EXHIBIT R-25

BAKER & McKENZIE

Baker & McKenzie LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street
P.O. Box 874
Toronto, Ontario

Tel: +1 416 863
Fax: +1 416 863
www.bakernet.com

Asia Pacific
Bangkok
Beijing
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta
Kuala Lumpur
Manila
Melbourne
Shanghai
Singapore
Sydney
Taipei
Tokyo

Europe & Middle East
Almaty
Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Bologna
Brussels
Budapest
Cairo
Dusseldorf
Frankfurt / Main
Geneva
Kyiv
London
Madrid
Milan
Moscow
Munich
Paris
Prague
Riyadh
Rome
St. Petersburg
Stockholm
Vienna
Warsaw
Zurich

North & South America
Bogota
Brasilia
Buenos Aires
Caracas
Chicago
Guadalajara
Houston
Juarez
Mexico City
Miami
Monterrey
New York
Palo Alto
Porto Alegre
Rio de Janeiro
San Diego
San Francisco
Santiago
Sao Paulo
Tijuana
Toronto
Valencia
Washington, DC

BY FAX, E-MAIL AND BY COURIER

Reply to:
Lydia Salvi
+1 416 865 6944
Lydia.salvi@bakernet.com

November 12, 2009

Ernst & Young Inc.
Monitor of Abitibi-Consolidated Inc.
Bowater Canadian Forest Products Inc., et al.
800 Rene-Levesque Blvd. West
Suite 1900
Montreal, QC H3B 1X9

Attention: Ms Donna Comerford
AbitibiBowater Claims
Fax number: 514-879-3992
E-mail: abitibibowater@ca.ey.com

Dear Sir / Madam,

RE: Canadian CCAA Proof of Claim re Abitibi-Consolidated Inc.

We represent Npower Cogen Limited.

Attached please find Proof of Claim together with supporting documentation in connection with Npower Cogen Limited's claims against Abitibi-Consolidated Inc.

Should you have any questions, please do not hesitate to contact me.

Regards,
BAKER & McKENZIE LLP

Lydia Salvi
LS/sf

Encl.

TORDMS-#400872-v1

Baker & McKenzie LLP, an Ontario limited liability partnership, is a member of Baker & McKenzie International, a Swiss Verein

Schedule "A" to Proof of Claim of Npower Cogen Limited

A. Energy Supply Arrangement Between Npower Cogen Limited ("Cogen"), Bridgewater Paper Company Limited ("BPCL") and Abitibi-Consolidated Inc. ("Abitibi ")

1. On August 3, 1998, National Power PLC ("**National Power**") and BPCL entered into an energy supply contract ("**ESC**") wherein National Power agreed to supply electricity and steam to BPCL. To the extent required and subject to confidentiality protection and consent by Cogen, the ESC can be provided upon request.

2. As a condition to enter into the ESC, Abitibi granted a guarantee to National Power pursuant to a Guarantee dated February 22, 1999 ("**Guarantee**") guaranteeing the obligations of BPCL (a wholly owned subsidiary of Abitibi) to National Power under the ESC. The Guarantee is attached as Exhibit 1.

3. The ESC was assigned on November 22, 2000 by National Power to Cogen. The Guarantee was subsequently assigned on 26 May 2005 by National Power (at that time named International Power plc) to Cogen. The letter of notice of assignment of the ESC and the assignment agreement for the Guarantee, are attached as Exhibit 2.

B. Abitibi's Purported Repudiation of the Guarantee and Cogen's Reservation of Rights to Object

4. On April 17, 2009, this Honourable Court issued an Order (the "**Initial Order**") granting the protection of the *Companies' Creditors Arrangement Act* ("CCAA") to among others, Abitibi.

- October charges, not yet invoiced, estimated to include Standing Charge of £1,200,000, Steam Charge of £506,000, and Electricity Charge of £472,000;
- November charges currently accruing on supplies taken, estimated as at midnight on 13 November to include Standing Charge of £1,300,000, Steam Charge of £289,000, and Electricity Charge of £225,000; and
- miscellaneous fixed charges for rates and engineering services, among other things, of £40,000 for October and £20,000 for the period to 13 November.

(ii) "Take or pay" liability under clause 9.7 of the ESC of **£8,416,192** The origins and nature of the "take or pay" liability are as follows. The pricing structure for energy and steam in the ESC was agreed on the basis that BPCL would purchase at least 770,000 Tonne of Steam (as defined in the ESC) each year. Under clause 9.7 of the ESC, if BPCL takes less than 770,000 Tonne of Steam in a 12 month period, BPCL must pay for steam it has not taken up to that amount. (Clause 9.7 also provides that such payments for steam not taken will be credited to BPCL in any of the following three years for steam taken in excess of 770,000 Tonne of Steam.) BPCL must pay for steam it has not taken at the Steam Charge, which is the price per Tonne of Steam calculated in accordance with clause 9.5 of the ESC. The Steam Charge was £5 when the ESC was first agreed, but was subsequently revised on a regular basis in accordance with clause 9.6 of the ESC and subsequently in accordance with the letter agreement dated 27 March 2003. A breakdown of the liability is attached as Exhibit 4. BPCL has not paid for this shortfall for the period of 2005 – 2009.

(iii) Transfer Charge liability under clause 9.11 of the ESC of **£51,168,669**. The origins and nature of the Transfer Charge liability are as follows. Under the ESC, Cogen built a combined heat and power plant next to BPCL's paper mill, on BPCL's land. The ESC provides that Cogen should then supply BPCL with electricity and steam from the plant for a period of 15 years. At the end of that period, BPCL is effectively entitled to purchase the plant for a nominal sum in accordance with clause 3.5 of the ESC. The reason for the nominal sum is that, over 15 years of supplies, Cogen was expected to recover the cost of building the plant through its regular charges under the ESC. If BPCL defaults on the ESC before or after entering an insolvency procedure, Cogen will be entitled to terminate the ESC pursuant to clause 17.3. If Cogen does so, BPCL will be liable to pay the Transfer Charge pursuant to clauses 17.4 and 9.11. The Transfer Charge is a liquidated damages amount intended to put Cogen in the position it would have been in if BPCL had continued to honour the ESC until its natural termination date, including compensation for building the plant. Upon payment of the Transfer Charge in full, the plant transfers to BPCL pursuant to clause 17.10 of the ESC. A breakdown of the calculation of the liability is attached as Exhibit 5.

10. BPCL's financial position is tenuous and the probability of it being able to meet its obligations under the ESC is nominal to zero. Accordingly, the probability of Cogen needing to call on the Guarantee is very high to 100%. BPCL's tenuous financial position is recognized by Abitibi itself throughout its motion materials filed in support of its

or other matter related to the Proof of Claim or any other rights it may have apart from the Proof of Claim.

16. Cogen reserves its right to seek additional claims for any and all other claims arising from the Petitioners legal obligations under any applicable law or contract.

Parent Company Guarantee

THIS GUARANTEE is made the 22nd day of February 1999 by Abitibi-Consolidated Inc. registered number 337578-1 whose registered office is 1155 Metcalfe, Suite 800, Montreal, Quebec H3B 5H2 (the "Guarantor") in favour of NATIONAL POWER PLC registered number 2366963 together with its permitted successors in title and/or assignees ("NP")

WHEREAS

(A) The Guarantor has a controlling interest in Bridgewater Paper Company Limited of North Road, Ellesmere Port, South Wirral, Merseyside L65 1AF which is registered under registration number 1726334 (the "Contractor") which has entered into an Energy Supply Contract dated 3 August 1998 with NP (the "Contract") pursuant to which the Contractor shall purchase energy from NP supplied at the Premises and shall undertake all of the other obligations and duties all as set out in the Contract.

(B) It is a condition of the Contract that the Contractor procure for NP a guarantee from the Guarantor in the terms set out below as security for the due and proper performance of each and all of the duties, obligations and undertakings to be performed and observed by the Contractor under or pursuant to the Contract.

NOW THIS DEED OF GUARANTEE WITNESSETH as follows:

1. Interpretation

Save to the extent that the context or the express provisions of this Guarantee otherwise require:

(A) the "Winding-up" of a person also includes the bankruptcy, insolvency, amalgamation, reconstruction, reorganisation, administration, composition of creditors, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any applicable jurisdiction;

(B) headings shall not be deemed parts of this Guarantee or be taken into consideration in the interpretation or construction hereof;

(C) all references to persons include individuals, bodies corporate and unincorporated, authorities, associations or other legal entities and their successors, permitted transferees and assigns;

(D) words and expressions used in the Contract have the same meaning in this Guarantee;

(E) words importing the singular include the plural and vice versa; and

(F) all references to documents or other instruments include all amendments and replacements thereof and supplements thereto and any agreement or instrument effected pursuant thereto.

3.2.3 the making or absence of any demand on or the taking or not of any action or obtaining or not of any judgement against the Contractor or any other person for payment or otherwise;

3.2.4 the enforcement or absence of enforcement of the Contract or of any security, right of action or other guarantee or indemnity;

3.2.5 the release of any such security, right of action, guarantee or indemnity;

3.2.6 any action lawfully taken by NP to determine the Contract, or any dispute or disagreement whatsoever under or in relation to the Contract;

3.2.7 the Winding-up of the Contractor, NP or the Guarantor;

3.2.8 any disability, incapacity or change in the status, constitution, function or control or ownership of NP, the Contractor or the Guarantor or between either or all of them;

3.2.9 any illegality, invalidity or unenforceability of or any defect in the provisions of the Contract or any of the Contractor's obligation under or pursuant to it; and

any other matter or thing whereby by the operation of law or otherwise (in the absence of this present provision) the Guarantor would or might be discharged or released from liability hereunder, or by which its liability may be affected.

4. Indemnity

As a separate, independent and alternative stipulation the Guarantor unconditionally and irrevocably agrees as a primary obligation to indemnify NP against any loss suffered by it as a result of:

4.1 any failure by the Guarantor to perform its obligations under or pursuant to this Guarantee in accordance with the provisions hereof and otherwise in the manner specified in the Contract; or

4.2 any of the Guaranteed Obligations being or becoming void, voidable or unenforceable for any reason or in the event of this Guarantee not proving to be binding on the Guarantor for any reason (whether or not now existing and whether or not now known or becoming known to NP, the Contractor or the Guarantor),

provided that the liability of the Guarantor hereunder shall be no greater than the liability of the Contractor under the Contract.

5. Continuing Security

Each of the Guarantor's obligations under this Deed are and will remain in full force and effect by way of continuing security until the complete performance, observance or compliance by the Contractor of the Guaranteed Obligations. Furthermore, those obligations of the Guarantor are additional to, and not instead of and shall not be prejudiced by, any security, right of action or other guarantee or indemnity at any time existing in favour of NP, whether from the Guarantor or otherwise.

assignment of this Guarantee as set out in this Clause 9, in writing.

10 Costs

Notwithstanding any limitations of liability contained in this Guarantee and in addition thereto, the Guarantor hereby covenants to pay to NP all and any reasonable costs, charges, losses or expenses of whatever nature incurred by or on behalf of NP in enforcing this Guarantee.

11. Waiver

No failure or delay on the part of NP to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or other exercise of any right or remedy.

12. Severability

If at any time any one or more of the provisions of this Guarantee is or becomes illegal, invalid or otherwise unenforceable in any respect such illegality, invalidity or unenforceablity shall not prejudice or affect the remaining provisions of this Guarantee which shall continue in full force and effect notwithstanding such illegality, invalidity or unenforceabilty.

13 Notices and Communications

13.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Guarantee shall be in writing and sent by hand, post or facsimile transmission.

13.2 Any notice or other communication shall be addressed as provided in sub-clause 13.3 and, if so addressed, shall be deemed to have been duly given or made as follows:

(A) if sent by hand, upon delivery at the address of the relevant party;

(B) if sent by post, upon actual receipt thereof;

(C) if sent by facsimile, upon actual legible receipt thereof.

13.3 the relevant addressee, address, and facsimile number of each party for the purposes of this Guarantee, subject to sub-clause 13.3 are:

(A) Abitibi-Consolidated Inc.
1155 Metcalfe
Suite 800
Montreal
Quebec H3 5H2
Canada Fax No: 00 1 514 875 6284

(B) National Power PLC
Centre Court
1301 Stratford Road

THIS IS EXHIBIT "2" TO THE PROOF OF CLAIM OF NPOWER COGEN LIMITED

From: International Power plc
Senator House
85 Queen Victoria Street
London
EC4V 4DP

To: Abitibi-Consolidated Inc.
1155 Metcalfe
Suite 800
Montreal
Quebec
H3B 5H2

Dated: 26 May 2005

Dear Sirs,

Notice of assignment

We refer to the Parent Company Guarantee dated 22 February 1999 issued by you in our favour relating to the obligations of Bridgwater Paper Company Limited under an Energy Supply Contract dated 3 August 1998 (the "PCG").

We hereby give you notice pursuant to clause 9 of the PCG that on the date hereof, International Power plc assigned to Npower Cogen Limited of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB all its right, title, interest and benefit in and to the PCG.

Please refer all future correspondence in respect of the PCG to Npower Cogen Limited at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB.

Yours faithfully,

Signed by .....

for and on behalf of
International Power plc

THIS DEED is dated 26 May 2005

PARTIES

(1) INTERNATIONAL POWER PLC incorporated and registered in England and Wales with company number 2366963 whose registered office is at Senator House, 85 Queen Victoria Street, London, EC4V 4DP (Assignor).

(2) NPOWER COGEN LIMITED incorporated and registered in England and Wales with company number 2624987 whose registered office is at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB (Assignee).

BACKGROUND

(A) The Assignor is the current beneficiary of a Parent Company Guarantee dated 22 February 1999 issued by Abitibi-Consolidated Inc. (PCG).

(B) The Assignor has agreed to assign to the Assignee its rights under the PCG upon the terms set out below.

