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Date:	October 26, 2009

**BY COURIER**

British Columbia Utilities Commission  
6th Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention:** Erica M. Hamilton, Commission Secretary

Dear Sirs/Mesdames:

**Re: Application to the British Columbia Utilities Commission ("Commission") for an Order pursuant to Section 70 of the *Utilities Commission Act* ("UCA") allowing the use of FortisBC Inc. ("FortisBC") Transmission Facilities**

We write on behalf of Shaw Cablesystems Limited ("Shaw Cable") and Shaw Business Solutions Inc. ("SBS") (collectively "Shaw") to file Shaw's application to the Commission pursuant to Section 70 of the UCA for an order directing FortisBC to allow Shaw to continue to use FortisBC's electric transmission facilities for Shaw's telecommunications facilities throughout the FortisBC service area. A copy of Shaw's application is enclosed with this letter.

We would be pleased to provide further information that may assist the Commission in its review of this application.

Yours truly,

Bull, Housser & Tupper LLP

A handwritten signature in cursive script that reads "David Bursey".

David Bursey

2064547

cc. FortisBC Inc.

**In the Matter of the *Utilities Commission Act***

**Section 70**

**Shaw Cablesystems Limited**

**and**

**Shaw Business Solutions Inc.**

**Application to the British Columbia Utilities Commission**

**for an Order allowing the use of**

**FortisBC Inc. Electricity Transmission Facilities**

**26 October 2009**

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## 1. EXECUTIVE SUMMARY

Shaw Cablesystems Limited (“Shaw Cable”) and Shaw Business Solutions Inc. (“SBS”) (collectively “Shaw”) are applying for an order from the B.C. Utilities Commission (the “Commission”) directing FortisBC Inc. (“FortisBC”) to allow Shaw to continue to use FortisBC’s electric transmission facilities for Shaw’s telecommunications facilities throughout the FortisBC service area.

Currently, Shaw has extensive telecommunications facilities throughout the FortisBC service area to serve the communications needs of over 65,000 Shaw customers, most of whom are also FortisBC customers. Shaw has accessed FortisBC’s transmission and distribution poles for the placement of its telecommunications facilities since 1972, with the agreement and co-operation of FortisBC and its predecessors. FortisBC has recently taken action to discontinue Shaw’s access to the FortisBC’s transmission system.

On 3 April 2009, FortisBC notified Shaw that it must remove its facilities from FortisBC poles along FortisBC Lines 50 and 54 located in and around Kelowna by 3 April 2010 and that it must remove its facilities from FortisBC poles along FortisBC Lines 40 and 76 in the area located in and around Penticton to Okanagan Falls by 31 October 2010. On 13 February 2009, FortisBC also notified Shaw that its Transmission License Agreement with Shaw will terminate effective 12 February 2019. Early this month, FortisBC also filed a court action to, among other things, declare the Transmission License Agreement at an end.

At the heart of this dispute are outstanding issues related to transmission pole rental rates, ownership of the Kettle Valley fibre, and other related matters. Shaw and FortisBC have been in discussions since 2006 to resolve the issues, but have reached an impasse. FortisBC is attempting to terminate the Transmission License Agreement so it may increase the annual rate it charges Shaw for transmission pole access. FortisBC wishes to renegotiate the Transmission License Agreement and recently proposed a rate that would increase the annual rate Shaw pays from about \$40,000 to \$927,000 – an increase of over 20-fold. FortisBC’s proposal is unreasonable and ignores the Transmission License Agreement.

Shaw disputes the validity of the April 3<sup>rd</sup> notices as a basis to terminate Shaw’s access to the FortisBC transmission system. Shaw remains open to reasonable discussion with FortisBC and

believes all outstanding issues could be resolved on reasonable terms. FortisBC has recently terminated discussions, and so Shaw seeks the Commission's intervention.

Shaw believes it is in the public interest for the Commission to order FortisBC to continue to provide access for Shaw's telecommunication facilities. Shaw's use of FortisBC's utility corridor has benefited both companies and their respective customers for over 37 years by the efficient shared use of a common transmission corridor to avoid duplication of facilities which in turn reduces the overall economic, social and environmental impacts.

## **2. APPLICATION AND BACKGROUND**

### **2.1 The Application**

Shaw is applying under Section 70 of the Act for an order from the Commission:

- directing FortisBC to allow Shaw to install, operate and maintain telecommunications cables and related interconnection facilities on FortisBC's electric transmission facilities, including the facilities located on FortisBC's 11 Line, 40 Line, 50 Line, and 76 Line; and
- setting reasonable terms and rates for that use.

This application explains the background leading up to the application and the basis for the requested order.

### **2.2 Information about the Applicants**

#### **(a) Corporate Profile**

Shaw Cable and SBS are both wholly-owned subsidiaries of Shaw Communications Inc. ("Shaw Communications"). Shaw Communications was originally incorporated in 1966 in Alberta under the name Capital Cable Television Co. Ltd. It became Shaw Communications Inc. in 1993.

Shaw Communications is a diversified telecommunications company whose core business is providing broadband cable television, high-speed internet, digital telephone, telecommunications services (through its subsidiaries, Shaw Cable and SBS) and satellite

direct-to-home services (through Shaw Direct). Shaw Communications serves 3.4 million customers, including over 1.6 million internet and 775,000 digital telephone customers, through a telecommunications network that includes 625,000 kilometres of fibre optic cable. Shaw Communications is traded on the Toronto and New York stock exchanges and is included in the S&P/TSX 60 Index.

Shaw Communications' registered corporate office is located in Calgary, Alberta. Shaw has eight regional offices in B.C., including Vancouver, Kelowna and Cranbrook.

Shaw Cable was incorporated in Alberta and is extra-provincially registered in British Columbia. Shaw Cable holds the Canadian Radio-Television and Telecommunications Commission ("CRTC") distribution licenses and is the principal operating entity for Shaw Communications. Shaw Cable provides cable services in Western Canada and Ontario, including: high definition television, video on demand, pay per view, high speed internet and digital telephone.

SBS was incorporated in 2000 in Alberta and is extra-provincially registered in British Columbia. SBS originally operated under the name Big Pipe Inc. and then changed its name to SBS in 2006. SBS operates the long haul fibre route that serves as the primary telecommunications backbone for Shaw's broadband internet, voice and video customers, and provides wholesale telecommunications services, including internet and data connectivity services to businesses, government institutions (including the B.C. Government) and other organizations.

**(b) Contact Information**

For the purpose of this application, communications should be sent to the following Shaw representatives:

Chris Ewasiuk, Director Regulatory Affairs  
Shaw Communications Inc.  
861 Cloverdale Avenue  
Victoria, BC V8X 4S7  
Telephone: (250) 475-7212  
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E-mail: [chris.ewasiuk@sjrb.ca](mailto:chris.ewasiuk@sjrb.ca)

With a copy to:

Peter Johnson, Vice-President, Law  
Shaw Communications Inc.  
Suite 900, 630-3<sup>rd</sup> Avenue S.W.  
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And to Shaw's external legal counsel:

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**(c) Operations in British Columbia**

Shaw has operated cable systems in British Columbia for over 37 years, starting with the acquisition of the cable systems in Kelowna and Penticton in 1972. As of December 2008, Shaw had 1.18 million cable customers throughout British Columbia.

As Shaw's geographical footprint has grown across British Columbia, so too has its service offerings. Today, Shaw is the leading provider of digital television and high-speed internet services in the province, with over 510,000 and 825,000 customers respectively. Shaw also provides digital telephone services, including 911 emergency services, to nearly 300,000 B.C. households. In support of these services, Shaw employs over 3,700 people in communities across the province with annual operating expenditures in excess of \$525M and capital investment of over \$203M in British Columbia in 2008.

Shaw's operating areas in the Okanagan, Boundary and West Kootenay regions overlap with those of FortisBC with the exception of the following communities: Princeton, Keremeos, Oliver, Osoyoos, Slokan and Kaslo. Shaw serves over 65,000 customers in the FortisBC service area. Most of Shaw's customers are also FortisBC customers. A map of the Shaw system within the FortisBC service area is attached as Appendix 1.

Within B.C., Shaw has license arrangements with BC Hydro and Telus and other local utilities to access their transmission rights-of-way and facilities for Shaw's telecommunications facilities. Throughout Canada, Shaw and other telecommunication service providers follow a similar pattern of accessing the existing transmission corridors of local and regional utilities.

**(d) Shaw Experience and Expertise**

Shaw or its affiliates own and operate its telecommunications network across Canada and in the continental United States. As a result, Shaw has substantial expertise in the design, operation and maintenance of telecommunications facilities.

SBS typically provides third party customers wholesale telecommunications service by leasing capacity on Shaw's network. In exceptional circumstances, Shaw has granted indefeasible rights to use (IRUs) cable fibres to third parties such as other national telecommunication service providers who may swap other fibre for such IRUs. IRUs are extended lease terms where the reversionary interest in the fibre remains with Shaw.

Shaw provides both restorative maintenance and preventative maintenance services to its IRU customers or, in exceptional cases, to third party customers who own fibre within the same cable sheath as Shaw, including FortisBC.

