

ST200002

STANDARD CHARGE TERMS

Filed by: British Columbia Hydro and Power Authority

BACKGROUND:

- A. BC Hydro wishes to obtain from the Owner a statutory right of way for certain rights on, under, over and across the Land.
- B. The Owner has agreed to grant BC Hydro a statutory right of way in respect of the Land.
- C. A statutory right of way is necessary for the operation and maintenance of the undertakings of BC Hydro.

AGREEMENTS:

In consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

INTERPRETATION

- 1.1 In this Agreement the following terms have the following meanings:

“Agreement” means the General Instrument Part 1 and these Standard Charge Terms;

“Area of the Works” means that portion of the Land located within 6 metres of either side of the centre of the alignment of the Works;

“BC Hydro” means British Columbia Hydro and Power Authority and all Persons authorized by BC Hydro for the purposes of this Agreement;

“Contaminants” means substances, wastes or other materials present in the soil, sediment, water or groundwater of the Land, which are prohibited, controlled or regulated under applicable environmental laws, and which are present in quantities or concentrations exceeding the risk based or numerical criteria, standards or conditions prescribed under any applicable environmental law, regulation or order of any authority having jurisdiction;

“Crops” means cultivated plants intended for sale or personal use, and ornamental trees and shrubs;

“General Instrument Part 1” means Part 1 of the General Instrument, as amended or replaced from time to time, pursuant to the *Land Title Act* of British Columbia;

“Land” means the land described in Item 2 of the General Instrument Part 1;

“Merchantable Timber” means trees that have attained sufficient size, quality and volume to make them suitable for harvesting and which are deemed to be commercially valuable at the time of cutting in the particular circumstances;

“Owner” means the Person named as the registered owner in fee simple on the indefeasible title to the Land;

“Person” means any association, society, corporation, individual, joint stock company, joint venture, partnership, trust, unincorporated organization, or any federal, provincial, regional, municipal, or other government or authorized agency, department or ministry thereof;

“Underground Civil Works” means civil infrastructure associated with the underground distribution of electricity by BC Hydro, including all vaults and lids (including manholes, chambers and boxes), cabinets, transformer pads, ducts, conduits and any associated protective installations; and

“Works” means poles, guy wires, anchors, push braces and other pole support structures, crossarms, attachments and pole-mounted equipment, above-ground, pad-mounted or underground transformers, overhead or underground wires and cables (including associated connectors), switchgear, controlgear, kiosks, the Underground Civil Works, all related fittings and components, including any associated protective installations, in any combination and using any type of technology or means, necessary or convenient for the purposes of transmitting and distributing electricity and for the purpose of communications, all as relating to the rights and responsibilities of BC Hydro in connection with BC Hydro’s electrical distribution system.

- 1.2 This Agreement will be governed by, construed and enforced in accordance with the applicable laws in force in British Columbia and Canada.
- 1.3 Words in one gender include all genders, and words in the singular include the plural and *vice versa*. Statutory references include a reference to any amendments (including replacement legislation).
- 1.4 The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term or matter.

GRANT OF STATUTORY RIGHT OF WAY

- 2.1 The Owner grants to BC Hydro, forever, the right and statutory right of way to:
 - (a) excavate for, construct, install, replace, upgrade, operate, maintain, remove and repair the Works on, under, through, over and across the Land;
 - (b) clear the Area of the Works, and to keep it cleared (including pruning and removal) of any trees or growth;
 - (c) clear the Area of the Works and to keep it cleared of all or any part of any obstruction, structure, building, improvement or other matter which, in the reasonable opinion of BC Hydro, might:
 - (i) interfere with the exercise of its rights; or
 - (ii) create or increase any danger or hazard to the Works or to Persons or property in relation to the Works;

- (d) enter, work, pass and repass through, on and along the Area of the Works;
- (e) have reasonable unobstructed access through, on and over the Land to and from the Area of the Works for all purposes relating to this Agreement;
- (f) install lines for service connections, as required for transmitting and distributing electricity or for communication purposes, on, under, through, over and across the Land outside the Area of the Works to buildings and structures on the Land or on immediately adjacent lands or public road;
- (g) prune and remove trees or growth on the Land that, in the reasonable opinion of BC Hydro, might create or increase any danger or hazard to the Works or to Persons or property in relation to the Works;
- (h) have exclusive use and occupation of the Underground Civil Works on the Land used or installed for use by BC Hydro, whether the property of the Owner or BC Hydro;
- (i) conduct investigative studies and related work within the Area of the Works to ensure compliance with applicable legislative and regulatory requirements in relation to the purposes permitted in this Agreement; and
- (j) do all things necessary or incidental to the undertakings of BC Hydro in connection with the above.

COVENANTS OF BC HYDRO

3.1 BC Hydro covenants with the Owner, to the extent that BC Hydro in the exercise of its rights under this Agreement:

- (a) damages the Land outside of the Area of the Works; or
- (b) damages, cuts or removes:
 - (i) any Crops, Merchantable Timber, structures, buildings or improvements, which are owned by the Owner and located outside of the Area of the Works; or
 - (ii) any of the Underground Civil Works, or structures, improvements or Crops within the Area of the Works for which the Owner has received prior written permission from BC Hydro for the placement of such structures, improvements or Crops within the Area of the Works,

and provided such damage, cutting or removal is not caused as a result of the Owner's breach of this Agreement or the act or omission of the Owner, its contractors or those Persons for whom the Owner is responsible at law, then within a reasonable period of time, BC Hydro will either compensate the Owner for such damage, cutting or removal, or repair such portion of the Land, Underground Civil Works, structures, buildings or improvements as closely as is practicable to their condition immediately prior to the damage.