AGREED TERMS

1. ASSIGNMENT

The Assignor hereby assigns to the Assignee the full benefit (in each case, so far as the Assignor can assign the same and subject to the burden thereof) of such rights as it may have under or in connection with the PCG.

2. GOVERNING LAW

2.1 This deed and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

2.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THIS IS EXHIBIT "3" TO THE PROOF OF CLAIM OF NPOWER COGEN LIMITED

THIS IS EXHIBIT "4" TO THE PROOF OF CLAIM OF NPOWER COGEN LIMITED

Summary Table of BPCL Steam Take or Pay Liability May 2005 to May 2009

Contract Year		Total Shortfall x Avg Stm Price
2005-06		6,585
2006-07		2,601,100
2007-08		2,783,860
2008-09		3,024,647
TOTALS		£ 8,416,192

Date	CHP Phase Commencement Date Anniversary	Base Transfer Charge
1st June 2008	Eigth	£ 52,849,752
1st June 2009	Ninth	£ 50,938,240

Charge reduction per day		5,237.02
No. days 1st June 08 to 17 April 09		321
Charge Reduction to 17 April 09		1,681,083.16
Transfer Charge as at 17th April 2009	**£**	**51,168,669**

EXHIBIT R-26

FORM OF NOTICE OF REVISION OR DISALLOWANCE OF A CLAIM OR SUBSEQUENT CLAIM AGAINST ABITIBI-CONSOLIDATED INC. AND BOWATER CANADIAN FOREST PRODUCTS INC., *et al.*

Name of Creditor: NPower Cogen Limited
Sent VIA: Courier and Email
Claim Reference: 4311

Pursuant to the order issued by the Superior Court of Quebec on January 18, 2010 (the "**Claims Determination Order**"), Ernst & Young Inc. in its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc. *et al* ., hereby gives you notice that it has reviewed your Proof of Claim against **Abitibi-Consolidated Inc. ("ACI")** and has revised or disallowed your claims as follows (all undefined capitalized terms herein shall have the meaning attributed to them in the Claims Determination Order and/or Schedule A to the Proof of Claim dated April 6, 2010 filed by Npower Cogen Limited ("Cogen") against ACI):

	Proof of Claim	**Revised Claim**
Nature of Claim or Subsequent Claim (secured or unsecured)	**Unsecured Claim**	**Unsecured Claim**
Claim Amount	**November 12, 2009 – £64,882,861** **April 6, 2010 - £70,160,658**	**C$0.00** **C$0.00 (subject to conditions below)**

Reason(s) for the Revision or Disallowance:

We have reviewed your Proof of Claim dated November 12, 2009 and are disallowing your claim for the following reasons:

1. Your claim dated November 12, 2009 (the "**November Claim**") is disallowed in full on the basis that claims contained in the November Claim were duplicated and revised in the updated claim of April 6, 2010 (the "**April Claim**").

We have reviewed your April Claim and are conditionally revising and otherwise disallowing your April Claim for the following reasons. Please note, until the conditions referenced in paragraph 4 below have been satisfied to the satisfaction of the Monitor, the April Claim shall be considered as being DISALLOWED in its entirety:

2. Paragraphs 1-4 of Schedule A to the Cogen Claim reference the Energy Supply Contract (the "**ESC**") and the Guarantee. This latter document is expressed to be in favour of National Power and is said to have been assigned to Cogen by the documents attached as Exhibit 2.

3. Clause 9 of the Guarantee authorized assignments to "National Power (Cogeneration) Limited or to the holding company of National Power (Cogeneration) Limited". The notice of May 26, 2005 which purports to assign the Guarantee under the said Clause 9 is given by "International Power plc" and not National Power, evidencing an assignment to Cogen. Attached to the notice was a "Deed of Assignment" reciting that International Power plc "is the current beneficiary of a Parent Company Guarantee".

4. No evidence has been tendered to establish (i) how International Power plc came to be the holder of the Guarantee as alleged; and (ii) the means by which ACI is alleged to have consented to this further assignment which is not contemplated by the provisions of Clause 9 referred to above (the Clause being restricted to a single assignment to a single named company). *We therefore require satisfactory evidence that International Power plc was the valid holder of the Guarantee at the time of the assignment to Cogen on May 26, 2005 and that ACI explicitly consented to the assignment thereof since Clause 9 does not provide the claimed authority for such assignment.*

5. In the interest of expediency and time, we are providing you with the revisions and disallowances which are proposed to be made in respect of the April Claim. However, the April Claim must be considered as being ENTIRELY DISALLOWED unless and until satisfactory evidence is provided to the Monitor establishing to the satisfaction of the Monitor answers to the questions raised in paragraph (4) above. References to the "Guarantee" below are without prejudice to the position that the existence of the Guarantee and its valid assignment to Cogen as the alleged holder thereof remains in dispute subject to such further evidence as Cogen shall file.

6. The claim that the Guarantee is not the proper object of a repudiation is entirely rejected. The repudiation is provided for in the Initial Order and was effected in accordance with its terms. The allegations by Cogen of a variety of conditions precedent to repudiation (beyond the ones provided by the Initial Order) are unfounded.

7. Paragraphs 12-30 of the April Claim raise a variety of allegations stemming from an Amended and Restated Paper Supply Agreement between Abitibi and Bridgewater Paper Company Limited ("**BPCL**") as well as certain support assurances allegedly given by ACI to BPCL. Cogen is not a party to such Agreement and does not have standing to advance alleged claims on behalf of BPCL. Claims in these paragraphs are accordingly unfounded.

8. Further, the European Receivables Transaction was specifically approved by the Court. Cogen's characterization of this Transaction is not accurate and neglects to note that BPCL had provided

a guarantee secured by the very receivables that were the subject of the Transaction. The receivables so transferred remained at all times subject to security in favour of a different group of creditors.

9. The Monitor has reviewed the portion of the April Claim regarding the indebtedness of BPCL to Cogen under the ESC and the Guarantee as recited in paragraphs 31-35 of the April Claim. Subject to proof of the validity of the Guarantee as noted above, the Monitor is prepared to revise the April Claim and allow it in part in the amount of $C 101,916,948 for the following reasons:

   (a) Pursuant to the Claims Procedure Order dated January 18, 2010, all Subsequent Claims (as defined in the Order) denominated in a foreign currency shall be filed in the currency in which they are incurred but, for purposes of determination of the value of such Subsequent Claims for voting and distribution purposes, shall be converted by the Monitor to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the date of the notice of repudiation or termination which gave rise to said Subsequent Claim. Accordingly, any guaranteed indebtedness of BPCL to Cogen denominated in pounds sterling must be converted to Canadian dollars at the rate of £1 = $C1.8791.

   (b) With respect to the take or pay liability, the amount of £1,223,551, which represents the 2009/2010 liability, has been disallowed on the basis that any claim for unpaid steam "take or pay" can only arise as at the anniversary of the CHP Phase Commencement Date (June 1, 2000) or June 1, 2010.

   (c) The amount of £14,700,000 has been disallowed on the basis that this amount represents an estimate of the value of the heat and power station that is being retained by Cogen.

10. The balance of the April Claim is rejected as it has not been substantiated and is without merit.

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute this Notice of Revision or Disallowance, you must, within ten (10) business days of the date of this Notice of Revision or Disallowance, deliver a Notice of Dispute by registered mail or courier at the addresses indicated hereon. The Form of Notice of Dispute is attached to this Notice.

2. Creditors shall be responsible for obtaining proof of delivery of such Notice of Dispute through their choice of delivery method. No acknowledgement of receipt will be provided by the Monitor.

3. If you do not deliver a Notice of Dispute within the above prescribed time period, the determination of your Claim or Subsequent Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Service of the Notice of Dispute:

Ernst & Young Inc., Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*

By Registered Mail or Courier:

Ernst & Young Inc.
800 Rene-Levesque Blvd. West, Suite 1900
Montréal, Québec
H3B 1X9

Attention: Donna Comerford

Telephone : 866-246-7889
Fax : 514-879-3992
E-mail : abitibibowater@ca.ey.com

IF YOU FAIL TO DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU FOR VOTING AND/OR DISTRIBUTION PURPOSES UNDER A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT.

Dated at Montreal, Quebec this 16th day of June, 2010.

ERNST & YOUNG INC.
In its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc. *et al.*

Per:

D Comerford

Encl.

Cc Lydia Salvi – Baker& McKenzie

FORM OF NOTICE OF DISPUTE OF A NOTICE OF REVISION OR DISALLOWANCE OF A CLAIM, SUBSEQUENT CLAIM AGAINST ABITIBI-CONSOLIDATED INC. AND BOWATER CANADIAN FOREST PRODUCTS INC. *et al.*

Pursuant to the order issued by the Superior Court of Quebec on January 18, 2010 (the **"Claims Determination Order"**), we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Claim Reference Number _____ and dated _____ issued by Ernst & Young Inc. in its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*, in respect of our [Claim / Subsequent Claim] (all undefined capitalized terms herein shall have the meaning attributed to them in the Claims Determination Order).

Name of Creditor: _____.

Reason(s) for dispute (*attach additional sheet and copies of all supporting documentation if necessary*):

_____

_____

Signature of Creditor or Union (or representative): _____

(Please print name): _____

Date: _____

Telephone number: (_____) _____

Facsimile number: (_____) _____

Full mailing address:

_____

_____

Email: _____

THIS FORM AND SUPPORTING DOCUMENTATION ARE TO BE RETURNED TO THE MONITOR BY REGISTERED MAIL OR COURIER AT THE ADDRESS INDICATED BELOW IN ORDER TO BE RECEIVED BY THE MONITOR WITHIN TEN

(10) BUSINESS DAYS OF THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE.

Creditors or Unions shall be responsible for obtaining proof of delivery of such Notice of Dispute through their choice of delivery method. No acknowledgement of receipt will be provided by the Monitor.

Address for Service of the Notice of Dispute:

Ernst & Young Inc., Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*

By Registered Mail or Courier:

Ernst & Young Inc.
800 Rene-Levesque Blvd. West, Suite 1900
Montréal, Québec
H3B 1X9

Attention: Donna Comerford

Telephone : 866-246-7889

Fax : 514-879-3992

E-mail : abitibibowater@ca.ey.com

EXHIBIT R-27

FORM OF NOTICE OF DISPUTE OF A NOTICE OF REVISION OR DISALLOWANCE OF A CLAIM, SUBSEQUENT CLAIM AGAINST ABITIBI-CONSOLIDATED INC. AND BOWATER CANADIAN FOREST PRODUCTS INC. *et al.*

Pursuant to the order issued by the Superior Court of Quebec on January 18, 2010 (the "**Claims Determination Order**"), we hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Claim Reference Number 4311 and dated June 16, 2010 issued by Ernst & Young Inc. in its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*, in respect of our [Claim / Subsequent Claim] (all undefined capitalized terms herein shall have the meaning attributed to them in the Claims Determination Order).

Name of Creditor: Npower Cogen Limited

Reason(s) for dispute (*attach additional sheet and copies of all supporting documentation if necessary*):

See attached Schedule to Notice of Dispute and Exhibits

Signature of ~~Creditor or Union (or representative)~~ Lawyer of Creditor:

(Please print name): Chris Besant

Date: June 29, 2010

Telephone number: (416) 865-2318

Facsimile number: (416) 863-6275

Full mailing address:

Brookfield Place, Suite 2100, 181 Bay Street
PO Box 874 Toronto, Ontario Canada M5J 2T3

Email: chris.besant@bakernet.com

THIS FORM AND SUPPORTING DOCUMENTATION ARE TO BE RETURNED TO THE MONITOR BY REGISTERED MAIL OR COURIER AT THE ADDRESS INDICATED BELOW IN ORDER TO BE RECEIVED BY THE MONITOR WITHIN TEN

SCHEDULE TO NOTICE OF DISPUTE OF A NOTICE OF REVISION OR DISALLOWANCE OF A CLAIM, SUBSEQUENT CLAIM OF NPOWER COGEN LIMITED ("COGEN") AGAINST ABITIBI-CONSOLIDATED INC. (VARIOUSLY "ABITIBI" AND "ACI")

RESPONSE TO NOTICE OF DISALLOWANCE / FURTHER PARTICULARS OF CLAIMS

GENERAL

1. This Schedule is in response to The Form of Notice of Revision or Disallowance of a Claim or Subsequent Claim dated June 16, 2010 and delivered to Cogen by email on June 17, 2010 (the "Notice of Revision") issued by Ernst & Young Inc. (the "Monitor") and the CCAA Debtors. Unless otherwise indicated herein, capitalized terms used herein have the meanings assigned to them in the Proofs of Claim filed by Cogen and in the Notice of Revision. Where the context or the validity of the Proofs of Claim and this Notice of Dispute so requires , ACI also refers to affiliates of ACI. The letter "L" before a numerical amount denotes the UK Pounds Sterling)

2. Cogen repeats and relies on the facts and documents set out in its two Proofs of Claim as filed on November 12, 2009 (the First Proof of Claim") and April 7 2010 (the "Second Proof of Claim" and collectively the "Proofs of Claim"), as well as on the additional facts below set out in response to the Notice of Revision. Cogen also reserves the right to amend and supplement this response.

3. Cogen's disputes the entire Notice of Revision. However, the Dispute is primarily in 4 principal respects:

   A. The ESC and Guarantee were validly assigned to Cogen and Cogen accordingly has status to prove and assert the claims its has asserted.

   B. The disallowed portion of the Take or Pay Liability Claim is a proper claim that should be allowed.

C. As is admitted in the Notice of Revision, Cogen has proven the entire amount of the Transfer Charge Liability asserted in the Proofs of Claim. The proposed reduction of the Claim amount by 14.7 million UK pounds properly relates only to a proposed reduction in the Notice of Revision of the amount allowable on account of the Transfer Charge portion of the Proofs of Claim. In any event, the 14.7 million pound reduction as proposed by the Notice of Revision is not a proper deduction from the proven amount on account of the Transfer Charge nor from any other amount of the Proof of Claim.