**2.3 Background to Application**

**(a) Historic Access to FortisBC Electricity Transmission Facilities**

Shaw owns, operates and maintains extensive telecommunications facilities throughout the FortisBC service area and serves the communications needs of many of FortisBC's customers. Shaw has accessed FortisBC's transmission and distribution poles and rights-of-way for the placement of its telecommunications facilities since 1972, with the agreement and co-operation of FortisBC and its predecessors. This access by Shaw has benefited both the companies and their customers.

The following sections briefly explains the major projects by which Shaw's fibre optic network was attached and interconnected to the FortisBC electricity transmission system. Previously, Shaw's network in this area was based on coaxial cable.

**(i) *The Early 90s Build (Trail to Nelson)***

In the early 1990's, Shaw worked with West Kootenay Power Ltd. ("WKP", now FortisBC) to install fibre optic cable on WKP distribution poles from Trail through Castlegar to South Slokan. This installation followed the access rights established in Shaw's 1990 distribution licence agreement with WKP. A copy of the agreement is attached as Appendix 3.

**(ii) *The Mid-90s Build (Kelowna to Penticton)***

In the mid-1990's WKP worked collaboratively on Shaw's access to WKP's transmission lines for Shaw's fibre optic cable system.

In 1995, the parties agreed that WKP would install Shaw's ADSS telecommunications fibre optic cable<sup>1</sup> and related interconnection facilities on WKP transmission poles between Kelowna and Penticton in exchange for Shaw's payment of the installation costs and an annual pole rental fee. The parties agreed that Shaw would own, operate and maintain the installed telecommunications fibre and related interconnection facilities. WKP did not have any interest in using Shaw's facilities at the time of the initial project.

WKP installed Shaw's 48 fibre ADSS fibre cable and related interconnection facilities from Kelowna to Penticton in the summer and fall of 1995. Initially, the fibre was for Shaw's exclusive use, however, in later years Shaw allowed FortisBC access to some of the fibre strands to provide control and monitoring capability for their own facilities along this corridor which was part the overall arrangement worked out in the 2004 MOU (as described in the next section).

**(iii) *The 2004 Build (Penticton to Oliver)***

In November 2004, FortisBC, SBS and Shaw Cable entered into a binding Memorandum of Understanding (the "2004 MOU") for the Penticton to Oliver fibre build. The 2004 MOU was to govern until the parties entered into definitive agreements. Definitive agreements were never concluded so the parties performed based on the terms of the 2004 MOU. A copy of the 2004 MOU is attached as Appendix 6.

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<sup>1</sup> A description of ADSS cable is attached as Appendix 2.

Under the 2004 MOU, the parties agreed to install new fibre optic cable between Penticton and Okanagan Falls on FortisBC transmission poles. Shaw supplied and retained ownership of the fibre cable. Both parties contributed to the costs for the installation of the fibre cable and associated equipment.

Shaw also agreed to:

- grant FortisBC rights to use certain fibre strands within the Shaw cable sheath from Penticton to Vernon, and from Vernon to Okanagan Falls. In exchange for Shaw's contribution of fibre in kind, FortisBC agreed to reduce the pole rental rate to 5/6 of the standard rate under the TLA; and
- sell FortisBC the cable between Okanagan Falls and Oliver provided Shaw was granted an irrevocable option to purchase back the cable within the first 15 years from the completion of the construction of this fibre route. Shaw's reason for the temporary sale of this segment of the fibre build to FortisBC was to facilitate Shaw's acquisition of the rights-of-way required for the build. FortisBC had already acquired the necessary rights-of-way for its transmission facilities. The irrevocable option to purchase back the cable allowed Shaw to resume ownership of the cable after it acquired the necessary rights-of-way for its system.

FortisBC installed Shaw's ADSS 72 strand fibre optic cable and related interconnection facilities from Penticton to Oliver during the period between 2004 to 2006.

**(iv) *The 2007 Build (Oliver to Grand Forks – the Kettle Valley Fibre Project)***

In late 2006, FortisBC approached Shaw about a joint project to install Shaw communication fibre along FortisBC's 11 Line from Oliver to Grand Forks which is sometimes referred to as the Kettle Valley Fibre Project. The project was to be similar to the build the parties completed in 2004.

Like previous builds, the parties agreed that Shaw would supply its fibre cable to FortisBC for installation, and then lease or IRU fibre strands within that fibre cable to FortisBC. Shaw also agreed to pay its pro rata share of the construction costs.

Shaw supplied its 72 fibre ADSS cable for FortisBC to install during its work on the Kettle Valley transmission loop project which was undertaken in August 2007. FortisBC installed Shaw's fibre cable and related interconnection facilities from Oliver to Grand Forks during the period from October to December 2007. The interconnection facilities consists of a total of 17 splice locations in Shaw owned structures and a total of four fibre drop locations. Two of these fibre drop locations provide for fibre entrances into FortisBC power substations along the corridor.

FortisBC now disputes Shaw's ownership of the fibre cable and the terms associated with this joint project. FortisBC asserts that it owns all of the cable despite the fact that Shaw never agreed to sell all of the cable and FortisBC has not paid for it.

**(b) Agreements Governing Relationship of the Parties**

Two general agreements govern Shaw's use of FortisBC's transmission facilities:

- The Licence Agreement for the Use of Poles between West Kootenay Power Ltd. (now FortisBC) and Shaw Cablesystems (B.C.) Ltd. (now Shaw Cable) which was entered into in 1990 and amended in 2001 ("Distribution Licence Agreement"). The Distribution Licence Agreement governs the use of distribution poles and related rights-of-way.
- The Transmission License Agreement between West Kootenay Power Ltd. (now FortisBC) and Shaw Cablesystems Ltd. (Shaw Cable) which was entered into in 1999 ("Transmission License Agreement"). The Transmission License Agreement was made effective to 1 January 1996 and governs the use of transmission poles and related rights-of-way. A copy of the agreement is attached as Appendix 5.

The parties have also executed further agreements within the over-arching framework of the two general agreements to deal with rights and responsibilities of each party relating to specific projects, including responsibilities for construction costs, contribution and delivery of materials, and rights of access to fibre. Several examples are:

- The 2002 MOU, which was to apply to two projects: 1) a fibre build from Penticton to Warfield, and 2) a fibre build from Penticton to Kelowna. These projects never proceeded. A copy of the 2002 MOU is attached as Appendix 4.

- The 2004 MOU described earlier in Section 2.3(a)(iii).
- The September 2008 Agreement (8 principles), which was to resolve outstanding issues related to the Kettle Valley project. A copy of the 2008 Agreement is attached as Appendix 7.

**(c) Recent Issues Related to Shaw's Access to the FortisBC System**

Shaw and FortisBC have been in discussions since 2006 to resolve outstanding issues related to the Kettle Valley fibre project, transmission pole rental rates and other matters. Following these discussions, several significant issues remain unresolved.

FortisBC has sent notices to Shaw to terminate the Transmission License Agreement in 2019, and to remove Shaw facilities from parts of the FortisBC system within the next year. The following section explains.

**(i) Notices of Termination**

On 13 February 2009, FortisBC notified Shaw that the Transmission License Agreement will terminate effective 12 February 2019.

On 3 April 2009, FortisBC notified Shaw as follows:

1. FortisBC requires Shaw to remove its facilities from FortisBC poles along FortisBC Lines 50 and 54 (areas located in and around Kelowna) by 3 April 2010 because FortisBC requires the space currently used by Shaw to install new FortisBC transmission infrastructure in accordance with good utility practice.
2. FortisBC requires Shaw to remove its facilities from FortisBC poles along FortisBC Line 40 (Penticton to Okanagan Falls) by 31 October 2010 because FortisBC is decommissioning its transmission line in accordance with good utility practice.

Shaw disputes the validity of the April 3<sup>rd</sup> notices as a termination of Shaw's right to use the FortisBC transmission rights-of-way and transmission poles in these areas:

- For Lines 50 and 54, FortisBC has not explained why good utility practice necessitates the removal of Shaw's telecommunications equipment. Shaw understands that FortisBC has an ongoing interest in maintaining telecommunications equipment on these lines. In fact, FortisBC has suggested that Shaw leave its fibre cable in place and transfer it to FortisBC in lieu of incurring the decommissioning costs, even though the capacity of Shaw's cable far exceeds FortisBC's needs. Shaw had offered FortisBC sufficient capacity on Shaw's cable for its communication needs, which would meet FortisBC's objectives and allow Shaw continued access to these support poles. FortisBC is currently using fibre in Shaw's cable sheath, and has been doing so since 2004.
  
- For Lines 40 and 76, Shaw is aware that FortisBC is replacing its existing wooden transmission poles with steel poles. Shaw believes it has the right to relocate to the new facilities and FortisBC can accommodate the reinstallation of the Shaw telecommunications facilities on the new FortisBC infrastructure. In fact, FortisBC and Shaw were collaborating on the plan to relocate Shaw's cable to the new transmission lines before FortisBC issued the notices to remove all Shaw's facilities.

Copies of the 13 February 2009 and 3 April 2009 Notices of Termination are attached as Appendices 8(a), (b) and (c) to this Application.

**(ii) *Unresolved Issues***

From Shaw's perspective, the issues underlying the April 3<sup>rd</sup> notices do not relate to good utility practice or technical feasibility.

