

EXHIBIT 15
RULES FOR ARBITRATION

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**ARBITRATION
PURSUANT TO ARTICLE 39.3 OF THE ARTICLES OF AGREEMENT**

1 Interpretation

1.1 In this Exhibit 15 (the "Rules"):

- (a) Except as otherwise set forth herein, the terms and phrases have the same meaning as may be attributed to them under
 - (i) the *Arbitration Act*, c. A-14, RSNL 1990, and
 - (ii) the Agreement;
- (b) "the Court" means the Supreme Court of Newfoundland and Labrador.

1.2 In these Rules time shall be calculated in the same manner as time is calculated in the Agreement.

1.3 In these Rules a reference to an arbitrator includes a reference to a 3-person arbitral tribunal, as the case may be.

1.4 If any provision of these Rules is inconsistent with or contrary to a mandatory provision of the *Arbitration Act*, c. A-14, RSNL 1990, the mandatory provision of the arbitration legislation shall be applied.

2 Application of Rules

2.1 These Rules apply to an arbitration conducted under the Agreement.

2.2 The Parties may, by agreement in writing, change or make additions to these Rules.

3 Communications

3.1 All written communications under these Rules shall be given in the same manner as Notices are to be given in the Agreement or, upon appointment of counsel, to counsel for a Party by ordinary mail or e-mail.

3.2 A copy of all written communications between the arbitrator and a Party shall be given to the other Party at the same time.

3.3 There shall not be any oral communications with respect to the Dispute between a Party and the arbitrator unless it is made in the presence of both Parties or their legal representatives.

4 Objections to Process



4.1 A Party shall state any objections to any aspect of the arbitral proceedings or to the conduct of the other Party or the arbitrator at the earliest possible time.

4.2 The arbitrator may refuse to consider an objection if a Party fails to comply with clause 4.1.

5 Location of Arbitration

5.1 Unless otherwise agreed, the arbitration shall be conducted in Toronto, Ontario, Canada at a location to be determined by agreement of the Parties.

6 Notice to Arbitrate

6.1 Either Party (the "claimant") shall submit a Dispute to arbitration, as permitted under the Agreement, by giving the other Party (the "respondent") a Notice in the manner prescribed by the Agreement containing the following:

- (a) a description of the Agreement;
- (b) a statement of the issues in the Dispute;
- (c) a request that the Dispute be referred to arbitration;
- (d) a description of the claim being made;
- (e) the name or names of proposed arbitrators, along with the resume described in clause 8.6.

7 Commencement of Arbitration

7.1 For purposes of the calculation of time under the Rules, the arbitration shall be deemed to have commenced on the date the respondent receives the Notice under Exhibit 15 clause 6.1.

8 Appointment of Arbitrator

8.1 Subject to Exhibit 15 clause 8.2, the arbitration shall be conducted before a single arbitrator who possesses the qualifications specified in Exhibit 15 clause 8.5.

8.2 Unless the Parties agree otherwise, the arbitration shall be conducted before a 3-person arbitral tribunal, each of whom possess the qualifications specified in Exhibit 15 clause 8.5, if the amount involved in the Dispute exceeds \$10,000,000.00.

8.3 Subject to Exhibit 15 clause 8.2, the Parties shall make every reasonable effort to reach agreement on a single arbitrator within 30 days after the arbitration commences.

8.4 If the arbitration is to be conducted before a 3-person arbitral tribunal:

- (a) each Party shall appoint an arbitrator within 30 days after the arbitration commences, and
- (b) the 2 appointed arbitrators shall make every reasonable effort to reach

agreement on a third arbitrator who shall be chairperson within 45 days after the arbitration commences.

- 8.5 An arbitrator must be impartial and independent of the Parties and be an experienced and skilled arbitrator and preferably shall reside in Canada and have knowledge of relevant construction industry issues. Where a claim arises out of issues relating to performance guarantees for power transmission and distribution, the arbitrator shall have sufficient knowledge of such subject matter. The chairperson of the 3-person arbitral tribunal shall be a commercial or construction lawyer resident of Canada and a practising member of a provincial bar association. No arbitrator shall be a resident of Newfoundland and Labrador or a resident of France or Quebec.
- 8.6 If a Party or an arbitrator proposes an individual as an arbitrator, the Party or arbitrator shall provide a current written resume of that individual's work background, qualifications and arbitration experience.
- 8.7 If an agreement is not possible under Exhibit 15 clause 8.3 or 8.4(b) or a Party fails to make an appointment under Exhibit 15 clause 8.4(a), either Party may make a written request to the Court to appoint an arbitrator as soon as possible.
- 8.8 Before accepting an appointment, an arbitrator shall provide the Parties with a written statement declaring that there are no circumstances likely to give rise to reasonable doubts as to the arbitrator's independence or impartiality and that the arbitrator will disclose any such circumstances to the Parties if they should arise before the arbitration is concluded.
- 8.9 A single arbitrator who resigns for any reason, is unable or refuses to act or is removed from office, shall be replaced by another arbitrator under these Rules and any oral hearings previously held shall be rescheduled.