D. The Claim for elevated priority and status for the claim in respect of the post filing supply of Electricity and Steam in the amount of 9,447,548 UK Pounds Sterling (variously referred to herein as the "Post Filing Supply Claim" and the "Post Filing Supply Invoices") is a proper claim for elevated priority and status which should be allowed.

4. However, Cogen will withdraw its claim, asserted in its proofs of claim, to elevated priority for the balance of its Claim beyond item D, if the four points above are allowed.

5. Cogen accepts the proposed conversion rate of CDN$ 1.8791 = 1 UK Pound Sterling which is asserted in the Notice of Dispute as the rate to be used to convert its claim from UK Pounds to Canadian Dollars, subject to this being without prejudice to its positions on the items it is disputing above.

6. Cogen acknowledges that its two Proofs of Claim contain overlap and will continue to rely on its First Proof of Claim only insofar as it is necessary or helpful to establish the claims conditionally allowed in the Notice of Revision, and to establish the claims in the Second Proof of Claim and this Notice of Dispute.

A. THE ESC AND GUARANTEE WERE VALIDLY ASSIGNED FROM NATIONAL POWER TO COGEN

7. Pursuant to Paragraphs 2 -5 of the Notice of Revision, the Monitor has asked for further satisfactory evidence that International Power plc was the valid holder of the Guarantee at the time of the assignment to Cogen on May 26, 2005 and that ACI explicitly consented to the assignment thereof.

8. Attached as Exhibit "A" hereto is the BCPL/Abitibi Timeline of Contractual Documents and Corporate Name Changes, which addresses the points noted in Paragraphs 2 through 5 of the Notice of Revision and which substantiates that International Power plc was the valid holder of the Guarantee at the time of the assignment to Cogen on May 26, 2005 and that Abitibi's consent to the assignment was not required in accordance with Clause 9 of the Guarantee.

9. In its Notice of Revision the Monitor recognizes that National Power was the valid holder of the Guarantee at the time of the assignment in question. The notice of May 26, 2005 which purports to assign the Guarantee is given by International Power plc and not National Power. However, International Power plc and National Power are the same corporate entity. National Power's name was changed to International Power plc on October 2, 2000, after execution of the Guarantee, but before execution of the Assignment of the Guarantee. As such, International Power plc, being the same corporate entity but for a name change, is the valid holder of the Guarantee at the time of the assignment to Cogen on May 26, 2005.

10. Abitibi's consent to the assignment of the Guarantee was not required because pursuant to clause 9 of the Guarantee (as acknowledged in the Notice of Revision), the Guarantee authorized assignments to National Power (Cogeneration) Limited. Again, National Power (Cogeneration) Limited and Npower Cogen Limited are the same corporate entity. National Power (Cogeneration) Limited changed its name to Innogy Cogen Limited on October 3, 2000 and then to Npower Cogen Limited on August 2, 2004.

11. The corporate documents evidencing the foregoing name changes are attached to this Notice of Dispute as Exhibit "B"

12. Cogen assumes that, based on the foregoing, the Monitor is prepared to allow Cogen's Claim in part, in the amount of $C 101,916,948. Cogen does not dispute that amount except with respect to the issues set out below which remain in dispute.

B. DISALLOWED PORTION OF TAKE OR PAY LIABILITY

13. Pursuant to paragraph 9(b), the Monitor has disallowed Cogen's claim for take or pay liability in the amount of L1,223,551, which represents the 2009/2010 liability on the basis that any claim for unpaid steam "take or pay" can only arise as of June 1, 2010. Cogen disputes the Monitor's disallowance of the take or pay liability of L 1,223,551. We note that although this date had not passed at the time Cogen submitted its claim in April, it has now and as such should be an admitted claim.

14. Moreover, claims under the CCAA include claims in respect of contractual obligations arising in future so it is irrelevant whether the liability arises before or after the filing date or any subsequent claims bar date: the claim for that amount is a valid claim.

15. As noted below, ACI had no contractual entitlement to repudiate the Guarantee and hence all obligations which would have been covered by the Guarantee through the intended contractual life of the Guarantee are properly assertable as claims

C. DISALLOWED PORTION OF TRANSFER CHARGE LIABILITY

16. Pursuant to paragraph 9(c), the amount of L14,700,000 was disallowed on the basis that this amount represents an estimate of the value of the heat and power station that is being retained by Cogen, and that the value of the retained plant should be deducted from the transfer charge claim.

17. Cogen disputes this disallowance on the basis that it cannot see any basis for this disallowance nor how the quantum of this disallowance was arrived at. Neither is explained in the Notice of Revision.

18. The value of the power plant is only relevant to the transfer charge element of the claim - i.e. the only issue is whether the value of the plant can be deducted from the Transfer Charge element of the Cogen proofs of claim as asserted. Cogen's position is that no deduction is required nor permissible in law. The transfer charge liability in the ESC is a pre-estimated contractual liquidated damage amount intended to put Cogen in the position it would have been in if BPCL had continued to honour the ESC until its natural termination date, including compensation for building the plant. That liquidated damage amount contemplated that the plant would remain the property of Cogen in the event of breach. Title to the plant has always been with Cogen, and never passed at any time to BPCL, and hence BPCL is not transferring the plant back to Cogen and is not entitled to any deduction from the Contractual Transfer Charge Amount claimed under the contract.

19. In the alternative, if for any reason the value of the heat and power station is required to be deducted from the amount of the Claim, it would be deductible only from the Transfer Charge Claim. The Disallowance assigns a value of 14.7 million UK Pounds to the heat and power station but provides no reasons, calculation nor substantiation of that amount. As the onus is on the Monitor to substantiate the deduction it claims, no deduction should be made from the claim on this basis.

D. DISALLOWANCE OF PRIORITY/STATUS FOR THE POST FILING SUPPLY INVOICES CLAIM

Monitor/CCAA Debtors Admission of Unpaid Post Filing Invoices as Unsecured Claim

20. In the Notice of Dispute and Disallowance, the Monitor and the CCAA Debtors have conditionally allowed, as unsecured claims, the claims set out in paragraphs 31-35 of Cogen's second Proof of Claim dated April 7, 2010 (the "Second Proof of Claim"). That conditionally allowed amount includes the full of amount of the Cogen Claim in respect of the unpaid Post Filing Supply Invoices. This portion of the Allowed Claim totals Cdn$ 17,752,887, representing the sum

of 9,447,548 UK Pounds Sterling converted to Canadian Dollars at the rate of Cdn$ 1.8791 per UK Pound (the "Unpaid Post Filing Invoices"). The condition imposed by the Monitor on the admission of this claim relates solely to the request that Cogen provide further proof of the ESC and Guarantee assignments, which further proof is tendered above.

Monitor/Debtor Disallowance of Higher Priority Status of Unpaid Post Filing Invoices

21. However, the Monitor and the CCAA Debtors have disallowed the portion of the Cogen claim which asserts that this claim is entitled to higher priority and/or status. Cogen disputes this aspect of the disallowance and asserts that such claims do indeed have the priority and status contended for. In particular, the Monitor has disallowed the claims to enhanced status for this claim set out in paragraphs 7 through 30 of Cogen's Second Proof of Claim.

Cogen Dispute of Disallowance re Post Filing Invoice Priority/Status

22. Cogen disputes the disallowance of the claims in paragraphs 7 through 30 of the Claim as they pertain to the Unpaid Post Filing Invoices on the following grounds:

a) The Interim Supply Provisions of the Initial CCAA Order in this case require payment of the Post Filing Supply Claim;

b) The claim under the Guarantee in respect of the Post Filing Supply Invoices is by law an Excluded/Unaffected Claim under any CCAA Plan which may be proposed by ACI and its affiliates;

c) It is oppressive and unfairly prejudicial under section 241 of the Canada Business Corporations Act ("CBCA") for ACI to refuse and fail to pay the Post Filing Supply invoices because:

i) ACI gave a Support Commitment to BPCL to induce it to continue trading until Feb 2, 2010 and Cogen relied upon that commitment to continue supplying;

ii) ACI was a party to direct representations to Cogen that BPCL would continue trading and honouring its commitments into 2010;

iii) It is proper to infer from the facts set out in the Proofs of Claim and this document that ACI participated in the formulation and execution of a private plan formulated with BPCL between July and September 2009 to (A) terminate its financial support for BPCL despite its commitment to fund BPCL's obligations; (B) to transfer a substantial portion of BPCL's liquid assets to a newly created ACI entity on the eve of BPCL's inevitable shutdown that would result; (C) to induce BPCL to forbear from enforcing its rights against BPCL and ACI while this plan was being implemented without Cogen's knowledge; and (D) to allow BPCL to continue to request and accept supply from Cogen while this undisclosed plan was being implemented; all of which thereby (1) unfairly inducing Cogen to supply BPCL without knowledge that ACI did not intend to pay for the amounts supplied; and (2) substantially reduced the prospects for Cogen to recover on its claims against BPCL and ACI;

iv) During the period between ACI filing for CCAA protection and BPCL's shutdown, ACI as a creditor of BPCL received payments from BPCL while BPCL was insolvent, which payments were preferential vis a vis BPCL's other creditors, and which should not have been made by BPCL or accepted by ACI unless ACI and BPCL had arranged to ensure that all other claims being incurred by BPCL during that period would be paid in full.

Below are the additional background facts (beyond what is already set out in Cogen's two proofs of claim) supporting these positions.

D.1 ADDITIONAL BACKGROUND FACTS RE POST FILING SUPPLY CLAIM

Supply by Cogen of Electricity and Steam to BPCL/Guarantee by ACI

23. National Power PLC entered into the ESC with BPCL in 1999.

24. As part of that transaction, ACI issued the Guarantee, which provided that ACI guaranteed as primary obligor and not simply as surety, that National Power PLC would be paid for, inter alia, all invoices for supply of heat and power etc to BPCL. The relevant terms of the Guarantee are extracted in more detail below. A copy of the Guarantee is attached to the First Proof of Claim.

25. The Guarantee was validly assigned to Cogen in 2005 as explained above (as was the ESC at the same time. A copy of the ESC as assigned is annexed hereto as Exhibit "C".).

26. Pursuant to the terms of the ESC as assigned, Cogen supplied electricity and steam to BPCL from the time of the assignment in 2005 through to the shutdown of BPCL and its filing for UK administration on February 2, 2010.

ACI Guarantee Terms

27. The terms of the Guarantee provide in relevant part as follows:

a) It guarantees that ACI is liable to pay for all Cogen invoices for electricity and steam supply invoices that are overdue;

b) It provides that the Guarantee may be called whenever the ESC is breached by BPCL.

c) It provides that ACI is liable not just as surety but as primary obligor for anything supplied to BPCL under the ESC.

d) It provides that the Guarantee cannot be repudiated by ACI.

Relevant extracts from the Guarantee are attached as Exhibit "D". The effect of the Guarantee provisions is that the power by Cogen under the ESC as guaranteed by ACI, was at all material times in substance and in law the supply by Cogen of power to BPCL and ACI as joint and several primary obligors.

BPCL Entirely Reliant for Funding Support on ACI

28. The importance of the Guarantee to Cogen and particularly its provisions which make ACI a primary obligor, is that BPCL was not able to operate without ACI funding. The UK Administrator of BPCL appointed under the *UK Insolvency Act 1986* (variously the "UK Administrator" and the "Administrator") has confirmed this specifically on page 2 its recent proposal to creditors. The report specifically notes that prior to its shutdown, BPCL had been trading at a loss for several years, and that it was **"solely reliant"** on ACI for funding of its operations, and that absent that funding, BPCL was insolvent and would be unable to continue to operate. This report is attached hereto as noted below. In short the Guarantee ensured that ACI could be compelled to fund obligations incurred by BPCL to Cogen.

BPCL's Requirement for a Support Commitment

29. Under the UK *Insolvency Act 1986*, a company's directors incur potential personal liability if they allow the company to continue to trade while insolvent knowing that it will not be able to honour commitments incurred. There are also other potential repercussions for directors who trade on while a company is insolvent, such as running a risk that they will be disqualified from acting as a company director. Accordingly, in order for BPCL to be able to continue in operation, its directors had no choice but to require did require ACI to provide the Support Commitment - a commitment that ACI would fund its obligations incurred while BPCL continued to operate..

Relationship between BPCL and ACI.

30 Prior to its merger with Bowater, ACI was the parent of the Abitibi Group of companies, and BPCL was an indirect wholly owned subsidiary of ACI. It is proper and reasonable to infer that, as is typical of most multinational operations, ACI ultimately managed the Abitibi Group of Companies, including BPCL, from its head office in Montreal.

31. It is proper and reasonable to infer that, following ACI's merger with Bowater in 2007, ACI continued to manage the former Abitibi Group of

companies from its Montréal head office, including BPCL, subject to its obligation to report to the merged parent company, AbitibiBowater Inc.

32. It is proper and reasonable to infer that (i) at all material times herein, the board of BPCL reported to ACI, particularly as the board of BPCL contained two senior Abitibi executives, Jacques Vachon and Jon Melkenson; and that (ii) ACI was as result, at all material times was aware of the affairs of BPCL and was in functionally its ultimate directing mind.

33. The details of the relationship between ACI, Abitibi-Bowater Inc. and their subsidiaries including BPCL are detailed in the initial CCAA Affidavit and the affidavits filed in support of extension of CCAA protection; in the Monitors Reports filed in this proceeding, and in the Annual Reports and SEC filings of ACI pre merger and AbitibiBowaterInc post the 2007 merger (these are publicly available documents and as such have not been attached in the interest of focussing this submission on the real issues believed to be in dispute. However if it is, extracts from those materials will be provided).