Instead, Shaw believes the notices are related to unresolved issues on other matters, principally issues related to ownership of the Kettle Valley telecommunications facilities and FortisBC's dissatisfaction with the Transmission License Agreement rates for Shaw's access to the transmission poles generally.

### 3. BCUC JURISDICTION UNDER THE UTILITIES COMMISSION ACT

#### 3.1 Section 70 of the Act

Under Part 5, section 70, of the Act, the Commission may order FortisBC to allow Shaw to use FortisBC's electric transmission facilities for its telecommunications facilities.

The relevant sections of Part 5 are as follows:

68 In this Part:

"electricity transmission facilities" means conductors, circuits, transmission towers, substations, switching stations, transformers and any other equipment or facilities that are necessary for the purpose of transmitting electricity;

...

"public utility" means a public utility to which Part 3 applies;

...

70 (1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a public utility, to use the electricity transmission facilities of the public utility if the commission finds that

- (a) the person and the public utility have failed to agree on the use of the facilities or on the conditions or compensation for their use,
- (b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and
- (c) the public interest requires the use of the facilities by the person.

(2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.

(3) After a hearing, the commission may, by order, vary or rescind an order made under this section.

(4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies.

Broadcast distribution undertakings and telecommunications companies such as Shaw are subject to the constitutional jurisdiction of the federal government and not the provinces.<sup>2</sup> Shaw's cable television, internet, satellite and telecommunications businesses are regulated principally by the CRTC pursuant to the *Broadcasting Act* (Canada) and the *Telecommunications Act* (Canada).

However, the Supreme Court of Canada determined that the *Telecommunications Act* (Canada) does not give the CRTC jurisdiction to set the terms and conditions of access by cable systems to support structures of electric utilities. As a result, authority over such matters remains with the provincial public utility boards, such as the Commission.<sup>3</sup>

#### **4. THE SECTION 70 DECISION-MAKING CRITERIA**

Pursuant to section 70, the Commission may issue an order allowing Shaw to use FortisBC's electricity transmission facilities if it finds that:

- (a) Shaw and FortisBC have failed to agree on the use of the facilities or on the conditions or compensation for their use,
- (b) the use of the facilities will not prevent FortisBC or other users from performing their duties or result in any substantial detriment to their service, and
- (c) the public interest requires the use of the facilities by Shaw.

The following sections address each of the criteria separately.

##### **4.1 Failure to Agree on Conditions or Compensation for Use**

As described in section 3, Shaw and FortisBC have several agreements governing Shaw's access to the FortisBC transmission and distribution system. Shaw relies on those agreements. However, FortisBC disputes Shaw's rights under those agreements, and has given notice to terminate Shaw's access to the FortisBC transmission poles: immediately in the case of the Kettle Valley Project; by April 2010 in the case of FortisBC Lines 50 and 54; and by October 2010 in the case of Lines 40 and 76. Further, FortisBC does not agree on any future access by Shaw and has given notice to terminate the Transmission License Agreement generally in

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<sup>2</sup> *Capital Cities Communications v. C.R.T.C.*, [1978] 2 S.C.R. 141

<sup>3</sup> *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476, 2003 SCC 28

February 2019. Thus, FortisBC and Shaw are unable to agree on terms of access by Shaw of FortisBC's facilities now for the disputed areas, and generally for the future.

FortisBC has also recently filed a court action in the British Columbia Supreme Court in an attempt to accelerate the termination of Shaw's rights by asking the court, among other things:

- to declare that the Transmission License Agreement has been terminated;
- for an injunction to have Shaw remove its telecommunications facilities from FortisBC transmission facilities and land; and
- for an injunction to restrain Shaw from using its telecommunications facilities on FortisBC transmission facilities.

Shaw will defend the court action, but must pursue its remedies before the Commission concurrently so it can maintain reasonable access to the FortisBC transmission facilities and avoid any disruption of service to Shaw customers. FortisBC's efforts to deny Shaw access poses an immediate threat to Shaw's facilities and service. Shaw customers rely on Shaw for critical telecommunication services, some of which include 911 emergency calling.

If Shaw must remove its telecommunications facilities from FortisBC's Lines 40, 76, 50 and 54 in 2010, as demanded by FortisBC, then Shaw must plan and construct alternate transmission corridors for its telecommunications facilities in the same time frame. The cost and time to do so will be significant. More importantly, the effort is unnecessary and wasteful for all concerned since the FortisBC transmission poles can easily accommodate Shaw's equipment and have done so for many years. FortisBC can offer no legitimate reason to discontinue the practice.

The urgency is all the more acute in the case of the upgrade of Lines 40 and 76. FortisBC has started work on that upgrade already. It would be most efficient for all concerned for Shaw to be part of the project planning now to incorporate its facilities on the new infrastructure. FortisBC itself advocated this view until recently.

FortisBC advised the Commission in its Okanagan Transmission Reinforcement ("OTR") application that it would finalize arrangements with Shaw to allow the transfer of the Shaw's

telecommunications cable to the new transmission poles.<sup>4</sup> Shaw was working towards that goal with FortisBC when FortisBC abruptly abandoned that approach and issued its termination notices in February and April this year. Shaw remains open to discuss reasonable options, but FortisBC refuses to talk.

As a public utility, FortisBC has an obligation to allow reasonable use of its transmission facilities for others to use to carry other services. If FortisBC will not agree on reasonable terms, the Commission has jurisdiction to intervene in the public interest to order FortisBC to allow use on terms the Commission deems reasonable. The Commission's jurisdiction extends beyond the contract and land issues before the court to issues related to the public interest in ensuring an efficient and responsible use of FortisBC's utility corridor.

Given FortisBC's actions to discontinue access to Shaw, Shaw seeks the Commission's intervention to find a reasonable solution.

#### **4.2 FortisBC May Perform its Utility Duties – No Detriment to Service**

Providing access for Shaw's fibre optic cable does not prevent FortisBC from performing its public utility duties. Indeed, the communications links that FortisBC has acquired through its joint telecommunications fibre builds with Shaw have become an integral component of FortisBC's own transmission facilities. If Shaw did not share its telecommunications fibre with FortisBC, then FortisBC would need to install its own.

In several recent FortisBC projects, the importance of the telecommunications facilities on the transmission system has been reaffirmed. In FortisBC's CPCN application to the Commission, FortisBC noted the importance of the telecommunications infrastructure as well as the convenience and low cost of installation, as follows:

One of the most common forms of communications infrastructure being installed by electric utilities today is fibre-optic networking. The attractions of fibre-optics are the high reliability, security, and nearly unlimited bandwidth that this technology offers. Utilities already own and maintain overhead poles and underground ducts which provide a convenient location to install the fibre-optic cable.

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<sup>4</sup> FortisBC Okanagan Transmission Reinforcement Project CPCN Application, Section 4 page 11.

During the construction of a new power transmission line the incremental cost to install fibre cable is very low (essentially only the cost of the fibre cable and required attachment hardware). Thus, it is common to install fibre optic cable on new transmission lines. An example of this is the fibre-optic cable that was installed on the 230 kV transmission line between Trail and Castlegar as a part of the Kootenay 230 kV System Development.<sup>5</sup>

The Commission approved use of the fibre optic cable by FortisBC as a communications link between Kettle Valley and Grand Forks terminal when it issued a Certificate of Public Convenience and Necessity for FortisBC's Kettle Valley Distribution Source Project. However, FortisBC does not require the transmission capacity of a 72 fibre ADSS cable for its internal communications. A large portion of that transmission capacity would be surplus to its reasonably foreseeable utility requirements. Moreover, FortisBC is not licensed as a telecommunications carrier under the *Telecommunications Act* for the purpose of providing telecommunications services to others, so the surplus transmission capacity would sit idle which would be an inefficient use of the utility assets. In any event, FortisBC does not currently own the Kettle Valley telecommunications facilities; Shaw does.

In 2005, FortisBC updated the Vaseux terminal to improve the power supply in the south Okanagan. The recent OTR Project is the second phase of this project and received Commission approval in October 2008. The OTR project is expected to be completed in 2011.

Shaw understands that the basic components of the OTR will involve FortisBC:

- replacing the existing 161kV transmission 40 line between Vaseux Substation to Oliver with a 230 kV transmission line;
- replacing the 76 line with a 230 kV line;
- adding a second 230 kV line (the 75 line) between Vaseux to Penticton; and
- constructing a new substation east of Oliver and upgrading two other existing substations in the South Okanagan.

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<sup>5</sup> FortisBC, Kettle Valley Project CPCN Application, Appendix A, page 18.

There is no technical or other legitimate reason why Shaw's telecommunications facilities cannot be accommodated on the new FortisBC transmission poles. Shaw is aware of similar support structures carrying comparable or larger cable loads. See Appendix 9 for a representative schematic.

FortisBC itself stated in its CPCN application to the Commission that it planned to relocate the fibre optic cable from the existing poles to the new ones:

To meet these objectives the proposed OTR Project will locate the new structures next to existing structures within the right-of-way to provide the required line clearances. Galvanized steel poles will be used rather than lattice steel towers or wood poles for reliability purposes, to minimize wildfire damage risk, and to minimize impact on the right-of-way and property owners. Optimization of individual pole locations may occur during detailed line design and during consultation with property owners.