3.2 With respect to the exercise of BC Hydro's rights under this Agreement, BC Hydro covenants with the Owner to:

- (a) take reasonable steps not to interfere unduly with the drainage of the Land;

- (b) comply with all applicable laws, including with respect to any Contaminants; and
- (c) indemnify the Owner against all liability incurred by the Owner out of any claim made by any Person for injury or harm to any Person or property to the extent caused by the negligence or willful misconduct of BC Hydro in the exercise of its rights under this Agreement on the following conditions:
 - (i) the Owner will promptly provide written notice of the claim to BC Hydro; and
 - (ii) BC Hydro will not indemnify the Owner in respect of any claim for injury or harm to Persons or property to the extent caused by the Owner's breach of this Agreement or by the negligence or willful misconduct of the Owner, its contractors or those Persons for whom the Owner is responsible at law.

COVENANTS OF OWNER

- 4.1 The Owner covenants with BC Hydro that, unless BC Hydro gives its prior written permission (which permission may be given subject to terms and conditions), the Owner will not do or knowingly permit to be done, any act or thing which, in the reasonable opinion of BC Hydro, might:
- (a) interfere with the exercise of any rights granted to BC Hydro;
 - (b) impair the operating efficiency of any part of the Works;
 - (c) obstruct the access of BC Hydro to any part of the Works;
 - (d) create or increase any danger to the Works or to Persons or property in relation to the Works; or
 - (e) impair the vertical or lateral support of the Area of the Works.
- 4.2 Without limiting the generality of section 4.1, the Owner covenants with BC Hydro that, unless BC Hydro gives its prior written permission (which permission may be given subject to terms and conditions), the Owner will not:
- (a) diminish or increase the ground elevation in the Area of the Works by any method including, piling any material or creating any excavation, drain or ditch in the Area of the Works;
 - (b) carry out blasting, pile driving or logging operations on or near any portion of the Area of the Works; or
 - (c) make, place, erect, operate, use, maintain or permit any obstruction, structure, building or improvement on, under, through or over the Area of the Works.

MUTUAL COVENANTS

- 5.1 The Owner and BC Hydro mutually covenant and agree between them that:
- (a) if BC Hydro elects to pay compensation pursuant to section 3.1 and the Owner and BC Hydro cannot agree on the amount of compensation to be paid, then the matter

in dispute will be settled by arbitration by a single arbitrator under the *Arbitration Act* of British Columbia;

- (b) unless otherwise agreed by the parties, any Merchantable Timber on the Land which is owned by the Owner and cut by BC Hydro in the exercise of its rights under this Agreement will remain the property of the Owner;
- (c) nothing in this Agreement will in any way abrogate from or affect any rights, powers (including any powers of expropriation), exemptions or privileges, which BC Hydro may have under any private or public statute, law, by-law, order, regulation or electric tariff, or any agreement it has with the Owner, or any charge registered against title to the Land;
- (d) failure to enforce any covenant or restriction contained in this Agreement for a breach or violation of any covenant or right contained in this Agreement will not in any way constitute a waiver, in whole or in part, of any of the injured party's rights or remedies;
- (e) any waiver of an obligation under this Agreement must be in writing and only relates to the identified violation or breach without extending to any further or subsequent violation or breach, notwithstanding any rule of law or equity;
- (f) the Works installed will remain the property of BC Hydro except to the extent specified below; and
- (g) if the Works are no longer required by BC Hydro, BC Hydro will, at its cost, remove the Works from the Land with the exception of the Underground Civil Works. The Underground Civil Works (to the extent that they are not already owned by the Owner) will then become the property of the Owner. If all of the Works have either been removed from the Land or become the property of the Owner pursuant to this section, upon the written request of the Owner, BC Hydro will discharge this Agreement from the title to the Land.

GENERAL

- 6.1 The terms "Owner" and "BC Hydro" include their respective heirs, executors, administrators, successors and assigns.
- 6.2 If the Owner is more than one Person, every covenant and agreement by the Owner in this Agreement will be joint and several.
- 6.3 This Agreement will run with the Land and will run with each part into which the Land may at any time be subdivided and each parcel into which it may at any time be consolidated, and will bind all present and subsequent owners of the Land, including their respective heirs, executors, administrators, successors, and assigns.
- 6.4 If any provision of this Agreement or a portion thereof is determined by a court or arbitrator of competent jurisdiction to be:
 - (a) illegal or unenforceable, that provision or portion thereof will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination; or

- (b) enforceable but beyond the scope of section 218 of the *Land Title Act* of British Columbia or is enforceable but does not run with the Land, that provision or portion thereof will be considered separate and severable, and the legality or enforceability of the remaining provisions will not be affected by that determination. The parties further agree that the severed provision or portion thereof will, to the extent possible under law, be enforceable as between them as a separate and stand-alone covenant, with such reference to this Agreement as may be necessary for proper interpretation and certainty, and will not fail for lack of separate consideration.

END OF SET