ACI CCAA Filing/Cogen Response

34. ACI and various other members of the Abitibi group of companies filed for CCAA protection on April 17, 2009. BPCL was not included in the filing and continued to operate with ACI funding (the Administrators Report confirms that support of 8 million pounds was provided by Abitibi to BPCL during FY 2009. BPCL never became part of the filing since.

35. Cogen was notified of the filing on or shortly after that date and wrote to BPCL on or about April 22, 2009 to advise that it would discontinue supply and terminate the ESC and commence insolvency proceedings against BPCL unless assured that BPCL would be able to pay for supply. In response, BPCL confirmed on April 23 that had sufficient funding to continue to pay its invoices. Attached hereto as Exhibit "E" is the April 22/23, 2009 exchange of correspondence.

36. Following the ACI CCAA filing BPCL in fact continued to trade and to pay Cogen's invoices for supply on a current basis throughout the spring summer and fall of 2009 as promised.

Spring/Summer 2009 BPCL/Cogen Restructuring Discussions

37. Cogen was BPCL's key and largest external supplier (and is now its largest external unsecured creditor). From about June through at least September 2009, BPCL and ACI engaged in extensive negotiations with Cogen about a proposal to restructure aspects of the relationship between BPCL and Cogen under the ESC. These negotiations resulted in a deal in principle by September 2009 which was reflected in drafts which were subject to the approval of the ACI lenders. The negotiations paused in or about September 2009 when BPCL indicated they were seeking ACI consent to the proposed deal reflected in the final drafts. Attached as Exhibit "F" is a draft produced during this negotiation process evidencing this negotiation.

38. In part as a result of these restructuring negotiations , Cogen was induced to continue supplying BPCL from June through October 2009, and to forbear from enforcing its rights under the ESC and the Guarantee.

39. However, despite the draft deal in principle with Cogen, ACI and BPCL were actually pursuing another solution. In July 2009, ACI and BPCL privately arranged to engage Ernst & Young UK ('EY UK", the UK affiliate of the Monitor which ultimately became the BPCL Administrator on Feb. 2, 2010), to explore restructuring options for BPCL and report to the BPCL board. on the same. (This is a proper and reasonable inference from the information detailed in the Administrator's Report attached further below). Although ACI/BPCL were in negotiations with Cogen over restructuring this key BPCL relationship, Cogen was not informed that BPCL and ACI were actually exploring and ultimately implementing a different solution.

ACI's Purported Repudiation of the Guarantee on July 7, 2009

40. On July 7, 2009, ACI wrote to Cogen purporting to repudiate the Guarantee. As noted above, ACI had no contractual right under the Guarantee to repudiate it. Cogen did not accept the repudiation as a valid act under the Guarantee contract.

41. The July 7 letter purported to exercise powers granted to ACI under the Initial CCAA Order to repudiate contracts. However, as detailed in the Proof of Claim, the power is not unlimited and could only be exercised if certain conditions were met.

42. On August 12, 2009, Cogen wrote to ACI and advised that the purported repudiation of the Guarantee under the CCAA was of no effect as the purported repudiation was not effected in accordance with the requirements of the Initial CCAA Order. The July 7 and August 12 letters are attached to the Proofs of Claim.

43. The continued supply and operation of BPCL until February 2010 was essential to ACI to protect its lenders asset base (BPCL assets were pledged to its lenders), to protect its European Supply system operated through BPCL, and to protect receivables owed to ACI and its other affiliates by BPCL on account of supply of goods for the European Market and raw materials for BPCL's operations. ACI needed Cogen to continue supplying power to BPCL for BPCL to continue to operate, and for Cogen to do that, Cogen needed the protection of the Guarantee and ACI's funding commitment to BPCL's board that it would support the company despite its CCAA filing. Indeed by letter dated April 22, 2009 (attached hereto as noted above), Cogen had already advised BPCL that it was not willing to continue supplying after ACI filed for CCAA protection, absent assurance of payment. In other words, the most central condition to the exercise of the CCAA power of repudiation - that repudiation was essential to the restructuring, was not met, and in fact the converse was true.

Support Commitment Discussion with BPCL in September 2009

44. Discussions took place with BPCL on this very point in September 2009. BPCL confirmed that ACI had issued a Support Commitment to its board

pursuant to which ACI committed to BPCL and its directors that it would fund the commitments incurred by BPCL. BPCL advised that the commitment expired in July 2009 but that it would be renewed through to the end of 2009 and beyond, so that BPCL could continue to make commitments to pay for supply to BPCL and other suppliers. Cogen was led to believe by this discussion that BPCL would continue operating with ACI support at least well into 2010. Attached hereto as Exhibit "G" is a memorandum dated September 25, 2009 documenting a discussion between Ian Wilkinson, a senior Cogen executive, and BPCL's finance director, Barry Benson. The discussions recorded in that memorandum are evidence of the Abitibi commitment in favour of BPCL was granted to the end of July and renewed through to the end of December 2009 and beyond.

45. While the Notice of Disallowance asserts that Cogen has no privity of contract in respect of the Support Commitment, that assertion is of no relevance. Cogen's claim is that drawing Cogen into forbearance from enforcement, and continued supply predicated on ACI support, and then withdrawing the support and dishonouring the bills is a violation of its reasonable expectation by ACI, BPCL and their affiliates, and constitute conduct oppressive and unfairly prejudicial to Cogen as a creditor of both BPCL and ACI and is a matter in respect of which the Court can issue a remedy as it deems just under section 241 of the CBCA.

46. The representation and inducement to Cogen to continue to supply based on the intention of ACI to fund BPCL's bills was authorized and induced by ACI and its directors acting in concert with BPCL and its directors, including their respective common directors. The awareness of the Abitibi head office of these matters is noted in the September 25, 2009 memo.

ACI's Undisclosed Decision to Shut Down BPCL

47. Following the review undertaken by EY UK as noted above, ACI determined that it no longer wished to provide funding for BPCL even were it to restructure the arrangements with Cogen. In consequence of that, ACI set in motion a series of coordinated steps aimed at shutting down BPCL. It took those

steps without informing Cogen of its plans, and allowed and induced Cogen to continue supplying in reliance on ACI support for its invoices throughout that process. The UK Administrators Report on its proposal referenced below references the role that ACI played in this process on page 3.

48. In the circumstances, it was oppressive and unfairly prejudicial to Cogen as creditor/supplier of ACI and BPCL, for ACI, BPCL and their respective directors and affiliates to fail to fund BPCL's obligations to Cogen while they permitted BPCL to continue to draw supply from Cogen.

49. It is reasonable and proper to infer that the plan to shut down BPCL involved 4 parts

i). having BPCL continue to operate and draw supply until the shut down plan was complete;

ii). Waiting until the shutdown to inform BPCL suppliers;

iii). the transfer shortly prior to the shutdown of a large chunk of BPCL receivables to a newly formed ACI subsidiary, ACUK;

iv). the interim payment of receivables owed by BPCL to ACI pending the shutdown.

50. All of these steps unfolded between July 2009 and February 2, 2010. In particular,

a. As detailed in the Proofs of Claim, ACI used BPCL as a conduit to effect certain European sales, resulting in parallel sets of receivables every month in the amount of approximately 15 million - from the European customers to BPCL, and from BPCL to ACI.

b. Despite the ACI support commitment, BPCL has been left with over 100 million pounds worth of unpaid suppliers (as detailed in the UK Administrators Report attached below) and other creditors (including a 70 million pound claim owed to Cogen). Yet during the last seven months before BPCL shut down, ACI arranged for BPCL to pay it up to 15 million dollars a month each month between July 2009 and February

2010. In fact, in the year preceding BPCL's administration, BPCL paid ACI, a non arms length creditor, up to 180 million dollars on account of ongoing supply. These facts are apparent from the materials filed in support of the November 10, 2010 motion by ACI. Those payments to ACI while BPCL was insolvent and not fully paying its other creditors were preferential and oppressive and unfairly prejudicial to BPCL's other creditors, including Cogen.

c. ACI took the decision to shut down BPCL at some point between July and September 2009, but induced and allowed Cogen to believe the opposite was occurring, and allowed and induced Cogen to believe that ACI was standing behind BPCL's payables, as is apparent from the September 25, 2009 memo previously attached hereto.

d. Although ACI's lenders advanced no money directly to BPCL (the Administrator's report notes that BPCL has no direct debt to lenders), ACI had previously caused BPCL to grant ACI's lenders security over the European receivables of BPCL. Part of the strategy of the shutdown was to shift the European Sales Process and associated assets and goodwill out of the hands of BPCL.

e. On or about October 30, 2009, BPCL discussed this transaction with Cogen but explained that it was merely an internal adjustment to the ACI group banking structure, and did not explain that this was part of a strategy whereby ACI would shortly withdraw funding support and trigger the shutdown of BPCL. A copy of an October 30, 2009 email from Barry Benson to Kevin Ansell and Ian Wilkinson (two senior Cogen executives) recording this discussion is attached as Exhibit "H".

f. As detailed in the November 10, 2009 motion materials, the BPCL receivables transfer was effected by ACI causing a new subsidiary to be formed in the UK which took an assignment of all of the BPCL European Receivables (and by implication the related contracts and goodwill) arising from the resale in Europe of products sold to BPCL by ACI.

According to the November 10, 2009 motion materials regarding that transaction (which motion filed in these proceedings, so those materials are not attached hereto) and the Notice of Revision, the only stated consideration for this transaction was ACI's continued supply of BPCL Given that there was no such intention to continue supply goods or money to BPCL, but to do the opposite, there was no consideration whatsoever for the assignment of the vast bulk of BPCL's liquid assets to another subsidiary formed by ACI. While the court materials filed assert that this was in the interest of creditors, in fact, it was a wealth transfer from BPCL's creditors to certain of ACI's creditors done effected to the detriment of Cogen, primarily for the benefit of ACI itself.

g. Contrary to what is suggested in the Notice of Dispute, the court did not approve what was done to the BPCL creditors and particularly Cogen through this transaction, and in particular:

- There was no disclosure of the intention to shut down BPCL.
- There was no disclosure of the impact on BPCL creditors.
- The court was not asked to approve any actions by BPCL in consenting to this assignment, nor did it do so, nor did it discharge BPCL or its directors and officers from any liability they might have to BPCL creditors and particularly Cogen.
- The Court did not make any order discharging ACI or its directors or officers from any liability it might have vis-a-vis BPCL creditors and particularly Cogen in orchestrating this transaction.

h. While the Notice of Revision suggests that the transferred receivables were pledged, in fact they were not pledged to lenders to BPCL for advances to BPCL, but to ACI's lenders for ACI's own debt.

BPCL Default under ESC and UK Insolvency Filing

51. Once the transaction was approved, ACI ceased paying BPCL's bills, but did not advise the court or Cogen of its plan to do so, nor that it was doing so.

Hence Cogen was not aware that payment had ceased or that shutdown was imminent.. As a result, from November 2009 until BPCL's shutdown in February 2010, Cogen continued to supply BPCL on the faith of the Guarantee, the Support Commitment and the representations it had received, and in reliance on the course of dealing to date. But neither BPCL nor ACI paid any of the Bills for that period. Specifically both BPCL and ACI have defaulted on the payment of the invoices for power supplied to BPCL from November 2009 to February 2, 2010.

BPCL Insolvency Filing

52. In accordance with the undisclosed ACI plan, ACI advised the BPCL board of its withdrawal of funding support. The board met on January 25, 2010, and having no choice, caused BPCL to file for administration on or about February 2, 2010 under the UK Insolvency Act, 1986 (see the Administrator's reports attached below).

53. Cogen filed a proof of claim in the resulting BPCL insolvency administration for claims under the ESC that parallel the claims under the Guarantee proved against ACI. That UK Proof of Claim against BPCL included inter alia, the Post Filing Supply Invoices. (A copy of this proof is available on request if it is considered germane.).

54. The Administrator's Report suggests that BPCL has liabilities consisting in cross collateralized secured claims from ACI's lenders totalling 750 million pounds, unsecured claims from ACI exceeding 90 million pounds, unsecured claims by Cogen totalling over 70 million pounds and unsecured claims by other creditors of about 70 million pounds. The report also indicates that there are only likely to be 18 million pounds in net realizable assets, and that the likely net realization for the unsecured creditors will be almost nothing. (Specifically, it projects a statutory minimum net realization for unsecured creditors of L$600,000, while projecting unsecured liabilities of almost L200,000,000). Attached here as Exhibit "I" is a copy of the BPCL Administrator's Report, which discussed inter alia, the history of BPCL's financial problems, ACI's role in supporting BPCL, ACI's decision to involve AC UK in reviewing restructuring

options, ACI's decision to discontinue supporting BPCL, as well as the Administrator's proposals for the liquidation of BPCL, and the likely outcome of the liquidation process.

Outstanding Invoices re Post Filing Supply

55. As a result of BPCL's default and non payment, the sum of L9,447,548 is overdue and owing to Cogen in respect of its supply of electricity and steam from November 2009 through February 2, 2010 ("the "Post Filing Supply Invoices"). That amount is accordingly owing under the Guarantee. The invoices are attached to the Cogen's First Proof of Claim with a summary/running balance.

D.2 LEGAL ANALYSIS OF THE POST FILING SUPPLY CLAIM

CCAA Interim Supply Claim:

56. The Initial CCAA Order obliges ACI to pay for goods and services supplied post filing in full.

57. As ACI was through the a primary obligor in respect of the ESC obligations, and as ACI was the prime beneficiary of what was supplied, Cogen claims the benefit of the protection for amounts owed to ACI suppliers under the CCAA order.