The fibre-optic cable currently mounted on the 76 Line and 40 Line structures will be relocated to these new structures.<sup>6</sup>

Further in the same application, FortisBC confirms that its facility sharing arrangements with Shaw apply to the project:

#### COMMUNICATION FIBRE

Details for an existing communication optical fibre to be strung as underbuild have not been confirmed at this time. Estimate allowances for the fibre to be transferred from the existing 40L/76L circuits to the new construction based on the use of the existing right of ways and structure locations hence spans being of similar length. [*sic*] If an alternate route is selected additional design and estimating will be required for new fibre. The facility sharing agreement between FortisBC and Shaw Communications contemplates some cost sharing for upgrades.<sup>7</sup>

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<sup>6</sup> FortisBC Okanagan Transmission Reinforcement Project CPCN Application, Section 4 page 11.

<sup>7</sup> FortisBC Okanagan Transmission Reinforcement Project CPCN Application, Appendix C, page 18 of 149.

### 4.3 The Public Interest

The use by third parties of utility rights-of-way and structures for telecommunication services has long been recognized as being in the public interest, for several basic and self-evident reasons:

- The neighbouring communities and the environment benefit from the efficiency use of limited land and natural resources by minimizing the environmental footprint of the facilities that share the utility corridor;
- The customers of each service provider benefit through reduced service rates arising from the efficiencies and improved economics of sharing common facilities; and
- The two service providers benefit from improved efficiency and economics during all phases of operations, including: the construction, operation, maintenance, and repair of their respective facilities.

For the most part, Shaw and FortisBC are serving the same customers. Without question, it is in the public interest for Shaw to make use of the FortisBC infrastructure. Discontinuing the historic access to FortisBC facilities by Shaw would increase cost both to FortisBC and Shaw (and their customers). Further, establishing parallel systems would result in unnecessary economic, social and environmental impacts.

In its application to the Commission for the OTR project, FortisBC refers to the value to its ratepayers of its arrangements with Shaw:

FortisBC welcomes the opportunity to reduce communication infrastructure costs by entering into partnering arrangements with other companies. As long as the stringent utility reliability and security standards can be met, these arrangements result in lower rate impacts by sharing costs and utilizing dark fibres that would otherwise go un-used. For example, a facility sharing arrangement has been negotiated with a major telecommunications company in the Okanagan area. This has allowed the construction of a fibre-optic backbone that runs from BCTC supply point at Vernon in the north, to the Oliver Terminal in the South. There is also a fibre-optic backbone which runs from Trail, to Castlegar to South Slocan in the Kootenay area. By constructing an East-West fibre link between Oliver and Trail these two isolated fibre backbones

could be linked. The construction of the fibre-optic system between Oliver and Kettle Valley would be the first step in this link.<sup>8</sup>

#### **4.4 Reasonable Rate for Shaw's Use**

##### **(a) Shaw's Current Rates**

In recent discussions with Shaw, FortisBC has proposed more than a 20-fold increase in transmission pole attachment fees, from approximately \$40,000 a year to \$927,000 a year.

The pole attachment fees that Shaw pays to FortisBC are based on negotiated agreements. The transmission pole attachment fees were specified in the Transmission License Agreement. The original rates were \$12.40/year for low-voltage poles and \$40.00/year for high-voltage poles. Both rates have been adjusted annually by the consumer price index (all items) for British Columbia. Currently, Shaw pays an attachment fee of \$14.72/year for each low-voltage transmission pole attachment (460 poles) and \$47.48/year for each high-voltage pole attachment (682 poles). Total current charges for transmission pole attachments are about \$40,000. Shaw also pays about \$174,000 in fees annually to FortisBC for distribution pole attachments.

In the recent discussions with Shaw, FortisBC proposed changing the basis from a per-pole attachment to a charge per hundred metres of distance (the distance from pole to pole) and an increase in the charge to \$484/year per hundred metres. FortisBC's proposal would increase the annual charge to Shaw to approximately \$927,000 – a \$887,000 increase, which is more than 22 times the current charge (calculation attached as Appendix 10). Shaw believes the rate proposed by FortisBC is unreasonable and ignores the Transmission License Agreement. Setting the charge at this level amounts to an effective denial of service because of economic infeasibility.

##### **(b) Application of the Existing Rates**

The Distribution Licence Agreement and Transmission License Agreement set out the rates that apply. Shaw believes these rates are the best evidence of what is just and reasonable in these

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<sup>8</sup> FortisBC Okanagan Transmission Reinforcement Project CPCN Application, Appendix A, page 21.

circumstances. FortisBC acknowledged in its OTR application that the Transmission License Agreement sets out cost sharing arrangements for the upgrades.<sup>9</sup>

## 5. CONCLUSION

Shaw believes that the issues in this application are narrow. Ultimately, the points of dispute centre on the fair and reasonable terms and rates for Shaw's access to the FortisBC system. The benefits of this access cannot be reasonably disputed, and in fact FortisBC has explicitly acknowledged the benefits in various filings with the BCUC. Shaw believes that an expeditious resolution of the access issue is in the best interest of the public, the customers and the parties.

The need to assure continued access is urgent given the short time frame FortisBC has given Shaw to remove its facilities from Lines 40, 76, 50 and 54. Those time frames may be shortened further by the recent court action. Further, the current upgrade work on Lines 40 and 76 is creating a window of opportunity for an efficient reattachment of Shaw's telecommunications cable to the new transmission poles. If this window closes without a reasonable basis for Shaw to access the new transmission poles, then Shaw and FortisBC will likely incur unnecessary cost and effort to achieve a resolution in the future.

To expedite the resolution of the issues, Shaw requests that a hearing be set soon, and that a Negotiated Settlement Process be set as soon as possible. Shaw believes that a Negotiated Settlement Process is appropriate in this case for several reasons:

- The issues lend themselves well to a mediated settlement because they are narrow and between two parties, in contrast to most public utility applications that involve multiple parties.
- FortisBC controls certain technical information about its system that is relevant to the review. The non-prejudicial nature of the negotiated settlement process encourages full disclosure from the parties involved and would encourage FortisBC to present information that would assist the Commission in making its determinations.

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<sup>9</sup> FortisBC Okanagan Transmission Reinforcement Project CPCN Application, Appendix C, page 18 of 149.

- It is in the customers' best interest for Shaw and FortisBC to reach an agreement on what is a reasonable rate for use of FortisBC facilities. The recent breakdown of negotiations between the parties may result in service interruptions if FortisBC removes the fibre optic cable from its transmission and distribution poles. A negotiated settlement process allows the parties to return to negotiations within a fair and structured mediation process.

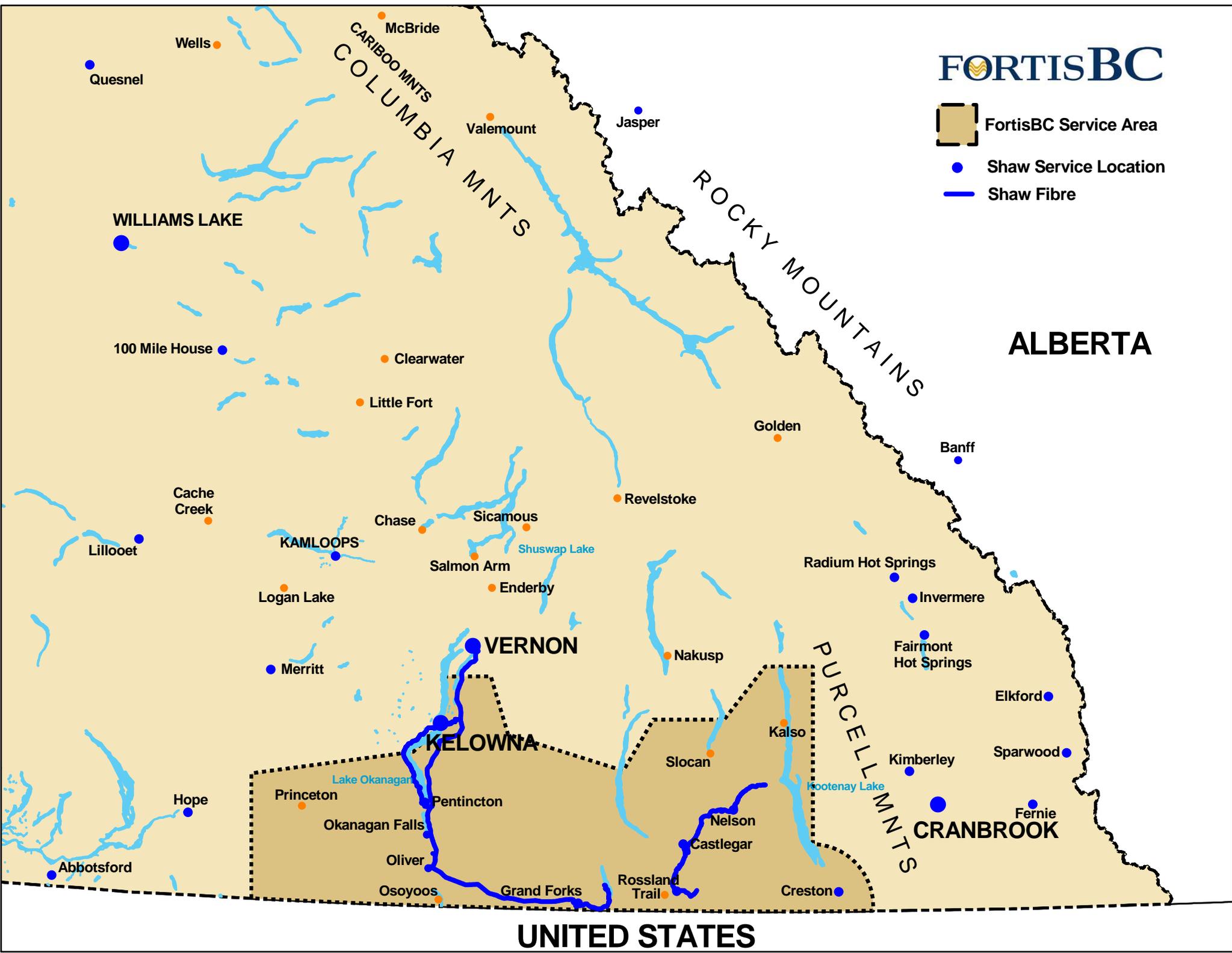
Shaw requests that the Commission consider this application expeditiously.

