

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES (“ICSID”) ARBITRATION (ADDITIONAL FACILITY) RULES**

BETWEEN:

**MERCER INTERNATIONAL INC.**

**Claimant**

AND

**CANADA**

**Respondent**

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**PROCEDURAL ORDER NO. 3**

**ICSID Case No. ARB(AF)/12/3**

**7 June 2013**

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**TRIBUNAL:**

**Mr. V.V. Veeder (President)  
Professor Francisco Orrego Vicuña  
Professor Zachary Douglas**

## **I. REQUEST FOR A CONSENT ORDER**

1. The Tribunal is in receipt of joint correspondence from the Claimant and the Respondent (the “Disputing Parties”) concerning the production of certain documents by the Respondent that are in the possession custody and control of the British Columbia Hydro and Power Authority (“BC Hydro”). The Disputing Parties have requested that the Tribunal issue an order to facilitate the production of these documents.

## **II. THE TRIBUNAL’S ORDER**

2. The Tribunal hereby orders the Respondent to produce these documents in accordance with the terms set out in joint correspondence to the Tribunal dated June 6, 2013.
3. A copy of the joint correspondence is attached to this order.

A handwritten signature in black ink, appearing to read "V.V. Veeder". The signature is written in a cursive, somewhat stylized font. Below the signature is a short horizontal line.

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**Mr. V.V. Veeder, President**

June 6, 2013

***By Email***

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Dear Mr. Veeder and Members of the Tribunal,

***Re: Mercer International Inc. v. Canada***

We write further to our correspondence of May 24, 2013 to confirm that the parties have resolved all of the remaining issues with respect to document production. The parties, therefore, have no objections to submit to the Tribunal on June 7, 2013. However, the parties have agreed to request an additional consent order for certain documents in the possession of the British Columbia Hydro and Power Authority ("BC Hydro") in order to proceed with document production.<sup>1</sup>

On the basis of Canada's May 28, 2013 correspondence and the parties' subsequent communications, the parties have agreed that Canada will produce, in response to Document Request 3, certain documents relating to what the Claimant alleges is another comparator, namely the Canfor (Northwood) pulp mill. Canada has agreed that in response to Document Requests 3.1-3.3.4 it will produce the following specific documents:

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<sup>1</sup> Canada and the Claimant only identified the need for an additional consent order after the parties had filed their initial joint correspondence requesting such an order on April 26, 2013.

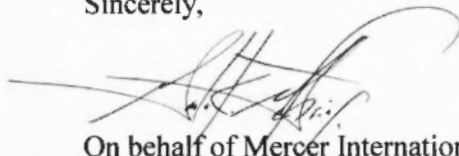
- the Canfor (Northwood) Energy Purchase Agreement (“EPA”) and Load Displacement Agreement (“LDA”) in response to Document Request 3.1;
- documents setting out the basis for the calculation of the Generator Baseline and Customer Baseline or load displacement requirements that are responsive to Document Requests 3.2 and 3.2.3 – including any non-contracted generator baselines also provided for under Document Request 3.9;
- the data specified in Document Requests 3.2.1, 3.2.2 and 3.2.4; and
- confidential BC Hydro submissions, if any, to the BCUC pertaining to the Canfor (Northwood) EPA and LDA pursuant to Document Request 3.3.4.

As initially explained in the parties’ April 26, 2013 joint correspondence to the Tribunal, BC Hydro has concerns over the production of these documents because they contain highly sensitive business confidential information that belongs or relates to other BC Hydro customers, including the Claimant’s competitors; and because BC Hydro has entered into contract agreements obligating it to maintain the confidentiality of certain documents and information. These contractual obligations, however, provide for the production of this information in response to an order of a court or tribunal.


BC Hydro is willing to produce the documents listed above in response to an order from the Tribunal (subject to any claims of privilege) on the condition that the relevant third-party business confidential information is designated as Restricted Access information, as appropriate, in accordance with the Confidentiality Order. Canada and the Claimant therefore request that the Tribunal order Canada to request that BC Hydro produce said documents.

A draft order is attached to this correspondence for your consideration. The parties have no objection to President Veeder acting on this request on his own.

Sincerely,



On behalf of Mercer International Inc.  
Ms. Gaela K. Gehring Flores



On behalf of the Government of Canada  
Mr. Michael Owen

cc: Ms. Alicia Martín Blanco