Post Filing Supply Claim is an Excluded/Unaffected Claims

58. The Guarantee by its terms does not permit repudiation, and was not otherwise validly repudiated under the CCAA, and was accordingly in force when the post filing supply was provided. As the obligations under the Guarantee were incurred post filing, they are neither a claim as of the filing date, nor a restructuring claim under the claims bar process, and as such are an excluded claim which survives the restructuring

Oppression Claims

59. ACI is a corporation governed by the CBCA and BPCL is one of its affiliates. Under section 241 of the OBCA, a creditor of ACI may complain of conduct by ACI and/or its affiliates which is oppressive or unfairly prejudicial ,to

it, and the court may fashion an appropriate remedy as it deems just. The circumstances under which Cogen was induced to continue supply, and the other conduct herein recited, were oppressive and unfairly prejudicial to Cogen as a creditor of both ACI and BPCL. In particular,

i) *ACI Support Commitment:* BPCL was entirely dependent on funding support from ACI, and accordingly the directors of BPCL could not cause BPCL to continue trading in the UK without incurring significant personal risk, unless they had an assurance of that continuing support.

ii) *ACI Party to Direct Representation of Continued Trading*: ACI was party to a representation made to Cogen that BPCL would continue trading in 2010 and that the interim supply obligations while it continued to trade would accordingly be honoured.

iii) *Oppressive transfer of BPCL Assets for ACI's direct and indirect benefit:* ACI planned and executed a transfer of BPCL's liquid assets, thereby reducing the apparent prospects for realization by Cogen on its claims against BPCL to virtually nothing.

iv) *Preferential Payments/Subordination of ACI Claim on BPCL*: ACI received preferential payments in priority to Cogen and other creditors from BPCL, which should be disgorged back to BPCL to the extent necessary to cause Cogen to receive a dividend from the BPCL administration in an amount sufficient to pay the Cogen Post Filing Supply Claim in full. ACI has proved a claim as a creditor of BPCL, diluting any potential recovery by Cogen,, but in fact ACI should be treated as a debtor of BPCL which is liable to refund assets to the BPCL estate,. and not as a BPCL creditor, and ACI and its affiliates s should be required to withdraw any claims they may submit in the BPCL administration,.

<u>Remedies for Oppression in this Case</u>

60. Under the oppression remedy, the court may fashion any remedy that is just to ensure that Cogen's Post Filing Supply Claim is paid in full plus applicable interest, which is what Cogen respectfully submits should be done. In the circumstances, the appropriate remedies include one or more of the following sufficient to produce that result:

a) Treating that claim as an excluded claim against ACI that ACI is required to pay in full and which survives the restructuring

b) Treating that claim as an equitable claim on the assets of ACI ranking ahead of other creditors of the estate;

c) Making an Order directing ACI to pay the unpaid Post Filing Invoices immediately

c) Deferral of the ACI unsecured claim against BPCL to the extent necessary to produce a dividend to Cogen to pay the Post Filing Supply Claim.

d) Allowing a claim against the directors and officers of ACI and BPCL in respect of the Post Filing Supply Claim.

e) Such other remedy as the court may deem just.

Monitor/Debtors' Disallowance of Post Filing Supply Claim

61. The Monitor has disallowed Cogen's claim in respect post filing supply of electricity and steam in the amount of L9,447,548 being amounts owing to Cogen for extending credit for the supply of electricity and steam from November 2009 through January 2010. The Monitor has not provided reasons for its disallowance except, in paragraph 10, that "this claim is rejected as it has not been substantiated and is without merit." Cogen disputes this disallowance for the reasons stated herein and in the Proofs of Claim.

Additional Oppression Grounds Which Justify Directing ACI to Pay the Post Filing Supply Claim in Full

62. It is Cogen's position that the conduct of Abitibi, BPCL and each of their respective directors and officers was oppressive, unfairly prejudicial to, and unfairly disregarded the interests of Cogen as a creditor of BPCL for the following reasons:

a. Cogen was advised by BPCL that, as BPCL struggled to meet its obligations as they became due, Abitibi and BPCL had entered into a formal funding agreement whereby Abitibi funded the payment of BPCL payables including amounts owed to Cogen. BPCL further advised that this arrangement was approved by the Abitibi board of directors to ensure that BPCL would meet its obligations as they came due (the "Support Commitment").

b. Cogen was assured that the Support Commitment would be used to ensure that Cogen received payment for post filing supply;

c. Cogen relied on the Support Commitment;

d. Abitibi, BPCL and each of their respective directors and officers were aware that the Support Commitment was the reason in which Cogen was continuing to supply electricity;

e. BPCL made representations to Cogen that it would not file for insolvency protection but rather effect an out of court restructuring;

f. On an operational level, BPCL was managed by Abitibi as part of Abitibi's global pulp and paper operations and hence Abitibi was familiar with BPCL's financial and operational circumstances including its relationship with Cogen. Two of the BPCL board members were senior executives of Abitibi;

g. By at least September 2009, if not before, Abitibi and BPCL and their respective directors and senior officers formed the intention to shut down BPCL and transfer its assets to other parts of the Abitibi group for effectively no consideration.

h. By at least September 2009, if not before, Abitibi and BPCL and their respective directors and officers represented that BPCL would continue in operations in 2010 with the support of Abitibi, when in fact the plan was to shut it down at the beginning of 2010.

Liability under the Oppression Remedy of ACI's and Participating ACI Affiliate Directors and Officers

63. It is Cogen's position that the conduct of Abitibi, BPCL and each of their respective directors and officers was oppressive, unfairly prejudicial to, and caused damage to Cogen for the grounds stated in this Notice of Dispute, including for the following reasons:

a. The conduct noted in paragraph 12 above induced Cogen to continue supplying electricity and steam throughout 2009 and in early 2010 while the asset strip and shut down of BPCL was being planned and executed, without the intention of paying Cogen in full;

b. This conduct induced Cogen to defer enforcement against BPCL under the ESC and against Abitibi under the Guarantee. It is reasonable and proper to infer that such conduct was aimed at avoiding having to pay any substantial sums to Cogen.

c. While Cogen continued to supply on the faith of the Support Commitment and other representations and conduct of ACI and BPCL detailed herein the foregoing parties used the time thereby gained to transfer key valuable assets out of the company into other Abitibi entities before any enforcement by Cogen or insolvency filing by BPCL;

61. Abitibi, all relevant ACI Affiliates, and BPCL, and the directors and officers of each are jointly and severally liable for the damages suffered by Cogen as a result of same.

Invalidity of Repudiation of the Guarantee as it Relates to the Post Filing Supply Claim

64. Pursuant to Paragraph 6, the Monitor has disallowed Cogen's claim that the Guarantee is not capable of repudiation and as such an unaffected claim in the CCAA process that cannot be repudiated by Abitibi. Cogen disagrees with the Monitor's position. As further particularized in Cogen's proof of claim, and this Notice of Dispute, it is Cogen's position that the Guarantee is not capable of repudiation as such repudiation contravenes both the Initial CCAA Order and CCAA case law. The Monitor has failed to respond to Cogen's position simply stating that the repudiation is provided for in the Initial Order and effected in accordance with its terms. Cogen, in its proof of claim and this Notice of Dispute, has outlined various factual violations of the initial order that have not been addressed or responded to by the Monitor. By way of example, the initial order places an onus on Abitibi to consult with Cogen prior to terminating the Guarantee to see if an agreement can be reached prior to such termination. This did not occur.

65. Accordingly the Guarantee insofar as it pertains to the Post Filing Supply Invoices and Claim, is an unaffected claim in the CCAA process that may not be repudiated by Abitibi in relation to the Post Filing Supply Invoices and which may not be compromised by any CCAA Plan..

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

EXHIBITS:

A	BCPL/Abitibi Timeline of Contractual Documents and Corporate Name Changes
B	Corporate Name Change documents
C.	Energy Supply Contract (ESC)
D	Guarantee Extracts [Guarantee already attached to the Proofs of Claim]
E	April 22/23, 2009 Exchange of Correspondence re ACI CCAA Filing Impact
F.	Draft Heads of Agreement between Cogen and BPCL from August 2009
G	September 25, 2009 Cogen Memorandum re Discussion with BPCL
H	October 30, 2009 BPCL email re discussion with Cogen
I	BPCL Administrator's Report dated March 2010.

EXHIBIT R-28

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBI BOWATER INC.,

and

ABITIBI-CONSOLIDATED INC.,

and

BOWATER CANADIAN HOLDINGS INC.,
and the other Petitioners listed on Schedules A, B. and C

Debtors

and

ERNST & YOUNG INC.

Monitor

and

NPOWER COGEN LIMITED

Petitioner

SUBMISSIONS TO THE CLAIMS OFFICER OF NPOWER COGEN LIMITED

FACTS

A. Background

1. On April 17, 2009, Abitibi Consolidated Inc. ("**Abitibi**") and other listed petitioners (collectively the "**Abitibi Group**") were granted an Order (the "**Initial CCAA Order**") for protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). The Initial CCAA Order was subsequently amended on May 6, 2009.

2. Npower Cogen Limited ("**Cogen**") until February 2010, was a supplier of electricity and steam to Bridgewater Paper Company Limited ("**BPCL**"), a UK based member of the Abitibi group of companies, pursuant to a long term energy supply contract dated August 3, 1998 (the "**ESC**"). The ESC is attached as **Exhibit 1.**

3. By way of two (2) separate and distinct guarantees, one written guarantee dated February 22, 1999 (the "**ESC Guarantee**") and one commitment of payment and support as described in further detail below (the "**Post-Filing ESC Commitment**"), Abitibi guaranteed and committed to support certain post-filing obligations to Cogen by BPCL arising after Initial CCAA Order. The ESC Guarantee is attached as **Exhibit 2.**

4. On February 2, 2010, BPCL entered administration in the United Kingdom pursuant to the *Insolvency Act* 1986 and on February 8, 2010, Cogen terminated the ESC for breach of contract on the basis that BPCL was insolvent and had not paid its invoices for the Abitibi post-filing period noted below. A few hours prior to termination, BPCL instructed Cogen to cease all steam supplies to the paper mill. The notice of termination is attached as **Exhibit 3.**

5. BPCL and Abitibi have failed, despite requests, to pay Cogen for energy provided to BPCL during the Abitibi post-filing period November 1, 2009 to February 2, 2010, invoiced at £9,447,548 (the "**Outstanding Post-Filing Cogen Payable**").

B. The Energy Supply Contract and Guarantee and Purported Repudiation

B.1 The Energy Supply Contract and Guarantee

6. Pursuant to the ESC, National Power PLC ("**National Power**"), agreed to build a power plant next to BPCL's paper mill on land owned by BPCL and supply the mill with steam and electricity for a period of 15 years. At the end of this 15 year term, BPCL had an option to purchase the plant for a nominal sum. The ESC was assigned by National Power to Cogen on November 22, 2000.

7. As a condition precedent to National Power entering into the ESC, Abitibi, BPCL's parent, was required to provide an unlimited guarantee of BPCL's obligations under the ESC. The ESC Guarantee was assigned by National Power to Cogen on May 26, 2005.

B.2 The Purported Repudiation

8. By letter dated July 7, 2009, Abitibi purported to repudiate the ESC Guarantee (the "**Purported Repudiation**"). The Purported Repudiation is attached as **Exhibit 4.**

9. Cogen objected to the Purported Repudiation by letter dated August 11, 2009, noting, *inter alia,* that the Purported Repudiation did not comply with paragraph 46(f) of the Initial CCAA Order (the "**Objection Letter**") or CCAA case law. No response to the Objection Letter was ever received. The Objection Letter is attached as **Exhibit 5.**

C. Abitibi's Post-Filing Energy Supply Payment Commitment

10. Immediately after the granting of the Initial CCAA Order, Cogen sought assurances that Abitibi would continue to pay for post-filing electricity and steam supplied by Cogen since BPCL was unable to pay Cogen from its own resources and funding for payments up to that point had come from Abitibi.

11. By letter dated April 22, 2009, Cogen wrote to BPCL for its and Abitibi's confirmation that post filing invoices of Cogen would continue to be paid by Abitibi given BPCL's precarious state, failing which Cogen would discontinue to supply energy to BPCL and seek to take such other enforcement steps as it deemed appropriate. The April 22, 2009 letter is attached as **Exhibit 6** and BPCL's response is attached as **Exhibit 7.**

12. BPCL assured Cogen that it had a payment support commitment from Abitibi to fund the payment of post-filing goods and services incurred by BPCL, including those owing to Cogen (the **"Post Filing ESC Commitment"**):

    (a) during a meeting on or around September 25, 2009 (notes of which meeting were taken by Ian Wilkinson are attached as **Exhibit 8**), between Cogen and BPCL, Barry Benson, an officer of BPCL, confirmed that BPCL had a "comfort letter" from Abitibi to the end of September assuring the board that Abitibi would continue to support the BPCL business should that be required and that BPCL assumed that a new letter would be provided for the remainder of 2009. Subsequent to this meeting, Mr. Benson confirmed that comfort letters were being issued/renewed each month to the end of December 2009;

    (b) the Post-Filing ESC Commitment is reflected in the Proposals of the BPCL's Administrator, dated March 5, 2010, wherein Ernst &Young LLP, as Administrator, state that the only source of funding available to support the ongoing operations of BPCL was Abitibi and that the operations of BPCL were solely reliant on Abitibi funding (the documents relevant to BPCL's insolvency are attached as **Exhibit 9** and **10**); and

(c) Abitibi's Post-Filing ESC Commitment to January 22, 2010 is reflected in the Minutes of the Board of Directors of BPCL dated January 21, 2010 which provided, amongst other things as follows:

> *The Directors considered the Cash Flow Statement and the fact that its parent company, Abitibi had confirmed that it would not provide any further financial support to BPCL beyond January 22, 2010. The Chairman reported that, as a consequence, the Company is unable or is likely to become unable to pay its debts as they fall due.*

The minutes of the meeting of the board of directors are included in **Exhibit 11.**

13. Two (2) BPCL board members, Jacques Vachon and Jon Melkerson, right up to the time BPCL went into administration were also senior officers of Abitibi until 2007 and subsequently part of the nine (9) member senior executive team of AbitibiBowater Inc. ("Bowater").