All of which is respectfully submitted by Shaw Cablesystems Limited and Shaw Business Solutions Inc. this 26 day of October 2009.

## **Appendix 1**

### **Map of the Shaw System within the FortisBC Service Area**

-  FortisBC Service Area
-  Shaw Service Location
-  Shaw Fibre

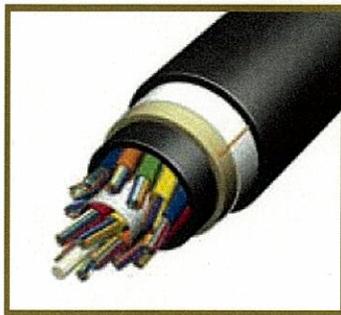


## **Appendix 2**

### **ADSS Cable Description**

## Description of 72f All Dielectric Self Support (ADSS) Fibre Optic Cable

Typical design for ADSS cable used on hydro-electric structures that support extra-high-, high- and medium-voltage (EHV, HV, MV) transmission lines.



### ADSS Transmission Design

#### dry core design

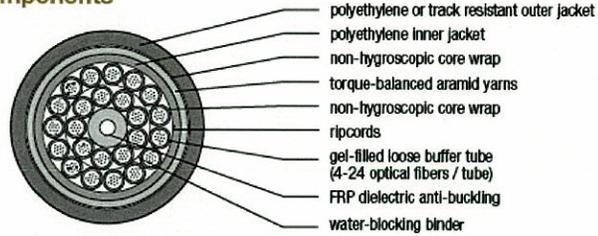
Typical Spans with 1.0% Installation Sag:

- NESC Heavy 1200 ft (366 meters)
- NESC Medium 1600 ft (488 meters)
- NESC Light 1800 ft (549 meters)
- Longer span lengths available on request

#### temperature range

Operating -40°C to +70°C  
 Storage -50°C to +70°C  
 Installation -30°C to +70°C

#### cable components



### Mechanical Properties of 72f ADSS

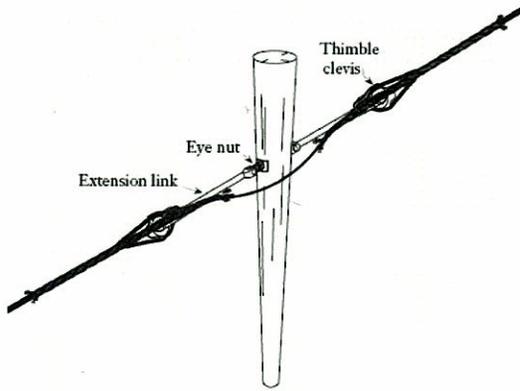
ADSS cable is normally custom manufactured to meet the placement specification of a specific Project. The typical mechanical properties of a 72f ADSS cable are as follows used in Transmission design are as follows.

Fibre Count	Cable Diameter		Cable Weight		Maximum Bending Radius (Dynamic)		Maximum Bending Radius (Static)		Maximum Operating Load		Estimated Ultimated Breaking Strength	
	Inches	mm	lbs/1000'	kg.km	inches	cm	inches	cm	lbs	N	lbs	N
72	0.575	14.2	115	171	13	32	6	15	3900	17348	6600	29358

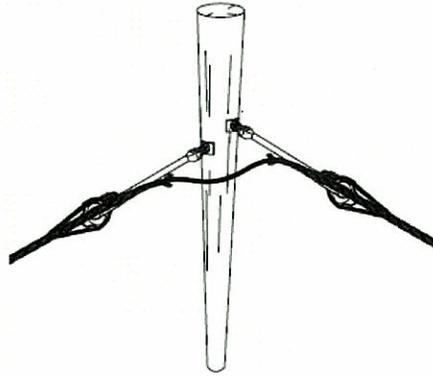
Typical cable outside diameter is from 0.5 to 0.75 inches

### Attachment Methods

Attachment hardware used is determined from; nominal outside diameter of the cable, degree of offset from one pole to the next, and maximum cable tension under CSA loaded conditions. Deadends and false deadends where the degree of offset from one pole to another exceeds 20 degrees and support structures for cable attachments which are tangent to the pole are the most common attachment types.



**False Deadend  
(Slack Storage)**



**False Deadend  
(Pole Offset Correction)**

## **Appendix 3**

### **Distribution Licence Agreement**

CONTRACT ID
SHAW
REG #:
0930
BARCODE:
0000508

LICENCE AGREEMENT FOR USE OF POLES

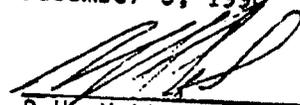
WEST KOOTENAY POWER LTD.

- and -

SHAW CABLESYSTEMS (B.C.) LTD.

(Date)

Certified a true copy of a  
License Agreement For Use Of Poles  
between West Kootenay Power Ltd. and  
Shaw Cablesystems (B.C.) Ltd. dated  
December 3, 1990

  
\_\_\_\_\_  
R.H. Hobbs

June 9/93  
\_\_\_\_\_  
Date

LICENCE AGREEMENT

THIS AGREEMENT made as of the 3 day of December, 1990

BETWEEN:

WEST KOOTENAY POWER LTD., a corporation duly incorporated by Special Act of the Legislature of the Province of British Columbia, having its head office at Waneta Plaza, 8100 Rock Island Highway, Trail, British Columbia V1R 4N7

(hereinafter called "West Kootenay")

AND:

SHAW CABLESYSTEMS (B.C.) LTD., a company duly incorporated under the laws of the Province of British Columbia, having as its mailing address at 7605 - 50 Street, Edmonton, Alberta T6B 2W9

(hereinafter called "Shaw")

WITNESSES THAT WHEREAS:

- A. Shaw furnishes cablevision service to subscribers in the Kootenay-Boundary, Penticton and Kelowna areas and has requested to use West Kootenay poles to attach messenger and telecommunications cable;
- B. West Kootenay is willing to grant Shaw a non-exclusive licence to attach its facilities to West Kootenay poles in accordance with the terms and conditions set forth in this Agreement;
- C. West Kootenay and the British Columbia Telephone Company ("B.C. Tel") have, by an agreement dated as of the 1st day of January, 1980, agreed to share the use of West Kootenay poles ("the Shared Pole Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

A621(1)

1. DEFINITIONS

- (a) "Abandoned Pole" means a pole which was a Contact Pole, from which equipment of Shaw has been removed and after which notice of abandonment has been given by Shaw to West Kootenay in accordance with subsection 4.05;
- (b) "Clearance Contact Pole" means either a single West Kootenay Pole which may be available to Shaw to provide clearance for Shaw equipment from West Kootenay equipment when Shaw facilities cross West Kootenay facilities, or a single West Kootenay Pole to provide access for service to a customer of Shaw. If more than one West Kootenay Pole or Contact Pole in sequence is involved, including the Clearance Contact Pole, then all poles involved shall become Contact Poles;
- (c) "Contact Pole" means a West Kootenay distribution pole which is being contacted by Shaw with or without a third party licensee including B.C. Tel or for which a Pole Contact Notification form has been signed by West Kootenay pursuant to subsection 4.03, but shall not include a Clearance Contact Pole or a West Kootenay Pole shared only with B.C. Tel;
- (d) "Prime Rate" means the rate of interest per annum established and reported by the Bank of Montreal to the Bank of Canada from time to time as the reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by it in Canada.
- (e) "West Kootenay Pole" means a pole other than a Contact Pole which is owned by West Kootenay;

2. SCOPE AND TERM OF AGREEMENT

- 2.01 This Agreement sets forth and is intended to govern all relationships between the parties concerning shared use of poles.

2.02 Unless sooner terminated under the provisions of paragraph 14.01 hereof, this agreement shall remain in force for an initial term of five years commencing September 1, 1990 and this agreement shall be deemed to be renewed for a further five year term and subsequent five year terms thereafter until one party gives to the other written notice of termination which shall not be effective earlier than the expiry date of the immediately succeeding term.