9 Procedural Meeting

- 9.1 Within 5 days after being appointed, the single arbitrator or the chairperson of the arbitral tribunal shall convene a procedural meeting of the Parties (and in case of an arbitral tribunal, the other 2 arbitrators) to reach a consensus, if possible, and to make orders, if necessary, on:
- (a) the procedure to be followed in the arbitration;
 - (b) the time periods for taking steps in the proceedings;
 - (c) the scheduling of any oral hearings or meetings;
 - (d) any preliminary applications or objections a Party may have, and
 - (e) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner taking into account the complexity and numbers of issues in dispute.

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9.2 The arbitrator shall prepare and distribute promptly to the Parties a written record of all the business transacted and decision and orders made at the procedural meeting in Exhibit 15 clause 9.1.

9.3 The procedural meeting in Exhibit 15 clause 9.1 may be conducted by conference call (audio and/or video).

10 Powers of the Arbitrator

10.1 Subject to any limitations in these Rules or any agreement reached by the Parties, the arbitrator may conduct the arbitration in any manner the arbitrator considers appropriate but each Party shall be treated fairly and shall be given full opportunity to present its case and make written or oral comments on the other Party's case, including, where a Party calls witnesses, to cross-examine such witnesses.

10.2 Except as may otherwise be provided by law or by agreement of the Parties, the arbitrator may rule on the arbitrator's jurisdiction.

10.3 The arbitrator may, on his/her own or upon motion by a Party:

- (a) adjourn the proceedings from time to time to facilitate settlement discussions between the Parties or for any other reasonable purpose,
- (b) make an interim order on any matter with respect to which a final award may be made, including an interim order for preservation of property which is subject matter of the dispute,
- (c) order inspection of documents, exhibits or other property at any location,
- (d) order the recording of any oral hearing or meeting,
- (e) order oral discovery,
- (f) inspect the Site after giving the Parties 7 days written notice of the intention to do so, and
- (g) if the arbitrator considers it just and appropriate in the circumstances, extend or abridge a period of time:
 - (i) required in these Rules, except a period of time specified under Exhibit 15 clause 17.2, or
 - (ii) fixed or determined by the arbitrator.

10.4 If the arbitration is before a 3 person arbitral tribunal, the award may be made by a majority of arbitrators, but if there is no majority decision on any matter to be decided, the decision of the chairperson shall be the decision of the tribunal on that matter.

11 Exchange of Statements

11.1 The Parties shall exchange written statements of their respective positions in the Dispute in the following manner:

- (a) the claimant shall give a statement outlining the facts, the matters in issue and the relief or remedy requested not later than 14 days after the procedural

- meeting is held in Exhibit 15 clause 9.1;
- (b) the respondent shall give a statement outlining the response to the claimant's statement and the respondent's counterclaim, if any, not later than 14 days after receiving the claimant's statement;
 - (c) the respondent to the counterclaim shall give a statement outlining the defence to the counterclaim not later than 14 days after receiving the counterclaim.

The Parties shall provide the arbitrator with copies of the statements exchanged in Exhibit 15 clause 11.1.

- 11.2 Each Party shall attach to each statement provided in Exhibit 15 clause 11.1, or at such other time as the arbitrator may order, a list of documents:
- (a) upon which the Party intends to rely, and
 - (b) which describes each document by kind, date, author, addressee and subject matter.
- 11.3 During the proceedings the arbitrator may allow a Party to amend or add to any statement made in Exhibit 15 clause 11.1, including the list of documents, unless:
- (a) the amendment or addition goes beyond the terms of the arbitration agreement in the Agreement, or
 - (b) the other Party would be prejudiced by the delay in making the amendment or addition.