14. Mr. Vachon served as Senior Vice President, Corporate Affairs and Secretary of Abitibi from 1997 to October 2007 and is currently the Senior VP, Corporate Affairs and Chief Legal Officer of Bowater.

15. Mr. Melkerson served as Senior Vice President Business and Corporate of Abitibi until October 2007 and is currently Senior Vice President International and Business Development of Bowater.

16. As well, the Administrator's Proposals confirm that BPCL was insolvent for several years and could not operate without Abitibi funding, providing that:

> *The Group [BPCL and its 3 subsidiary companies] has been trading at a gross loss for a number of years, prior to the appointment of the Joint Administrators, with operations being funded by [Abitibi].*

Moreover, following a business review concluded in September 2009, the Ernst & Young restructuring team was instructed by the BPCL directors on October 22, 2009 to carry out a contingency planning exercise on the considerations and steps required to place BPCL into administration. Notwithstanding the foregoing, Cogen was assured by BPCL on numerous occasions after Abitibi's CCAA filing that BPCL "has not entered or intends to enter into insolvency procedure" and "that it seemed clear to assume that the mill would continue into 2010 on the current contract".

17. BPCL now has no assets with which to pay the Outstanding Post-Filing Cogen Payable, a state of affairs contributed to by its transfer in November 2009 of certain valuable assets to a non-arms' length affiliate for no apparent consideration prior to its administration in February 2010 and subsequent shut down. It was represented by Mr. Benson that this transfer would not affect the continuing operation of BPCL when it now appears that it was part of plan to place BPCL

into administration. The email from Mr. Benson to Cogen is attached as **Exhibit 12.**

D. The Abitibi Claims Process

18. In accordance with the Second Claims Procedure Order of the Honourable Mr. Justice Clement Gascon, dated February 23, 2010, on April 6, 2010, Cogen submitted a proof of claim in the amount of £70,160,658.13 ("**Proof of Claim**") in the Abitibi claims process, reserving its rights with respect to the purported repudiation. This amount consisted of amounts owing from BPCL to Cogen, as guaranteed by Abitibi under the ESC as follows:

(i)	Supplies of electricity and steam:	£9,447,548.00
(ii)	"Take or Pay" liability:	£9,986,380.01
(iii)	Transfer Charge Liability:	£49,633,937.00
(iv)	Other liabilities:	£1,092,793.13

The Proof of Claim is attached as **Exhibit 13**. Also attached as **Exhibit 13A** is Cogen's first proof of claim dated November 12, 2009.

19. A Notice of Revision or Disallowance of a Claim or Subsequent Claim dated June 16, 2010 was delivered to Cogen by email on June 17, 2010 (the "**Notice of Revision**") issued by Ernst & Young Inc. (the "**Monitor**") and Abitibi. The Notice of Revision is attached as **Exhibit 14**.

20. Of Cogen's total claim of £70,160,658.13, the Notice of Revision:

    (i) Disallowed Cogen's entire claim subject to receiving evidence of the assignment to Cogen, which was subsequently provided by Cogen, reviewed by the Monitor and accepted by the Monitor as satisfactory;

    (ii) Disallowed Cogen's claim for "take or pay" liability in the amount of £1,223,551;

    (iii) Disallowed part (£14,700,000) of Cogen's Transfer Charge claim; and

    (iv) Disallowed Cogen's claim for unaffected and/or secured status under Abitibi's Plan of Arrangement.

21. Cogen disputes the disallowances noted above and has served its Notice of Dispute of the Notice of Revision dated June 29, 2010 setting out its position and response to the disallowances. The Notice of Dispute is attached as **Exhibit 15**.

E. Document Disclosure Requests

22. In hopes of narrowing the issues in connection with Cogen's claim, on July 27, 2010, Cogen by way of email from counsel requested certain

information/disclosure (the "**Disclosure Documents**") from Abitibi. The July 27, 2010 email is attached as **Exhibit 16**.

23. On August 6, 2010, Abitibi responded that it was not prepared to provide the information requested in paragraphs 6(b)-(g) of the July 27 email as Cogen did not have standing to request or review these documents. The August 6, 2010 email is attached as **Exhibit 17**.

24. On August 7, 2010, Cogen responded by way of email from counsel, advising that it did not agree with Abitibi's position on declining to make disclosure of the documents requested in points 6(b)-(g) and Cogen reserved the right to rely on negative inferences arising from non-disclosure, as well as to seek relief in respect thereof. No further response was received from Abitibi. The August 7, 2010 email is attached as **Exhibit 18**.

ISSUES

The issues for this claims hearing are:

1. Did Abitibi's repudiation of the ESC Guarantee comply with the terms of the Initial CCAA Order and jurisprudence?

2. Is the disallowed portion of the "Take or Pay" Liability Claim in the amount of £1,223,551, a proper claim?

3. Is the Monitor's proposed deduction of £14.7 million from the amount of Cogen's Transfer Charge Claim, a proper deduction from Cogen's transfer charge liability claim of £49,633,937?

4. Is Cogen's claim for electricity and steam in the amount of £9,447,548, the Outstanding Post-Filing Cogen Payable, a post-filing, an unaffected claim and/or a secured claim required to be paid in full in accordance with Abitibi's Plan of Arrangement?

5. Are the directors and officers of BPCL and Abitibi, jointly and severally liable with BPCL and Abitibi respectively for the Outstanding Post Filing Cogen Payable pursuant to Section 241 of the *Canada Business Corporations Act*?

6. Are Abitibi and the Monitor required to produce the Disclosure Documents requested by Cogen, thereby giving Cogen the right to tender additional evidence once such documents are produced and/or allowing the claims officer to draw negative inferences where production has been declined or not responded to?

LAW AND ARGUMENT

ISSUE #1 – PURPORTED REPUDIATION

25. Abitibi's Purported Termination is invalid as Abitibi failed to comply with the repudiation requirements of paragraph 46(f) of Initial CCAA Order, specifically, the Purported Repudiation does not comply with the requirements of paragraph 46(f) of the Initial CCAA Order in that:

    a) the Purported Repudiation must have been necessary for the orderly restructuring of its business and affairs;

    b) that the Purported Repudiation required the prior consent of the Monitor to be effective; and

    c) that there must have been discussion or negotiation with Cogen prior to the Purported Repudiation.

    There is no evidence that the Monitor provided its prior consent to the Purported Repudiation. There is no evidence that the Purported Repudiation was necessary for the restructuring. And most importantly, there was no discussion or negotiation with Cogen with respect to the ESC Guarantee prior to its purported repudiation.

26. Moreover, the Purported Repudiation of the ESC Guarantee does not comply with the limits imposed by the case law interpreting the power of a CCAA petitioner to repudiate contracts as:

    a) the ESC Guarantee is not capable of repudiation as based on CCAA case law, non-executory, financial contracts are not capable of repudiation; and

    b) Abitibi has not met the test set out by the CCAA case law to exercise a power to repudiate namely, that:

        i) the repudiation is necessary to permit a viable plan, not simply a way to make the plan more profitable; and

        ii) the repudiation is fair and reasonable, including the terms of repudiation and the treatment of the claim upon repudiation.

    677960 Alberta Ltd. v. Petrokazakhstan Inc. 2009 CarswellAlta 382 (Alta. Q.B.)

    Doman Industries Ltd. (Re) [2004] B.C.J. No. 1149

    9145-7978 Québec inc. (Arrangement relatif à) [2007] J.Q. no 3812 (Que. C.A.)

ISSUE #2 – DISALLOWED PORTION OF "TAKE OR PAY" LIABILITY

27. Section 9.5 of the ESC provides, in part, as follows:

> *BPCL will pay NP a Steam Charge for steam from the CHP Scheme throughout the CHP Phase. The quantity of steam supplied will be measured in accordance with Clause 14.*

28. Section 1.1 of the Definitions provides as follows:

> *The CHP Phase is defined as the period commencing on the CHP Phase Commencement Date (June 1, 2000) until the expiration or earlier termination of the ESC.*

29. Section 9.7 of the ESC provides in part, as follows:

> *If the quantity of steam supplied in any 12 month period commencing on the CHP Phase Commencement Date or any anniversary thereafter is less than 770,000 Tonne of Steam, BPCL will pay NP for steam not taken up to the amount of 770,000 Tonne of Steam at the Steam Charge.*

30. At issue is the entitlement of Cogen to the Steam Charge for the period from June 1, 2009 to June 1, 2010, not the calculation of the steam charge (£1,223,551), which amount is not disputed by the Monitor.

31. Pursuant to Section 9.5, the liability runs until the contract expires or is properly terminated in accordance with the contractual termination provisions.

32. In accordance with the ESC, on February 8, 2010, Cogen terminated the ESC for BPCL's breach of contract.

33. In accordance with the ESC, the obligation to make the minimum "take or pay" threshold is triggered at the beginning of each contract year and hence owing to Cogen on June 1, 2009 for the period from June 1, 2009 through June 1, 2010, prior to Cogen's termination of the contract and Abitibi's purported termination of the ESC Guarantee.

34. The measure of damages for breach of contract is the amount sufficient to place Cogen in the same position in which it would have been had the contract been performed (i.e the amounts owing under the "take or pay" clause).

> Pitch, Harvin D. and Ronald M. Snyder. Damages for Breach of Contract, 2d ed., looseleaf (Toronto: Carswell, 1989) at 1-4.

ISSUE #3: DISALLOWED PORTION OF TRANSFER CHARGE LIABILITY

35. Section 17.3(b)(iv) of the ESC, provides, in part, as follows:

> *Either Party may, upon providing notice to the other Party, forthwith terminate this Contract if: (a) an administration order under Section 8 of the Insolvency Act 1986 is made...*

36. Section 17.4 of the ESC provides, as follows:

> *Should NP terminate this Contract according to sub-clause 17.1(a), 17.1(c) or 17.3, BPCL shall pay to NP the Transfer Charge set out in accordance with sub-clause 9.11. In the event that termination takes place on a date other than an anniversary of the CHP Phase Commencement Date, the payment will be calculated by linear interpolation between the preceding and succeeding anniversaries of the CHP Phase Commencement Date.*

37. Section 9.11 of the ESC provides, as follows:

> *The Transfer Charge is as determined in the following table:*
>
> *"tenth anniversary date" £49,099,818*

38. Sections 9.11 and 17.4 of the ESC provide for a stipulated amount consisting of £49,099,818 to June 1, 2010, and the linear interpolation of the sum due to the actual date of termination, namely February 8, 2010 or £534,119 for Cogen's total claim of £49,633,937. Neither of these sections, nor any other provision of the ESC, contemplate a deduction for the value of the power plant because at the time of entering into the ESC, the parties took into account that Cogen was the owner of the power plant and title to the plant would remain with Cogen in the event of breach or termination of the ESC. Title to the plant has always been with Cogen, and never passed at any time to BPCL, and hence BPCL is not transferring the plant back to Cogen and is not entitled to any deduction from the contractual transfer charge amount claimed under the contract.

39. The transfer charge liability is a liquidated damages amount intended to put Cogen in the position it would have been in if BPCL had continued to honour the ESC until its natural termination date, including compensation for building the plant.

40. In the alternative, if for any reason the value of the heat and power plant is required to be deducted from the amount of Cogen's transfer charge claim, the value of the power plant to Cogen is nominal to zero without the underlying connection agreement between the power distribution agency and the power provider which allows the provider to hook up to the grid and sell power produced at its plant. Cogen has not had access to the connection agreement for the purposes of exporting electricity and has therefore been unable to enter into a binding contract with the UK grid system operator for the provision of Short Term Operating Reserve generation. The BPCL's Administrator is selling the connection agreement, along with the BPCL land in its liquidation process.

41. Moreover, this is further supported by the ESC, the intent of which was similar to an equipment lease with nominal buyout value.

42. If Cogen were to purchase the connection agreement, the value of the plant would still be substantially less than £14.7 million. In its Notice of Revision, the Monitor provided no explanation as to how it arrived at this value. In a subsequent conversation the Monitor advised that in order to determine the value to Cogen of retained ownership and future use of the plant, reference was made to the Energy Link Report dated November 2009 jointly commissioned by Abitibi and Cogen.

43. The Energy Link Report provides three value scenarios (High, Base, and Low cases) for the future profitability of the plant as a standalone electricity only generator. Each of the scenarios assumes that from the January 1, 2013, electricity only generators will not be granted any free allocation of carbon credits (that would otherwise be used to offset the carbon tax payable by operators in EU member states for the carbon emissions associated with the burning of fossil fuels). The report concludes that in the absence of a free allocation of carbon credits, the plant is likely to do little more than break-even post 2013. The Energy Link Report is attached as **Exhibit 19**.

44. The Monitor has been provided with advice that suggests that electricity only generators will receive a free allocation of carbon credits and has made an adjustment to the report valuation by allocating value to 2013 onwards. Although the allocation methodology of carbon credits under Phase 3 (post 2013) of the EU Emissions Trading System is yet to be finalized, it is well documented and accepted that there will be no free allocation carbon credits for electricity only generators. Therefore it is incorrect to make this adjustment to the report valuation.

45. It also appears that the Monitor has included the report value for operation in 2010. This is incorrect since the ESC was terminated in early February, 2010 as a result of BPCL filing for administration and the other matters referred to in the notice of termination at Exhibit 3.

46. Attached as **Exhibit 20** is the a copy of the Discussion paper – Allocation rules EU ETS post 2012, the European Commissions Directorate-General Environment – Directorate C – Climate Change & Air, Implementing Paper on Principles for Rules for Free Allocation Emissions Trading System – Post 2010, and a Summary of Key Elements of Phase 3 of the EU ETS.