### 3. PLACEMENT OF SHAW'S FACILITIES

#### 3.01 Standards

All Contact Poles and all equipment fixed to them and the construction, installation and maintenance of Contact Poles shall conform with the minimum standards set by the Canadian Standards Association and shall also conform to such additional or higher standards as may be determined by West Kootenay from time to time.

#### 3.02 Clearances

Clearances of conductors and attachments shall conform with the standards appearing under "Space Allocation for Contact Poles", attached hereto as Schedule A, as may be amended by West Kootenay from time to time.

#### 3.03 Guying and Anchoring

All guys and anchoring for Contact Poles shall conform to the standards set by West Kootenay for basic guying and anchoring. If equipment installed on a Contact Pole by Shaw causes a defect in the installation of the Contact Pole or West Kootenay equipment, then Shaw shall correct the defect or reimburse West Kootenay for the cost of correcting the defect. If heavier guying or anchoring is required in addition to basic guying and anchoring, Shaw shall install and maintain the additional or heavier guying and anchoring necessary to meet its requirements.

3.04 Attachment of Facilities

Shaw shall be entitled to attach telecommunications cables to one messenger on each Contact Pole. Space shall be assigned on Contact Poles as follows:

- (a) the two feet of vertical space on one side of the Contact Pole at the height indicated in Schedule A shall be assigned for the actual or potential use of B.C. Tel and of its permitted licensees for telecommunication purposes; and
- (b) a space beginning eight inches immediately above the top of the space described in paragraph 3.04(a) shall be reserved for the use of Shaw for telecommunication purposes; and
- (c) the space of 40 inches immediately above the space described in paragraph 3.04(b), shall be a safety clearance zone which, except for service drops or lighting attachments, shall not be assigned or used for telecommunication purposes or for transmission of electrical energy; and
- (d) the space above the space described in paragraph 3.04(c) shall be reserved for the exclusive use of West Kootenay for the transmission or distribution of electricity and related purposes.

Conduit, cable, and related supports connecting underground installations to facilities on the Contact Pole may be installed by either party in accordance with standards set by West Kootenay to ensure that adequate climbing space is provided for linemen to climb the pole, and to operate and maintain facilities while up the pole. Shaw shall ensure that all of its facilities are grounded in accordance with Canadian Electrical Code specifications, and Shaw shall be responsible and indemnify West Kootenay for any claims paid to West Kootenay and Shaw customers which were caused by inadequate grounding of Shaw facilities.

- 3.05 To permit West Kootenay to rent Contact Poles to B.C. Tel or other licencees; if any equipment owned by Shaw except power supplies covered under permit is found to be attached outside of the space specified by West Kootenay pursuant to paragraph 3.04(b), and if requested by West Kootenay, Shaw shall forthwith relocate the equipment to within the specified space at its own expense.
- 3.06 Each party shall place its equipment, conduct itself and use its best efforts to provide the other party with access on one side of Contact Poles to the equipment owned by other parties, and shall cooperate reasonably in scheduling work involving Contact Poles or equipment installed on them.
- 3.07 Ownership and Maintenance of Equipment  
Any equipment installed by Shaw on a Contact Pole shall be deemed not to be a fixture and its ownership shall not be changed by affixing equipment to the Contact Pole. The use of space on a Contact Pole by Shaw does not include or imply a transfer of any right, title or interest in or to the Contact Pole other than the rights granted to Shaw under this Agreement.
- 3.08 Shaw shall maintain its equipment installed on a Contact Pole at its own cost and to the satisfaction of West Kootenay.
- 3.09 Clearance Contact Poles  
If West Kootenay intends to relocate, replace, or repair a Clearance Contact Pole being used by Shaw, it shall notify Shaw of that intention but it shall not be responsible for any costs incurred by Shaw as a result of the relocation, replacement or repair of the Clearance Contact Pole.
- 3.10 If West Kootenay intends to abandon a Clearance Contact Pole being used by Shaw, it shall, if requested by Shaw, transfer ownership of that pole to Shaw for its depreciated value.

3.11 The rights granted to Shaw under this Agreement shall not materially interfere with the use of shared poles by B.C. Tel under the Shared Pole Agreement and the rights granted to Shaw are subordinated to the rights of B.C. Tel under the Shared Pole Agreement.

#### 4. INVENTORY AND ADMINISTRATION OF CONTACT POLES

##### 4.01 Inventory

Shaw shall advise West Kootenay as soon as practical after September 1, 1990 of the number of Contact Poles contacted by Shaw as of September 1, 1990.

##### 4.02 New Contact Poles

If Shaw wishes to have an existing West Kootenay Pole become a Contact Pole or a Clearance Contact Pole, Shaw shall advise the appropriate West Kootenay district representative. If West Kootenay decides the West Kootenay Pole in question is suitable for shared use, Shaw shall be assigned a space in accordance with subsection 3.04. Shaw shall only use experienced employees who have had training on the proper and safe attachment of telecommunications equipment on live electric utility poles.

4.03 Prior to installation of any equipment, Shaw shall report to West Kootenay in writing any poles other than Clearance Contact Poles on which it intends to install equipment. The report shall be in the form of the "Pole Contact Notification/Application", attached hereto as Schedule B, and shall include sufficient information to identify and reference the poles to the West Kootenay Contact Pole mapping system. If approval has been given in accordance with subsection 4.02, West Kootenay shall acknowledge its approval in a timely manner, by returning a signed copy of the form to Shaw. The poles described in the approved and signed Pole Contact Notification/Application form shall then become Contact Poles and will be placed in the adjusted inventory, and Shaw may proceed to install equipment on the Contact Pole.

4.04 Voluntary Abandonment

Shaw may abandon its use of a Contact Pole without prior notice to West Kootenay by removing at its own expense its equipment from the Contact Pole.

4.05 After removing its equipment from a Contact Pole, Shaw shall report to West Kootenay that it has abandoned a Contact Pole on a Pole Contact Notification/Application form in accordance with reporting procedure in subsection 4.03, and West Kootenay shall acknowledge receipt of the form and return a signed copy of the form to Shaw.

4.06 Inventories

In conjunction with an inventory made of B.C. Tel shared poles, an inventory shall be conducted by West Kootenay and Shaw to obtain a physical count of the number of Contact Poles, and that count shall constitute the number of Contact Poles for a new inventory. The new inventory shall replace any previous inventory.

4.07 In January of each year, West Kootenay shall provide Shaw with an adjusted inventory as of December 31 of the previous year reflecting changes in the number of Contact Poles during the previous year.

4.08 If it is determined by an inventory or otherwise that any Contact Pole reported as an Abandoned Pole remains contacted as a Contact Pole, that Contact Pole shall be deemed to be a Contact Pole for an additional three years from the year in which it was determined not to have been abandoned, for which past rental shall be due at the current pole rental from the year in which the pole was reported as an Abandoned Pole, plus the current year's pole rental multiplied by three.

4.09 If it is determined by a subsequent inventory or otherwise that any Contact Pole was not reported by Shaw as an additional Contact Pole in accordance with subsection 4.03, that Contact Pole shall be deemed to have been a Contact Pole for the previous five years, and Shaw shall process the Pole Contact Notification/Application form and pay a

rental for the unreported Contact Pole at the current year's pole rental multiplied by five.

4.10 West Kootenay and Shaw shall share the costs of conducting any inventory.

5. POLE RENTAL

5.01 Shaw shall pay an annual pole rental based on a charge of \$12.00 for each Contact Pole in 1990, adjusted annually by the same percentage that the Pole Rental in the Shared Pole Agreement with B.C. Tel is adjusted. Pole rental shall not be assessed for Clearance Contact Poles.

5.02 Shaw shall pay an annual rental amount to West Kootenay for Contact Poles which shall be an amount equal to the product of the pole rental for the year and the average of the number of Contact Poles established by the adjusted inventories on December 31 of the previous year and December 31 of the current rental year.

The annual rental amount shall be calculated and invoiced by West Kootenay in the following manner:

(i) The estimated rental amount for each year shall be calculated by West Kootenay in January of each year and invoiced as of June 30 by multiplying the pole rental for that year by the average of the actual number of Contact Poles established by the adjusted inventory on December 31 of the previous year and the estimated number of Contact Poles as of December 31 of the current rental year.

(ii) The actual rental amount for each year shall be invoiced by West Kootenay in January of the following year and shall be calculated as in paragraph 5.02(i), using the actual average number of Contact Poles. The amount invoiced by West Kootenay pursuant to paragraph 5.02(i) above shall be deducted from the actual rental

for the year determined by this paragraph and the resulting difference, where it represents an amount owing by Shaw, shall be the balance owing for the annual rental amount for the year. Where the resulting difference represents an amount owing to Shaw, West Kootenay shall pay to Shaw the difference by the last day of February of that year.

6. PAYMENT

6.01 The invoices issued on or about June 30th and in January of each year shall be paid within 30 days of mailing of the invoice.

6.02 Any amount required to be paid which is not paid within the time required shall be deemed to be in arrears and shall bear interest at the rate of 6% above the Prime Rate on and from the date payment was due.

6.03 If any payment due from Shaw to West Kootenay is in arrears for more than 60 days, West Kootenay may give notice of such non-payment to Shaw and may, on the 30th day following such notice, commence whatever procedures it considers necessary to cause the removal of Shaw equipment from Contact Poles, unless Shaw has, during the said notice period, either paid the amount in arrears with interest or provided notice of dispute to West Kootenay of all or part of the amount due.