12 Disclosure

- 12.1 Each Party shall provide to the other Party a copy of the documents listed by the Party pursuant to Exhibit 15 clause 11.3 not later than 14 days after the last statement has been issued under Exhibit 15 clause 11.1 or at such other time as the arbitrator may order. Such documents shall be produced as paper and/or as electronic copies, unless otherwise ordered by the arbitrator or as otherwise agreed by the Parties.
- 12.2 The arbitrator may order a Party to produce, within a specified time, any documents which:
- (c) have not been listed under Exhibit 15 clause 11.3,
 - (d) the Party has in its care, custody or control, and
 - (e) the arbitrator considers to be relevant.
- 12.3 Each Party shall allow the other Party the necessary access at reasonable times to inspect and take copies of all documents that the former Party has listed pursuant to Exhibit 15 clause 11.3 or that the arbitrator has ordered to be produced in Exhibit 15 clause 12.2. Where a Party asserts that a document contains confidential and/or proprietary information, the Party shall be allowed to redact such information except where it is materially relevant to the proceedings (which the arbitrator shall determine by confidential review).

- 12.4 If the arbitrator has determined that an agreed statement of facts is appropriate, the Parties shall prepare and send to the arbitrator an agreed statement of facts within the time specified by the arbitrator.
- 12.5 Not later than 21 days before any oral hearing commences, each Party shall give to the other Party:
- (a) the name and address of any witness and a written summary of such witness' evidence, and
 - (b) in the case of an expert witness, a written statement or report prepared by the expert witness.
- 12.6 Not later than 15 days before the oral hearing commences, each Party shall give to the other Party and the arbitrator an assembly of all documents to be introduced at the hearing.
- 12.7 The arbitrator shall determine whether oral discovery is appropriate and may set dates for completion of oral discovery and limits on the number of witnesses for discovery.

13 Hearings and Meetings

- 13.1 The arbitrator shall give the Parties written notice of not less than:
- (a) 14 days of any oral hearings, or
 - (b) 7 days of any meetings
- that have not been previously scheduled under Exhibit 15 clause 9.1.
- 13.2 All oral hearings and meetings in the arbitration shall be conducted in private and all written communications and documents in respect of these proceedings shall be kept strictly confidential by the arbitrator and the Parties.
- 13.3 Oral hearings shall be scheduled for consecutive days until completion.

14 Evidence

- 14.1 The arbitrator shall not be required to apply the legal rules of evidence and shall determine the relevance and materiality of the evidence presented.
- 14.2 All oral evidence shall be taken in the presence of the arbitrator and all the Parties unless a Party is absent by default or has waived the right to be present.
- 14.3 The arbitrator may order any individual to be examined by the arbitrator under oath or on affirmation in relation to the issues in dispute and to produce before the arbitrator all relevant documents within the individual's care, custody or control.
- 14.4 The document assemblies delivered under Exhibit 15 clause 12.5 shall be deemed to have been entered into evidence at the oral hearing without further proof and without

being read out at the hearing but a Party may challenge the admissibility of any document so introduced.

- 14.5 If the arbitrator considers it just and reasonable to do so, the arbitrator may permit a document to be introduced at the oral hearing which was not previously listed under Exhibit 15 clause 11.3 or produced as required under Exhibit 15 clause 12.1 or 12.5, but the arbitrator may take that failure into account when fixing the costs to be awarded in the arbitration.
- 14.6 If the arbitrator permits the evidence of a witness to be presented as a written statement, the other Party may require that witness to be made available for cross examination at the oral hearing.
- 14.7 The arbitrator may order any witness (including a witness not included in the lists and reports contemplated in Exhibit 15 clause 12.5) to appear and give evidence, and, in that event, the Parties may cross examine that witness and call evidence in rebuttal.

15 Default of Parties

- 15.1 If a claimant, without sufficient cause and after 10 days notice from the arbitrator, fails to provide the statement required in Exhibit 15 clause 11.1(a), the arbitrator may terminate the arbitration with respect to that claim.
- 15.2 If the respondent or the respondent to the counterclaim, without sufficient cause and after 10 days notice from the arbitrator, fails to provide the statement required in Exhibit 15 clause 11.1(b) or (c), the arbitrator shall:
- (a) continue the arbitration, and
 - (b) require the claimant or the claimant by counterclaim, as the case may be, to submit such evidence to support the claim as the arbitrator may require before making an award.
- 15.3 If a Party:
- (a) without sufficient cause, fails to appear at a scheduled oral hearing, or
 - (b) fails to produce any evidence,
- the arbitrator may continue the arbitration and make an award based upon the evidence before the arbitrator.