47. For the reasons stated in paragraphs 35 to 40 above, the value of the deduction assuming Cogen could purchase the connection agreement would be £3.263 million (the base case in the Energy Link Report) less the cost of Cogen to purchase the connection agreement from the BPCL Administrator. In the alternative, if there is a finding that a deduction is warranted, Cogen would be prepared to purchase the connection agreement, and submits that the value of the deduction should be equal to £3.263 million less the cost of Cogen to purchase the connection agreement from the BPCL's Administrator.

ISSUE #3 – POST FILING SUPPLY

48. The Outstanding Post-Filing Cogen Payable is a Post Filing Claim as defined under the Abitibi's proposed Plan of Compromise or Arrangement (the "Proposed CCAA Plan") and Post Filing Claims are excluded from the Proposed CCAA Plan, attached hereto **Exhibit 21**.

49. The Post-Filing ESC Commitment from Abitibi was necessary to ensure that the BPCL board of directors could continue in office because of the potentially severe penalties under UK law (such as for wrongful trading) that can be imposed on directors who permit companies to continue to incur liabilities knowing that such liabilities cannot be paid (as was the case with BPCL).

50. Under U.K. law, liability for wrongful trading under section 214 of the Insolvency Act 1986 can arise if, upon an application by the liquidator to a company, the court considers that a director or former director of the company at some time before it went into insolvent liquidation knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation. In short, a person will be liable if:

    (a) the company has gone into insolvent liquidation;

    (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation; and

    (c) that person was a director of the company at that time.

51. The Administrator's Proposals confirm that the administration of BPCL will be followed by either a voluntary liquidation or compulsory liquidation, both of which comprise an insolvent liquidation for the purpose of sub-paragraph (a) above (on the basis that there are insufficient assets to pay all of BPCL's liabilities). Hence the risks associated with wrongful trading are very real ones so far as the directors of BPCL are concerned. If the court determines that a director is liable for wrongful trading, that director can be required to make such contribution to the company's assets as the court thinks proper. Conduct amounting to wrongful trading can also render the director vulnerable to being the subject of disqualification proceedings - to disqualify him from being a director of any company.

52. Moreover, BPCL is controlled by Abitibi. The two companies share common officers and directors. In the circumstances, Abitibi knew or ought to have known that Cogen continued to supply energy based on statements made about continued funding by Abitibi.

53. And lastly, BPCL in advising Cogen that Abitibi had committed to paying Cogen's post-filing invoices was in effect Abitibi's agent. Abitibi never repudiated those statements (and in fact, complied with the commitment for many months) and is therefore bound by the statements of BPCL.

> *Great Northern Grain Terminals Ltd. v. Axley Agricultural Installations Ltd.* 1990 CarswellAlta 152 (Alta. C.A)

ISSUE #4 - OPPRESSION REMEDY

54. As a creditor of BPCL, Cogen had the reasonable expectation that Abitibi and its directors and officers would not act in a manner oppressive or unfairly prejudicial to creditors of BPCL.

> *First Edmonton Place Ltd. v. 315888 Alberta Ltd.* 1988 CarswellAlta 103 (Alta. Q.B.) adjourned 1989 CarswellAlta 181 (Alta. C.A.)
>
> *1413910 Ontario Inc. v. McLennan* 2008 Carswellont 4147 (Ont.S.CJ. [Commercial List]) aff'd 2009 CarswellOnt 2444, (Ont. Div. Ct.)
>
> *SCI Systems, Inc. v. Gornitzki Thompson & Little Co. 1997* CarswellOnt 1769 (Ont.C.J. Gen. Div)
>
> *Canadian Opera Co. v. 670800 Ontario Inc.* 1989 CarswellOnt 890 (Ont. S.C.J) aff'd *Canadian Opera Co. v. 670800 Ontario Inc.* 1990 CarswellOnt 2722 (Ont. S.C.J. Div Ct)

55. The post-filing conduct of BPCL, Abitibi and their respective officers and directors (some of whom are directors and officers for both), namely:

(a) the inducement of Cogen to continue to supply electricity and steam and not terminate the ESC, with a guarantee and a specific

post-filing commitment to pay for post-filing goods delivered and services rendered by Cogen;

(b) the invalid and improper termination of the ESC Guarantee;

(c) the representations that BPCL would not be shutdown in 2009 or 2010 when at the same time, BPCL was insolvent and considering the steps required to place BPCL into administration;

(d) the stripping of assets from BPCL without full disclosure to the court of the impending shutdown of BPCL;

(e) the leaving of BPCL without any realistic ability to pay for any services or goods acquired post-asset strip; and

(f) the refusal of Abitibi to honour its Post-Filing ESC Payment Commitment,

has had the effect of being oppressive and unfairly prejudicial to Cogen and unfairly disregarded its interests to its detriment and gives rise to a claim against them (the "Oppression Remedy Claim").

56. In fact, it may well be that Abitibi never had any intention to keep BPCL operating post-restructuring as an April 2010 letter to shareholders described BPCL (after its shut-down) as a non-core asset. The letter to shareholders, the 2009 Annual Report and 10K filing and the are attached respectively as Exhibits **22, 23**, and **24**.

57. As the events outlined above occurred post-filing, the Oppression Remedy Claim is a post-filing liability and to the extent damages are recoverable, said claim would be unaffected by any plan of compromise or arrangement.

58. The directors and officers of Abitibi are likewise personally liable for authorizing and directing the oppressive conduct by Abitibi.

ISSUE #5 – DOCUMENT PRODUCTION

59. Cogen requested documents it believes are necessary for the proper adjudication of the issues in this dispute. Abitibi is the only party that has said documents and is refusing to produce them.

60. It is trite law that an adverse inference can and must be drawn against a party when it fails to tender such documents and evidence.

Levesque v. Comeau, [1970] S.C.R. 1010 (S.C.C.)
Robbins Feed and Fuel Ltd. (Trustee of) (2008) O.J. No. 4766

RELIEF REQUESTED:

61. The relief requested is a determination by the claims officer as follows:

(a) Cogen's "Take or Pay" Liability Claim in the amount of £1,223,551 is a valid allowable proven unsecured claim against Abitibi, which amount should be added to the allowed amount of Cogen's allowed unsecured claim.

(b) Cogen's Transfer Charge Claim in the amount of £14.7 million is a valid allowable proven unsecured claim against Abitibi, which amount should be added to the allowed amount of Cogen's allowed unsecured claim.

(c) Both the Outstanding Post-Filing Cogen Payable, and Oppression Remedy Claims of Cogen are both:

(i) Post-Filing Claims and are accordingly not claims within the definition of the term "Claim" under the Claims Bar Orders, and as such cannot be compromised by any plan or arrangement under the CCAA; or in the alternative, are

(ii) Unaffected Claims as that term is defined in the Claims Bar Orders and the Proposed CCAA Plan; or in the alternative, are

(iii) Secured Claims as that term is defined in the Claims Bar Orders and the CCAA Plan, which ranks in priority to all other secured claims excepting those arising from the court ordered charges in the Initial CCAA Order; and/or in the alternative, are

(iv) Valid claims against the Directors and Officers.

(d) That the ESC Guarantee was not validly repudiated in accordance with the Initial CCAA Order, and, as such, remains in full force and effect, and that, accordingly, any post filing amounts owing by Abitibi under the ESC Guarantee are neither Claims, Restructuring Claims nor Subsequent Claims as those terms are defined in the Claims Bar Orders and the Proposed CCAA Plan.

(e) That the post filing conduct of Abitibi and BPCL and each of their respective directors and officers had the effect of being oppressive, unfairly prejudicial to, and unfairly disregarded the interests of Cogen and caused damage to Cogen and order that Abitibi and BPCL and each of their respective directors and officers are jointly and severally liable to pay the Outstanding Post Filing Cogen Payable in full forthwith.

(f) An interim ruling that the Claims Officer has jurisdiction to determine points 3, 4 and 5, but in the event that the Claims Officer determines otherwise, an order referring issues 3, 4 and 5 to the CCAA Court for

determination.

(g) An interim ruling directing Abitibi and the Monitor to provide Cogen with the documents/information requested in Paragraphs 6(a)-(g) of the email dated July 27, 2010 from Cogen's counsel to Abitibi's counsel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 10th day of August, 2010.

Chris Besant

BAKER & McKENZIE LLP
Barristers and Solicitors
BCE Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

Tel.: 416.865.2318
Fax: 416.863.6275

Lawyers for Npower Cogen Limited

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

No. 500-11-036133-094

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. ***et al***
Debtors

-and-

ERNST & YOUNG INC.
Monitor

-and-

NPOWER COGEN LIMITED
Petitioner

BS0350 n/dos.: 041053-1170

SUBMISSIONS TO THE CLAIMS OFFICER OF NPOWER COGEN LIMITED

Chris Besant Tel.: 416.865.2318
Fax: 416.863.6275

BAKER & McKENZIE LLP
Barristers and Solicitors
BCE Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

Lawyers for Npower Cogen Limited

EXHIBIT R-29

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF: ABITIBI BOWATER INC., and **ABITIBI-CONSOLIDATED INC.,**and **BOWATER CANADIAN HOLDINGS INC., and the other Petitioners listed on Schedules A, B. and C** , Debtors
and
ERNST & YOUNG INC. , Monitor,
and
NPOWER COGEN LIMITED, Petitioner

REPLY SUBMISSIONS OF NPOWER COGEN LIMITED

This document (the "Cogen Reply") is submitted in reply to the ACI Response dated August 20, 2010, ("ACI Response") to the Cogen Submission to the Claims Officer filed August 10, 2010 ("Cogen Submission"). Definitions used in the Cogen Submission are used herein as well.

A. GENERAL COMMENTS

1. ***There Are Only 3 Issues, Not 5.*** There are two issues concerning the quantum of the unsecured claim: (i) whether to admit the UK Pounds 1.2 million "take or pay" amount, and (ii) whether the 14.7 million UK Pounds deduction for the plant value from the admitted Transfer Charge amount is valid.

The third issue is the status of the post filing supply claim. The claim is already admitted as an unsecured claim and its quantum is not in issue. The only issue is whether it should be admitted as a Secured, Excluded or Unaffected Claim rather than simply an unsecured claim. That can arise for three reasons (i) the Guarantee has not been validly repudiated; (ii) Cogen is a third party beneficiary of the Support Commitment; (iii) ACI and its directors and officers are parties to post filing tortious/oppressive conduct.

2. ***Lack of Supporting Affidavit:*** The ACI Response contains a number of factual assertions unsupported by affidavit evidence. Not only should such assertions be disregarded, but an adverse inference should be drawn from the failure to offer proof of those facts, and they expose an ACI officer to cross examination.

3. ***Lack of Documentary Production:*** ACI was specifically requested in advance of the claims process, and again in the Cogen Submission to produce documents. ACI has not produced the documents, and in its submission failed to comment on same. An adverse inference should be drawn from its failure to produce documents.

4. ***Lack of Factual Admissions/Lack of Alternative Versions of Facts:*** ACI's Response offers a small set of what it admits are agreed facts. However, it has not agreed to a number of factual items it easily could have. In addition, it has not offered an alternative version of most of the unadmitted facts. It is respectfully submitted that where Cogen's factual assertions have not been contradicted by alternative sworn evidence, that Cogen's facts should be accepted.

B. AGREED FACTS

1. The facts stated as agreed by ACI are agreed except as follows:

1 (g) It is incorrect that no steps have been taken to bring the repudiation and other issues to court. Cogen reserved its right to bring a motion in August 2009 and in early July 2009 advised of its intention to bring a motion. In late July, Cogen arranged with ACI that it would serve a motion returnable on September 1, 2010 for scheduling and is proceeding to do so. That motion will encompass not only the repudiation issues, but the post filing supply claim. The motion is being brought without prejudice to the issues before the claims officer.

1 (h) and (k) While restructuring negotiations did occur in the summer of 2009, those negotiations were not active by the fall. Heads of agreement had been proposed but they were supposedly by the fall subject to approval by ACI and its lenders. But no such approval or communications concerning same ever ensued.

1 (i) The effect of the November 10 motion and order is misstated.

- The CCAA Court did not approve the actions of BPCL and its directors and officers in entering into the agreement, as BPCL is not a CCAA debtor and has no presence in Canada, and the court has no jurisdiction over BPCL in consequence.
- Second, the court acted only on the facts stated in the affidavit which do not address the issues raised in the Cogen affidavit.
- Third, at the time of the November 10, 2009 Order, none of the post filing supply invoices had come due and hence it was not known that the support commitment was not being honoured. The supply in question was for the months of November December and January and hence most of the supply had not even occurred, and the invoices had not been rendered for those periods. The Court did not deal at all with ACI's conduct which induced the non payment of those invoices as that issue was not before the court.
- Fourth, the disclosure in the affidavit states the consideration for the transaction to be ACI's continuing support of BPCL, but in fact this was not correct, as it is a reasonable inference from the facts which should be drawn that ACI had no intention of supporting BPCL in fact, and that the process of shutting down BPCL was already underway.

C. COGEN - SPECIFIC REPLIES TO ISSUES RAISED BY ACI

ISSUE #1 PURPORTED REPUDIATION

1. As detailed in paragraphs 25 of the Cogen submission, ACI's purported termination did not comply with the Initial CCAA Order. ACI has not provided any evidence to suggest otherwise: (a) To date, no evidence has been provided that the Monitor consented to the purported repudiation; (b) There is no requirement for Cogen to agree to the repudiation (Cogen has not stated this in its submissions), but there is a requirement under the initial order to consult and negotiate with Cogen. This did not occur; (c) To date, no evidence has been provided that the Purported Repudiation was necessary for the orderly restructuring.