7. EASEMENTS AND RIGHTS-OF-WAY

7.01 West Kootenay shall grant to Shaw access for installation maintenance or repair on a Contact Pole to the extent permitted by an easement, right-of-way or permit held by West Kootenay applicable to that Contact Pole.

7.02 West Kootenay shall be responsible for acquisition and maintenance of all easements, rights-of-way and permits relating to the location, use, and access for maintenance and repair of those Contact Poles which it installed, and shall use its best efforts to have

incorporated in the easements, rights-of-way and permits acquired in future, provisions which permit Shaw to make use of the pole as provided for in this Agreement.

7.03 If after using its best efforts West Kootenay is unable to obtain an easement, right-of-way, or permit which grants to Shaw access to property upon which a Contact Pole is situated, Shaw shall be responsible for obtaining its own easement, right-of-way or permit for access to property.

7.04 Notwithstanding the best efforts of West Kootenay pursuant to subsection 7.02, if relocation or removal of a Contact Pole is required because of inadequate rights-of-way, easements or permits relating to the location, use and access for maintenance and repair of Contact Poles, each party shall be responsible for the cost of transferring its own equipment to a relocated pole, or for the cost of installation for any alternate facilities.

8. RELOCATION, REPLACEMENT AND REPAIR OF CONTACT POLES

8.01 Shaw, at its cost, shall forthwith relocate its equipment on any Contact Pole or transfer its equipment to a replacement or substitute pole upon notification from West Kootenay. In any case deemed by West Kootenay to constitute an emergency, West Kootenay may relocate or transfer Shaw's equipment without notice and Shaw shall, on demand, reimburse West Kootenay for any expense hereby incurred. However, West Kootenay shall reimburse Shaw for any costs of so relocating or transferring facilities which it recovers from any third party liability to West Kootenay for these costs.

8.02 If Shaw damages the equipment of West Kootenay, West Kootenay shall report to Shaw the cost of repair or replacement required because of that damage, and Shaw shall reimburse West Kootenay for the reported cost of repair or replacement within 30 days of invoicing.

- 8.03 If West Kootenay damages Shaw facilities by an act of one of its employees, West Kootenay shall reimburse Shaw for the costs of repair, but West Kootenay shall not be responsible for lost revenue or any other indirect losses that may be incurred by Shaw.
- 8.04 If damage is caused to a Contact Pole by the action or omission of a third party other than a licensee, costs of repairing the Contact Pole will be borne by West Kootenay, and each party will bear the costs of repairing or replacing its own equipment.
- 8.05 If West Kootenay requires a Contact Pole for its own use without contact by Shaw, West Kootenay shall give Shaw a minimum of three months' notice to remove its equipment from the Contact Pole, or as much additional notice as the circumstances warrant. The notice shall stipulate a date by which all Shaw equipment must be removed. If such equipment has not been removed by the stipulated date, West Kootenay may remove the Shaw equipment and Shaw shall reimburse West Kootenay for any additional costs incurred.

9. EXPROPRIATION OR PREVENTION BY PUBLIC AUTHORITY

If a Contact Pole is expropriated or if through any act or omission of a public authority of competent jurisdiction or if because of an order of a court of competent jurisdiction either party is prevented from using a Contact Pole as contemplated by this Agreement, each party shall bear its own losses and costs which result from the prevention.

10. TAXES

Shaw shall promptly pay all taxes, assessments and levies relating to its equipment and to its use of the Contact Poles. Neither party shall be required to contribute to the payment of any taxes, assessments or levies relating to the property of the other party.

## 11. INDEMNIFICATION AND INSURANCE

11.01 Except as provided in subsection 8.03, Shaw shall not make any claim against West Kootenay with regard to Contact Poles, and shall indemnify and hold harmless West Kootenay and its representatives and each of them from and against any and all liability whatsoever for losses, damages, claims, liens, charges, and expenses, including legal fees, that West Kootenay may at any time sustain, for any reason including without limiting generality the attachment of Shaw's facilities on Contact Poles or any interruption, or interference with Shaw's services to any of its subscribers caused or claimed to have been caused by West Kootenay, its servants or agents whether negligent or not. Shaw agrees at its expense to defend or provide such assistance to West Kootenay as may be required to defend any claim, suit or other proceeding and promptly pay any and all costs, charges, legal fees and other expenses incurred by West Kootenay relating thereto.

11.02 Shaw shall maintain, at its expense, comprehensive general liability insurance in an amount of not less than \$1,000,000 all inclusive of any one occurrence protecting West Kootenay against any claims arising directly or indirectly out of shared use by Shaw under this Agreement. A certificate of insurance shall be furnished to West Kootenay not less than 30 days prior to the proposed date for attaching any facilities on any poles. West Kootenay shall be named an additional insured and the policy shall contain a standard cross-liability clause. The policy shall provide that the insurance shall not be cancelled, reduced, restricted or changed in any way without the insurer giving at least 30 days' notice in writing to West Kootenay.

## 12. LABOUR DISPUTES

If either party becomes involved in a strike, lockout or other labour dispute which affects the use by the other party of a Contact Pole or its

equipment on a Contact Pole or a Clearance Contact Pole, the party involved in the labour dispute will use its best efforts to make reasonable provisions so that the other party's access to Contact Poles and to the equipment attached to them is not impeded, and the normal business operations of the other party is not interrupted.

13. RESOLUTION OF DISPUTES

If the parties are unable to resolve promptly any difference or dispute regarding any matter arising under this Agreement other than the pole rental rates calculated in accordance with the provisions of section 5.02, either party may request that the difference or dispute be settled by submission to arbitration. After giving the notice of the request to the other party, the parties shall refer the difference or dispute to a single arbitrator for determination. The procedure to be followed in connection with the submission shall be that set out in the Commercial Arbitration Act (British Columbia), and the decision of the arbitrator shall be final and binding on both parties.

14. TERMINATION WITHOUT CAUSE

14.01 Notwithstanding the provisions of section 2.02, at any time after June 30, 1998 West Kootenay may give notice to Shaw of its intention to terminate this Agreement without cause, and upon the giving of such notice this Agreement shall terminate at a time stated in that notice which shall not be earlier than five years from the date of giving notice.

14.02 If notice of termination is given pursuant to subsection 14.01, Shaw shall complete the removal of its equipment from Contact Poles by the termination date, subject to specific extensions which may be granted by West Kootenay if strict compliance is impracticable for which Pole Rental shall continue to apply.

14.03 The parties shall make financial adjustments concerning the removal of equipment, with the object of treating each party equitably in abating

the annual rental amount at approximately the same rate as the equipment is removed.

14.04 Notwithstanding termination of this Agreement representations, warranties, and liabilities for all events and costs relating to events which occurred prior to the termination date shall survive termination and continue in full force and effect for the benefit of the parties respectively after the termination date until extinguished.

15. TERMINATION FOR CAUSE

15.01 If either party commits a material breach of this Agreement and does not remedy that breach after reasonable notice has been given, the other party may give notice of intention to terminate and if that notice is given this Agreement shall terminate at a date specified in the notice which shall not be less than three months after the giving of the notice.

15.02 For the purposes of this section, an event of material breach may include, without limiting generality, an act of bankruptcy or receivership, an act or a known intention to dissolve or wind up, or failure after due notice to make payments required by this Agreement.

16. INVOLUNTARY TERMINATION AND TERMINATION BY MUTUAL AGREEMENT

The parties may at any time mutually agree to terminate this Agreement at any date satisfactory to both parties, and there shall be no payment of lost cost, and matters relating to abatement of payments, removal of equipment, and survival shall be governed as if termination had occurred pursuant to section 15.

17. FURTHER ASSURANCES

Each of the parties shall, from time to time and at all times hereafter, upon every reasonable written request so to do, make, do, execute and

deliver, or cause to be made, done, executed and delivered all further acts, deeds, assurances and things as may be necessary in the opinion of the other party or counsel to the other party more effectively implement and carry out the intent of this Agreement.

18. NON WAIVER OF RIGHTS

The failure of either party to pursue any remedy resulting from a breach of this Agreement by the other party shall not be construed as a waiver of that breach by that party or any other party, or as a waiver of any subsequent or other breach.

19. ENTIRETY

Except when specifically excluded from the provisions of this Agreement by an agreement in writing, there are no representations, warranties, agreements or covenants made by either of the parties to this Agreement and not contained in it, and this Agreement supersedes all prior agreements, whether written or oral, between the parties and constitutes the entire agreement of the parties relating to the matters to which it pertains.

20. ASSIGNMENT

Shaw shall not assign all or any part of this Agreement without the prior written consent of West Kootenay.

21. ENUREMENT

This Agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed under seal.

