

**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

PROCEDURAL ORDER NO. 2

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

29 April 2013

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 (“disputing parties”) concerning the production of certain documents by the Respondent that are in the possession custody and control of by 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 April 26, 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.

Mr. V.V. Veeder, President

April 26, 2013

By Email

Mr. V.V. Veeder
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom
Tel: + 44 (0)20 7813 8000
Fax: + 44 (0)20 7813 2024
vvveeder@londonarbitrators.net

Professor Franciso Orrego Vicuña
Avenida El Golf No. 40. Piso 6
Santiago 755-0107
Chile
Tel: (56-2) 441.6300 or 6326
Fax: (56-2) 441.6399
forrego@uchile.cl

Professor Zachary Douglas
Graduate Institute of International and
Development Studies
Case Postal 136
1211 Genève 21
Switzerland
Tel: +41.229085828
zacharydouglas@matrixlaw.co.uk

Dear Mr. Veeder and Members of the Tribunal,

Re: *Mercer International Inc. v. Canada*

We write to request a consent order from the Tribunal for the production of certain documents that are in the possession of British Columbia Hydro and Power Authority ("BC Hydro").

On February 4, 2013, the Claimant submitted document request 3.1, which requested that Canada produce:

Documentation of all agreements, in full, between BC Hydro and any Self-Generator in the forest products sector, or other arrangements between the BC Government and any Self-Generator in the forest products sector, entered into between 1989 and the present, and providing for load displacement by the Self-Generator, or the sale of power by the Self-Generator, whether or not the agreements currently remain in force, including agreements that have not yet entered into force, and, including but not limited to agreements or other arrangements with the Self-Generators (sites) listed in Requests 3.1.1 through 3.1.10 and/or

predecessor or successor entities. Please include all amendments and side letters.

The documents requested in this category concern not only the actual treatment afforded different Self-Generators but also their surrounding circumstances, including data concerning the self-generator's historical load, power consumption, power generation, and historical use of self supply considered by BC Hydro in negotiating the agreements with the Self-Generators (sites) listed in Requests 3.1.1 through 3.1.10.

Document requests 3.1.1 through 3.1.10 listed ten forest products mills that the Claimant has identified as potential comparators. In addition, Canada and the Claimant have identified two other potentially relevant comparator entities during the parties' discussions with regard to document production: the Louisiana Pacific sawmill and the City of Nelson. The Claimant, therefore, has requested that Canada produce BC Hydro's Energy Purchase Agreement with Louisiana-Pacific and the Water Rights Agreement with the City of Nelson so that it can determine whether it requires additional production concerning these potential comparators. Accordingly, Canada forwarded the Claimant's requests to BC Hydro for its consideration.

BC Hydro has concerns over the production of documents pertaining to document request 3.1 as many of these documents contain highly sensitive business confidential information that belongs or relates to BC Hydro customers, some of which are the Claimant's competitors. BC Hydro has also explained that it has contracts with several of these customers which obligate 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. In such circumstances, BC Hydro is also contractually required to provide notice to the relevant customers in these circumstances.

BC Hydro has considered the Claimant's request and is willing to produce these documents 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 have also agreed that the production of information in response to document requests 3.1, 3.2, 3.2.1-3.2.4, 3.3, 3.3.1 - 3.3.5, 3.4, 3.5 and 3.6 will be limited to the forest products mills listed in document requests 3.1.1-3.1.10 and, where requested by the Claimant, the Celgar pulp mill.

Canada and the Claimant therefore request that the Tribunal order Canada to request that BC Hydro produce the Louisiana-Pacific Energy Purchase Agreement and documents that are responsive to Claimant's document requests 3.1, 3.2, 3.2.1-3.2.4, 3.3, 3.3.1 - 3.3.5, 3.4, 3.5 and 3.6 that relate to the forest products mills listed in document requests 3.1.1-3.1.10.

The parties have also determined that responding to the document requests will require the production of very large volumes of documents. This has made it impossible for the parties to meet the April 19, 2013 deadline established in Procedural Order No. 1.

The parties have therefore agreed to an extended production schedule under which the Claimant will use best efforts to produce documents to Canada by July 1, 2013, and Canada will produce documents to Claimant on a rolling basis, using its best efforts to complete document production by December 20, 2013.

Canada has also agreed to produce the Energy Purchase Agreements and Load Displacement Agreements that are responsive to document requests 3.1.1 - 3.1.10, as well as the agreements relating to Louisiana-Pacific and City of Nelson on May 3, 2013. Canada has further agreed to use its best efforts to produce other documents that Claimant identified to Canada by letter dated March 25, 2013 as its top priority document requests by June 7, 2013. Remaining documents will be produced monthly, on a rolling basis.

Due to this extended document production schedule, the parties have further agreed that the briefing schedule set out in Procedural Order No. 1 should be delayed until after Canada has completed its production on December 20, 2013. The parties agree that the Schedule of Proceedings set out in Procedural Order No. 1 could then resume with the filing of the Claimant's Memorial in February 2014. The parties will consult and return to the Tribunal with a proposed amended order in due course.

The parties look forward to your prompt response to this request, so that they may proceed expeditiously with the production of priority documents on May 3, 2013. A draft order is attached to this correspondence for your consideration. The parties agree that, to facilitate prompt action, President Veeder may act on this request on his own.

Sincerely,



On behalf of Mercer International Inc.
Mr. Michael T. Shor



On behalf of the Government of Canada
Mr. Michael Owen

cc: Ms. Alicia Martín Blanco