the performance of the obligations hereunder by the affiliate to which this Contract is assigned. For purposes of this Article, Seller's affiliates include companies controlled by, in control of, or under common control with Seller. In the event of assignment to such an affiliate;

- (a) such affiliate shall be relieved of an obligation pursuant to Article SC 10 - Force Majeure only if, and only to the extent that, the act, omission or circumstance affecting the affiliate would have affected Seller in the same manner, and relieved Seller of such obligation, if such assignment had not taken place; and

SC 8 Successors and Assigns (cont'd.)

- (b) such affiliate shall be at liberty to reduce deliveries pursuant to Article SC 3 - Delivery and Schedules only when, and to the extent that, such reduction would have occurred from Seller if no such assignment had taken place; and
- (c) Seller, without restricting its obligations to Buyer, set out above or otherwise, guarantees that the availability of Product to Buyer, or the price of Product to Buyer, shall not be adversely affected by reason of any assignment made pursuant to this Article.

SC 9 Governing Law and Forum

This Contract shall be governed by and construed in accordance with the laws of the Province of Newfoundland. All disputes involving this contract shall be submitted to a panel of three (3) arbitrators appointed and operating under the Arbitration Act, Revised Statutes of Newfoundland, 1990, c. A-14 as amended. Each party shall choose one (1) arbitrator and the third arbitrator shall be chosen by the two (2) arbitrators thus selected by the parties. The location of the arbitration hearing shall be in the Province of Newfoundland. The prevailing party shall be awarded all reasonable expenses (including reasonable legal fees) incurred in connection with the arbitration. Any dispute involving the amount of expenses awarded shall be resolved by the arbitrators. The written decision of the arbitrators shall be final, binding and convertible to a court judgment in accordance with the Arbitration Act".

SC 10 Force Majeure

- .1 Neither party shall be considered to have breached its obligations (except as to Buyer's obligation to pay for residual fuel oil delivered by Seller and Buyer's obligation, if any, to pay demurrage as provided in Article SC 6 - Demurrage) by reason of any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of public enemy, wars, fire, epidemic, earthquakes, floods, explosions, orders of governmental authority or any other cause, whether of the kind enumerated or otherwise not within the control of such party nor any act, omissions or circumstances which such party is unable to prevent or overcome by the exercise of due diligence, including as to Seller, its suppliers of residual fuel oil or crude oil.
- .2 If, by reason of any of the causes described in Clause SC 10.1, there is a shortage of residual fuel oil resulting in a decrease in the quantity or quantities of residual fuel oil available to Seller from its affiliates and under its contracts for the purchase or other acquisition of such residual fuel oil (such decrease not being willfully caused by Seller or its affiliates) other than by expiration of the term of existing contracts, or failure to renew or replace contracts as they expire, so that Seller is unable to fully comply with all of its obligations to Buyer and others to whom it is bound under then existing contracts, Seller shall be at liberty to reduce deliveries under this Contract to such extent as it in its judgment may see fit, as part of its prorating of available supplies and shall not be required to purchase supplies to make good any shortages resulting therefrom. Buyer shall be free to purchase from other suppliers any deficiencies hereunder caused by the operation of this Article. However, Seller agrees to assist Buyer, if so requested, in purchasing efforts to fulfill any such deficiencies.

Furthermore, should prorating of available supplies be necessary, Seller undertakes not to reduce deliveries to Buyer to a greater proportionate extent than the reduction applied to public utilities supplied by Seller with Product of similar grade and quality in Canada or elsewhere.

SC 11 Modification

This Contract sets forth the entire understanding of the parties and supersedes all prior understandings and agreements between the parties with respect to the purchase and sale of the Product to be sold hereunder, and may not be modified or terminated orally. No claimed modification or waiver of any of its provisions shall be valid unless in writing and signed by both parties.

SC 12 Laws and Regulations

- .1 Seller shall observe and keep itself fully informed of, and shall comply with, all laws and regulations in effect or which may become effective in any manner affecting those engaged or employed in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having jurisdiction or authority over the same. If any discrepancy or inconsistency should be discovered in the Contract in relation to any such law, Seller shall forthwith report the same in writing to Buyer.
- .2 Seller shall protect and indemnify Buyer from and against any and all liability from or based on the violation by Seller, Seller's subcontractors, agents, servants or employees of any such law or regulation.

SC 13 Performance of Work

Seller has entered into the Contract and shall perform the Work as an independent seller and not as an employee or agent of Buyer. Seller shall have exclusive and complete control over its employees or agents, and shall be solely responsible for their acts and omissions.