2. Contrary to Paragraph 5 of ACI's submissions, Cogen is not required to challenge the purported repudiation. The onus is on ACI to prove that it complied with the Initial Order. The

letter asserting repudiation is not presumptively valid. It has no effect unless ACI can meet the burden of proving that it complied with the Initial Order. The issue is not moot because it is relevant to the post filing and take or pay claims.

ISSUE #2 – DISALLOWED PORTION OF "TAKE OR PAY" LIABILITY

1. In accordance with the ESC, Cogen terminated the ESC for BPCL's breach of contract on February 8, 2010. Upon BPCL's breach of contract, Cogen is entitled to expectation damages for such breach in the amount sufficient to place Cogen in the same position in which it would have been in had the contract been fully performed. As such, Cogen is entitled to Take or Pay Liability for the duration of the ESC. Cogen only claims Take or Pay Liability for the Period in question, namely June 1, 2009 to June 1, 2010 in the amount of £1,223,551. The liability is triggered at the beginning of each contract year and hence owing to Cogen on June 1, 2009 for the period from June 1, 2009 through June 1, 2010.

2. Cogen is entitled to claim this amount under the Guarantee as repudiation of the Guarantee gives rise to expectation damages and hence Cogen is entitled to claim for damages for all amounts that it would be entitled to receive if the Guarantee was not repudiated.

3. In the alternative, if it is found that the liability for Take or Pay is not triggered at the beginning of the each contract year for the entire year, then Cogen is entitled to an annual Take or Pay Liability of £1,223,551 prorated for the period from June 1, 2009 to February 8, 2010.

ISSUE #3: DISALLOWED PORTION OF TRANSFER CHARGE LIABILITY

1. ACI in paragraphs 14 and 15 attempts to revisit in its submissions, Cogen's total claim of £49,633,937 for Transfer Charge Liability. This amount has already been accepted by the Monitor as a valid allowable proven unsecured claim against Abitibi. This is acknowledged in both the Notice of Revision by the Monitor as well as Paragraph 12 of ACI's submissions. As such, paragraphs 14 and 15 are irrelevant and will not be replied to herein. The only issue is whether the Monitor's proposed deduction of £14.7 million from the amount of Cogen's Transfer Charge Claim is a proper deduction from Cogen's transfer charge liability claim of £49,633,937.

2. Section 17.4 of the ESC clearly stipulates that if Cogen terminates the ESC in accordance with Section 17.3(b)(iv) of the ESC, BPCL must pay to NP the Transfer Charge calculated in accordance with Section 9.11 (which the Monitor has acknowledged for the reasons above is equal to £49,633,937) . Section 17.4 does not contemplate or stipulate a deduction for the value of the plant. The transfer charge liability is a liquidated damages amount intended to put Cogen in the position it would have been in if BPCL had continued to honour the ESC until its natural termination date, including compensation for building the plant. Based on the foregoing, no deduction should be made to Cogen's transfer charge claim.

3. In the alternative, if it is determined that a deduction is warranted, for the reasons noted in paragraph 40 of the Cogen submission, it is a well known industry fact that the value of the plant is nominal to zero without the underlying connection agreement. Absent the connection agreement, the plant cannot operate. Hence its value is zero.

4. ACI offers two arguments for its findings that the value of the plant is £14.7 million. Both findings are based on the premise that Cogen will acquire the underlying connection agreement. This has not happened and the BPCL administrator is proceeding to sell the connection agreement in such a way that Cogen will not be the acquiror.

5. While ACI notes that Cogen has not scrapped the plant yet, Cogen was hopeful that if certain events occurred, the plant could acquire value. These events have not occurred and as such, the plant has no value: (a) Up until June 2009, when the freehold of the BPCL site was sold by the UK Administrators to a third party, there had been a hope that the paper mill might be sold as a paper mill to a third party and hence the possibility that the CHP plant would be required for the paper mill. This did not occur. (b) Post June 2010, Cogen was in discussions with the BPCL administrator as to whether it could purchase the connection agreement. This would have enabled the plant to have value to Cogen. However, the BPCL Administrator is proceeding to sell the connection agreement in such a way that Cogen will not be the acquiror.

6. ACI also notes in paragraph 13 of its submissions that:"Cogen continued to derive profits from the operation of the plant after the date of the repudiation of the ACI Guarantee and these are not adjusted for in the Monitor's Notice of Revision". This argument is not relevant. Cogen was complying with its contractual obligation to continue supplies to BPCL; termination for breach of contract did not occur until early February 2010.

7. As noted in the Cogen submission, if the Administrator were to allow Cogen to purchase the connection agreement, then the plant would have a value equal to £3.263 million less the cost to Cogen of purchasing the connection agreement from the BPCL Administrator. ACI, in its submissions, has not addressed/responded to Cogen's industry documented support for deriving this lower value. The Monitor has acknowledged that, in arriving at its figure of a 14.7 million deduction, it relied on certain prospective carbon credits which Cogen has shown are not available. ACI has failed to respond to any of Cogen's submissions on the real value of the plant should a connection agreement be obtained.

ISSUE # 4. POST FILING SUPPLY/OPPRESSION REMEDY

4.1 Post Filing Claim – the Issues

1. As noted, the Post Filing Supply Claim is admitted as an unsecured claim. The only issue is whether it should have been admitted as an Unaffected, Excluded or Secured Claim. There are three reasons for this: (i) the Guarantee Repudiation is Invalid; (ii) Cogen is a Third Party beneficiary of the Post Filing Supply Commitment; (iii) ACI is liable to Cogen in respect of post filing tortious and oppressive conduct concerning BPCL.

4.2 Unrepudiated Guarantee- Liability for Post Filing Claim

2. The basis of the argument that the ACI Guarantee was not validly repudiated is set out in Section 1 above. If it was not repudiated, it remains a binding obligation that will be unaffected by the plan and the emergence from CCAA – ie an Unaffected Claim. The Post Filing Supply Invoices are covered by that unaffected Guarantee.

4.3 Third Party Beneficiary of Support Commitment

3. While ACI has not produced the document, ACI has not denied its existence. Cogen has tendered uncontradicted evidence that it exists.

4. The Commitment is from ACI to the Directors of BPCL, and as such are a contract to which Cogen is not a party. However, Cogen is and was intended to be a third party beneficiary of that contract, being one of the major suppliers in respect of which BPCL directors would have wrongful trading exposure. In other words, the Directors of BPCL were seeking to ensure Cogen got paid so that they would not violate UK law. The right of third party beneficiaries to enforce contracts is dealt with in the main submission.

4.4 Post-Filing Tort/Oppression Liability of ACI

5. The case here is much simpler than ACI's response suggests:

(a) BPCL was wholly dependent on ACI for support and was insolvent absent same and would therefore have been in breach of the ESC.

(b) ACI needed BPCL to keep servicing its European Sales Operation until it could migrate the business post filing. To do that, ACI needed BPCL to keep operating which in turn needed Cogen to keep supplying power.

(c) To keep BPCL operating, ACI needed the directors not to shut the company down, so they had to give the Support Commitment.

(d) To keep Cogen supplying, ACI had to have that commitment communicated to Cogen, which it was during the summer and fall of 2009. Specific assurances that ACI would support BPCL into 2010 were given.

(e) BPCL was centrally managed as part of the whole ACI Group, and for that reason, 2 of the global 9 member senior management team were on the BPCL board, ensuring that ACI and was fully aware of how Cogen was being dealt with., including the representations of ACI support being made.

(f) In April 2009 shortly after the ACI CCAA filing, Phillip Piddington and Kevin Ansell of Cogen attended a meeting with BPCL and ACI, at which Jon Melkerson, a director of ACI, provided a verbal assurance of the Support Commitment to Cogen on behalf of ACI.

(g) Given what actually happened, it appears that from the outset ACI was at least negligent as to whether it would honour the commitment once its secured the transfer of the assets from BPCL to the UK newco. Whether the representation was an intentional (the tort of deceit) or negligent misrepresentation (*Hedley Byrne v Heller* [1964] A.C. 465) from the beginning or simply something that ACI decided to dishonour later is immaterial. It was both a representation inducing reliance actionable in tort if dishonoured, and oppressive and unfairly prejudicial for it to be dishonoured when Cogen had supplied post filing in good faith. Either way, there is post filing tort/oppression liability outside the definition of "Claim" in the claims bar order, and hence ACI will remain subject to that liability notwithstanding its plan.

(h) Under the oppression remedy, it does not even matter if the representation was made to Cogen at all (even though it was). If ACI by its Support Commitment to keep BPCL trading and ordering supply in the belief that ACI would honour the commitments incurred, then it is unfairly prejudicial and oppressive for ACI to fail to honour the post filing supplies ordered from Cogen by BPCL on the faith of ACI's assurance that they would be honoured.

6. ACI refers to Cogen's ability to bring a motion to the Court. The Court has the jurisdiction to declare a Claim to be an Excluded Claim. But this first requires a determination that it is a Claim (as opposed to an Unaffected Claim.), and as to whether it is secured or unsecured. Cogen is bringing a motion for relief to protect the efficacy of whatever the Claims Officer determines, and for other relief but this does not displace the function of the Claims Officer. Those processes are complementary.

4.5 Jurisdiction of the Claims Officer:

7. ACI raises a threshold issue as to whether the Claims Officer has jurisdiction to determine whether a Claim should be admitted as Excluded, Secured, or Unsecured. There are three Claims Bar Orders dated Aug 26, 2009, Jan 18, 2010, and Feb 23, 2010, but the definitions are the same for purposes of this claims dispute, so reference will be made only to the Feb 23,

2010 Order ("Claims Bar Order"). The Claims Bar Order creates various categories of claims that have to be proven in different ways: (i) ***Claims.*** Under the definition, a claim is something, either secured or unsecured, that is based on facts that exist as of the Filing Date (April 17, 2009), which is clearly not the case here. The post filing supply cause of action did not even exist or begin to accrue, and the facts upon which it is based did not occur (including the supply and non payment), until the first invoice was not honoured at the end of November 2009 (ie ACI wrongfully withdrew support for BPCL once it completed the November 10 asset transfer to a newco, resulting in the post filing supply invoices going unpaid) (ii) ***Subsequent Claims*** – arise from contracts which are repudiated before August 31, 2009, which is not the basis of the post filing supply claim. (iii) ***Restructuring Claims*** -- arise from contracts which are repudiated after August 31, 2009, which is not the basis of the post filing supply claim. (iv) ***Excluded Claims*** -- liabilities that would otherwise be claims were they not specifically listed as being excluded in the Claims Bar Order. In other words, something must fit in the definition of Claim, and then in the list of exclusions before it is an excluded claim. The only relevant category is Claims declared by the court to be excluded. Excluded Claims get the treatment accorded to that category in the CCAA Plan (generally the plan says they will be unaffected by the plan). (v) *Unaffected Claims:* these are not the same as Excluded Claims. These are liabilities of the debtor that do not fall within the definitions in the claims bar order. One category of these is post filing tortious conduct such as post filing oppression arising from post filing conduct. That is not a claim arising from facts existing at the date of filing nor a claim provable in bankruptcy. Unaffected Claims are completely outside the plan and remain liabilities of the debtor post discharge/emergence because they are not claims subject to compromise. (See Claims Bar Order. And see cases cited at Houlden & Morawetz, G36 (8) and H66 and H67 (3).)

8. Under the Claims Bar Orders, the Claims Officer is given the authority to determine disputed claims. A dispute over a claim can be a dispute over whether it is secured or unsecured, and whether it is within the definition of claim or not. ACI asserts the Post Filing Supply amount is an unsecured claim which can be compromised by the plan because it is within the definition of claims in the Claims Bar Order, and that the claim is unsecured. This is disputed by Cogen, which asserts that the Post Filing Supply Claim is a Secured Claim or an Unaffected Claim outside the definition in the Claims Bar Order. Accordingly, the Claims Officer is tasked with determining the issue as to whether it is an unsecured claim, a Secured Claim, or an Unaffected claim. (Claims Bar Order)

9. The Claims Officer is permitted to determine its procedure to do so under the Claims Bar Order. Accordingly, the Claims Officer acting reasonably could decide to determine this issue, or determine parts of it and refer parts of it back to the court for determination. There are several options available to the Claims Officer (i) Determining whether the Post Filing Claim is within the definition of Claim, or whether it is an Unaffected Claim. (ii) If it is a Claim, determining whether it is Secured or Unsecured if established on the merits (iii) Setting procedures to determine the merits of the claim to secured status, or referring the merits back to the court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 24th day of August, 2010.

Christopher W. Besant
BAKER & McKENZIE LLP
Lawyers for Npower Cogen Limited

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

No. 500-11-036133-094

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. ***et al***
Debtors

-and-

ERNST & YOUNG INC.
Monitor

-and-

NPOWER COGEN LIMITED
Petitioner

BS0350 n/dos.: 041053-1170

REPLY SUBMISSIONS TO THE CLAIMS OFFICER OF NPOWER COGEN LIMITED

Christopher W. Besant Tel.: 416.865.2318
Fax: 416.863.6275

BAKER & McKENZIE LLP
Barristers and Solicitors
BCE Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

Lawyers for Npower Cogen Limited

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

No. 500-11-036133-094

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:
ABITIBIBOWATER INC. ***et al***
Debtors

and
ERNST & YOUNG INC.
Monitor

and
NPOWER COGEN LIMITED
Petitioner

BS0350 n/dos.: 041053-1170

MOTION FOR AN ORDER CONCERNING THE STATUS OF THE POST-FILING SUPPLY CLAIM OF NPOWER COGEN LIMITED AND RELATED RELIEF

Chris Besant Tel.: 416.865.2318
Fax: 416.863.6275

BAKER & McKENZIE LLP
Barristers and Solicitors
BCE Place, P.O. Box 874
181 Bay Street, Suite 2100
Toronto, ON M5J 2T3

Attorneys for Npower Cogen Limited