16 Close of Hearings

- 16.1 The arbitrator shall close any oral hearings when:
- (a) the Parties advise they have no further evidence to give or submissions to make, or
 - (b) the arbitrator considers further hearings to be unnecessary or inappropriate.
- 16.2 If the arbitrator considers it to be just and appropriate to do so, the arbitrator may

reopen the oral hearings at any time before making the final award.

17 Final Award

- 17.1 The arbitrator shall decide the dispute in accordance with the law.
- 17.2 The arbitrator shall make the final award as soon as possible and, in any event, not later than 45 days after:
- (a) the hearings have been closed, or
 - (b) the final submission has been made,
- whichever is the later date.
- 17.3 The final award of the arbitrator shall be in writing, shall state the reasons upon which it is based and shall be signed and dated.
- 17.4 The arbitrator shall give a copy of the award to each Party.
- 17.5 The arbitrator may order interest to be paid in the final award in accordance with the Agreement.
- 17.6 The final award is final and binding on the Parties and the Parties agree to comply with it as soon as possible, unless the arbitrator has made an error of law or has otherwise breached these Rules, in which case either Party may appeal such final award to the Courts for determination based solely on such error or breach.

18 Costs

- 18.1 The arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:
- (a) the fees of the arbitrator;
 - (b) any necessary and reasonable expenses incurred by the arbitrator to fulfil the arbitrator's functions;
 - (c) the fees and other necessary and reasonable expenses of the witnesses, as approved by the arbitrator, where such witnesses are not employees of either Party; or
 - (d) any necessary and reasonable fees, charges or expenses for providing services to the arbitrator or the Parties in connection with the arbitration.
- 18.2 Except for the costs of legal fees and legal expenses of the successful Party, the costs of the arbitration shall be borne by the unsuccessful Party unless the arbitrator considers it appropriate in the circumstances to apportion them between the Parties.
- 18.3 The arbitrator:
- (a) may decide which Party shall bear the cost of legal fees and legal expenses of the successful Party, if they were claimed during the arbitration,

- (b) may apportion those costs if the arbitrator considers it just and reasonable to do so, and
- (c) in either event, shall specify the amounts of those costs or the manner of determining those costs.

18.4 In making a decision under Exhibit 15 clause 18.3, the arbitrator is not limited to awarding the legal fees and legal expenses which a Court may award to a successful Party in a civil judicial proceeding.

18.5 Subject to any agreement entered into among the Parties and the arbitrator, the fees of the arbitrator shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrator and any other relevant circumstances.

19 Amendments and Corrections to the Award

19.1 The arbitrator may amend or vary a final award to correct:

- (a) a clerical or typographical error,
- (b) an accidental error, slip, omission or other similar mistake, or
- (c) an arithmetical error made in a computation.

19.2 An application by a Party to the arbitrator to amend or vary a final award shall be made within 15 days after that Party receives the award.

19.3 The arbitrator shall not amend or vary the final award, without the consent of all Parties, more than 30 days after all Parties have received it.

19.4 Not later than 15 days after receiving the final award, a Party may supply to the arbitrator for clarification of the award, and the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it.

19.5 Not later than 30 days after receiving the final award, a Party may apply to the arbitrator to make an additional award with respect to claims presented in the proceedings but inadvertently omitted from the award.

20 Consolidation

20.1 A Party to any of the arbitrations may, by Notice given to each of the Parties to the arbitrations and to the arbitrator, request that the arbitration be consolidated if:

- (a) a common question of law or fact arises in more than one arbitration,
- (b) the relief claimed in these arbitrations is in respect of or arises out of substantially the same factual situation, and
- (c) the arbitrations are being conducted under these Rules.

- 20.2 If any Party disputes the consolidation of the arbitrations, the Party may refer the Dispute to the Court by giving Notice within 7 days of receiving the Notice for consolidation.
- 20.3 If none of the Parties disputes the Notice given under Exhibit 15 clause 20.1, within the time permitted in Exhibit 15 clause 21.2, each of the Parties to the arbitrations shall be conclusively deemed to have agreed to the consolidation of the arbitrations.
- 20.4 If the Parties to the consolidated arbitration are unable to agree on any of the procedural issues arising out of the consolidation of the arbitrations, including identifying who the arbitrator shall be, any Party to the consolidated arbitration may refer the outstanding issues to the Court.

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