SC 14 Hazardous or Controlled Products

- .1 Seller shall not use or deliver a hazardous or controlled product, as defined by the Hazardous Products Act, Revised Statutes of Canada 1985; Chapter H-3 as amended, for the purposes of this Contract without the prior approval of Buyer. If such products are approved by Buyer, Seller shall be familiar with and fully comply with the Hazardous Products Act, and the Workplace Hazardous Materials Information System (WHMIS) Regulations, 1989 (Newfoundland Regulation 148/89) under the Occupational Health and Safety Act, Revised Statutes of Newfoundland, 1990, Chapter O-3, all as amended.
- .2 Seller shall ensure that a hazardous or controlled product is not used, stored or handled for the purposes of the Contract unless all of the requirements of the aforesaid Act and regulations in respect of labels, identifiers, material safety data sheets (MSDS) and worker education are complied with.
- .3 Seller shall ensure that all persons who work with a hazardous or controlled product or work in proximity to a hazardous or controlled product are informed about all hazard information received from the supplier of the said product as well as any other hazard information of which Seller is aware of, or ought to be aware of, concerning the use, storage and handling of the hazardous or controlled product.
- .4 Seller shall ensure that, prior to delivery of the hazardous or controlled product to the Jobsite, it is labelled with the supplier's label or with a label in accordance with requirements of the aforesaid Act and regulations. Seller shall provide Buyer with all such information including MSDS prior to delivery of the hazardous or controlled product to the Jobsite.

SC 15 Environmental Protection

- .1 Seller shall protect the environment of the areas where the Work is located and the Work at all times shall be subject to inspection by Buyer and relevant provincial and federal governments. Any specific matters relating to environmental protection shall be dealt with between Seller and Buyer.
- .2 Seller shall supply Buyer with a copy of a declaration conforming to the requirements of section 660.2(2) of the Canada Shipping Act, Chapter 36.

SC 16 Substitution of Lower-Sulphur Fuel

If, during the term of the Contract, a requirement is imposed upon Buyer to use a fuel with a lower sulphur content, the specification for such fuel shall meet all requirements of Article SC 1 - Product Quality except that the sulphur content shall not exceed 2.0% by weight. The price paid for such substitute fuel will be as tendered and will be subject to price adjustments for sulphur content computed as a straight line interpolation of the values published by Platt's Oilgram U.S. Marketscan daily mean "U.S. SPOT CARGOES - NEW YORK" price for No. 6 fuel oil 2.2% sulphur content and 1.0% sulphur content as provided for in the Contract. All other provisions of the Contract will apply.

SC 17 Termination

Either party may terminate the Contract upon giving the other party at least one hundred and eighty (180) calendar days written notice. During the notice period, the terms and conditions of the Contract shall remain in full force and effect and Seller shall meet the identified delivery requirements of the Holyrood Thermal Generating Plant.

SC 18 Commencement of Contract Deliveries

Contract deliveries will commence upon completion of the existing supply contract, anticipated at the time of tendering call for this document, to provide its final delivery in February, 1998. Seller will be advised in accordance with the provisions of Clause SC 3.4 of Article SC 3 - Delivery and Schedules for the first delivery, with the provisions of Clause SC 3.4 starting on January 5th, 1998.

SC 19 Limitation of Liability

In no event shall Seller be liable for damages for loss of profit or revenue, loss by reason of plant shutdown or inability to operate at rated capacity, claim of Buyer's customers, inventory or use charges or other forms of consequential damages.

SC 20 Disclaimer of Warranties

Other than the representations or warranties expressed in this Contract, Seller expressly negates any other representation or warranty, written or oral, express or implied, with respect to the Product and any related services hereunder, including, without limitation, any representation or warranty that the Product sold to Buyer will be merchantable, conform to models or samples, or fit for a particular purpose.

SC 21 Convention on Contracts for the International Sale of Goods

Buyer and Seller expressly agree that the United Nations Convention on Contracts for the International Sale of Goods 1980 shall not in any way apply or govern this Contract pursuant to Article 6 of the Convention.

SC 22 Claims

All claims for any cause whatsoever, whether based in contract, negligence or tort, strict liability or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives from Buyer, or Buyer receives from Seller, written notice of such claim not later than one hundred and eighty (180) days after Buyer's receipt of product as to which such claim is made or not later than one hundred and eighty (180) days from the date fixed for delivery of Product in the case of non-delivery of Product.