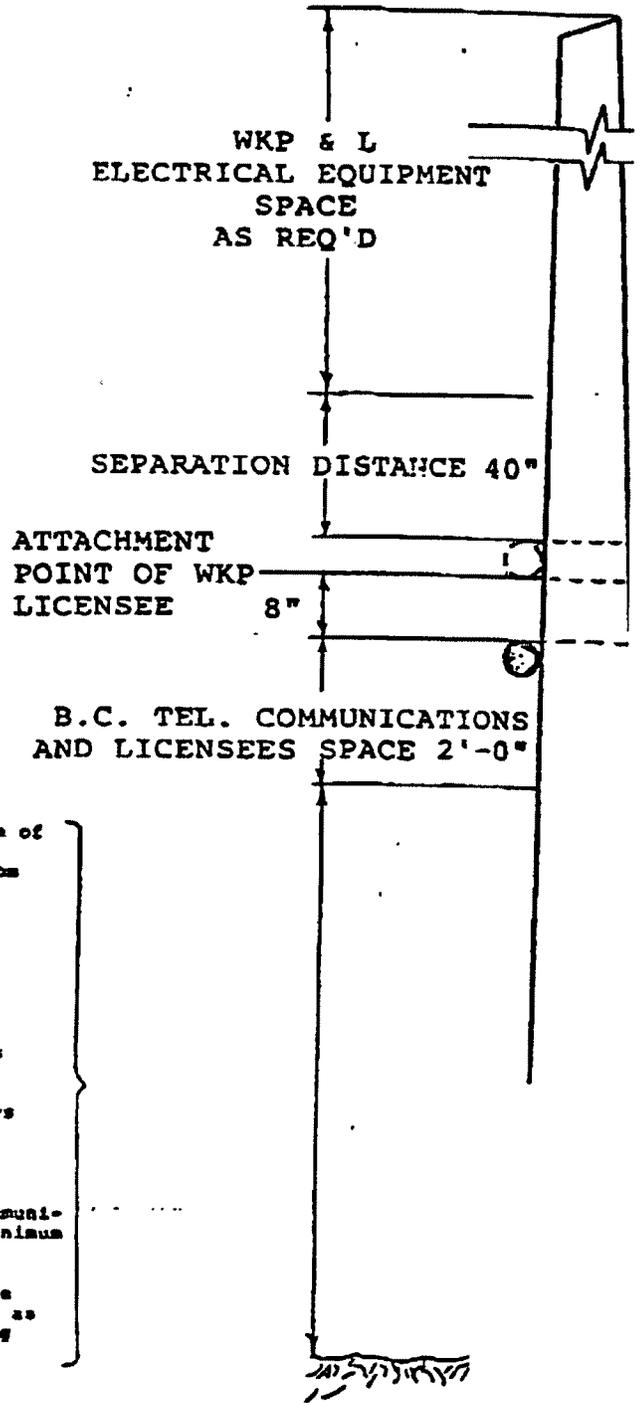
West Kootenay Power Ltd.

Shaw Cablesystems (B.C.) Ltd.

Per:   
Senior Vice-President, Operations

Per:   
\_\_\_\_\_

Per:   
Vice-President, Finance

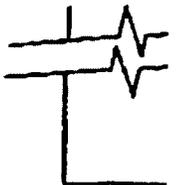


Shared poles, at the time of installation, shall be of sufficient length to permit the following heights, measured at the pole from ground level to the bottom of the B.C. Telephone space:

- a) Installations over ground accessible only to persons on foot....as appropriate, but not to result in conductor clearances to ground less than minimum CSA standards.
- b) Installations over roads other than highways, or over sidewalks and boulevards in urban areas .....18 feet.
- c) Installations over highways (provincial highways or the equivalent).....22 feet.
- d) Installations over railways.....27 feet.

The heights above are intended to result in telecommunications conductor clearances to ground exceeding minimum CSA standards over level and reasonable terrain.

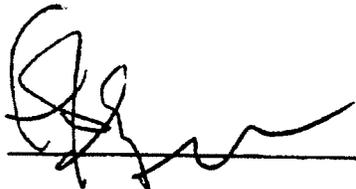
At all times, West Kootenay Power and B.C. Telephone District Representatives are to use these standards as a guide only, while determining the best engineering and economic solution in each circumstance.



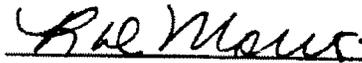
**LICENSE AGREEMENT FOR USE OF POLES**  
**ADDENDUM**

The following terms will form an addendum to the License Agreement dated December 3, 1990 between Shaw Cable and West Kootenay Power.

1. The rental rate for the calendar year 2001 will be \$16.75 for each West Kootenay pole to which Shaw attaches either trunk or distribution cable.
2. ~~There will be no charge for West Kootenay poles to which Shaw attaches drops except in the following circumstances.~~ In situations where Shaw attaches a drop cable to more than 3 West Kootenay poles in succession, all such poles will be paid at the rate of \$16.75. ( eg. 3 drop contacts in a row no charge, 4 drop contacts in a row the charge would be 4 times \$16.75 )
3. All ducts attached to a West Kootenay Power pole greater than 2 inches in diameter would be charged at \$16.75
4. ~~The maximum charge for each West Kootenay pole will be \$16.75~~
5. The pole attachment rate of \$16.75 will be subject to the annual inflation escalation as provided for in the agreement.
6. The number of poles for the 2001 billing by West Kootenay will be 5,549. ( Inventory count of 4,911 plus estimated additional contacts of 13% ) An adjustment to the number of charged poles for 2001 and subsequent years will take place after the next inventory count.
7. Shaw will pay for low voltage transmission contacts on invoice number 4042. The outstanding amount is \$21,514 plus GST.
8. Shaw will pay outstanding invoice number 4446 . This amount is \$122,427.87.



Les Gilbert (WKP)



Richard Morris ( Shaw )

October 3, 2001

**Appendix 4**

**2002 Memorandum of Understanding**



January 18<sup>th</sup>, 2002

Mark Warren  
UtiliCorp Networks Canada Ltd.  
1290 Esplanade, P.O. Box 130  
Trail, BC  
V1R 4L4

Dear Mr. Warren:

Re: Memorandum of Understanding between Shaw Cablesystems Company  
and UtiliCorp Networks Canada (British Columbia)

This letter will serve as a memorandum of Understanding ("MOU") between Shaw Cablesystems Company and its affiliates (collectively "Shaw") and UtiliCorp Networks Canada (British Columbia) and its affiliates (collectively "UtiliCorp") for the granting of a right to use certain fibres by Shaw to UtiliCorp.

**Penticton to Warfield fibre build ("PW Build")**

- Shaw will grant to UtiliCorp the right to use 6 strands of fibre within the PW Build in exchange for which UtiliCorp will waive all current and future pole rental fees payable by Shaw with respect to the PW Build.
- Shaw will grant to UtiliCorp the right to use up to and including 4 additional strands of fibre within the PW Build in exchange for cash consideration equal to cost of each fibre used by UtiliCorp plus installation charges plus 15% management fee. The exact amount of the cash consideration will not be definitively known until the completion of the PW Build.

Shaw will provide, for UtiliCorp's use, two racks at Shaw's shelter located along the PW Build, at mutually agreed rates or, if the parties are unable to agree, then at fair market rates to be determined by independent arbitration.

Shaw will provide ongoing maintenance of the fibre to be used by UtiliCorp at mutually agreed rates or, if the parties are unable to agree, then at fair market rates to be determined by independent arbitration.

**Penticton to Kelowna to Vernon fibre requirements ("PKV Requirements")**

Shaw will grant to UtiliCorp the right to use, at a minimum of 2 strands to a maximum of 6 strands of fibre at a mutually agreed to monthly rate or, if the parties are unable to agree, then at fair market rates to be determined by independent arbitration.

Shaw will provide ongoing maintenance of the fibre, as set out in the IRU at mutually agreed rates or, if the parties are unable to agree, then at fair market rates to be determined by independent arbitration.

Shaw Communications Inc.

Suite 900, 630 - 3rd Avenue SW, Calgary, Alberta T2P 4L4  
Telephone (403) 750-4500 • Facsimile (403) 750-4501



The parties agree to negotiate and execute a satisfactory irrevocable right of use agreement which shall contain mutually satisfactory terms reflecting the principles set out in this MOU, including, without limitation:

- A representation by Utilicorp that it does not now and will not, any time within the period commencing on the date hereof and expiring on February 17, 2003, provide Telecommunication Services to end user business customers and telecommunications carriers. Telecommunications Services means:
  - (a) the sale, transfer, assignment, lease, licence or grant of an indefeasible right to use any or all of the Fiber to any other telecommunications common carrier;
  - (b) the business of a competitive access provider, competitive local exchange carrier, or as a provider of non-residential long distance telephone services;
  - (c) switched and routed telecommunication services (other than Internet access services), both voice and data and local or long distance;
  - (d) local dedicated access and private line transmission services, both voice and data;
  - (e) voice and data application services, including, but not limited to, applications hosting, e-commerce hosting, unified messaging, networking security, virtual private networking and PKI/certificate authority; and
  - (f) Internet access services.
- Such other covenants, indemnities and conditions customary to a transaction such as the one contemplated by this MOU.

If the foregoing accurately sets forth your understanding of the terms of the arrangement to be documented between Shaw and UtiliCorp please so indicate by signing in the space provided for that purpose below, whereupon this letter shall constitute a binding agreement as of the date first above written.

Yours truly,

Shaw Cablesystems Company

Randy Elliot  
Senior Vice President Technical Services

Accepted

Utilicorp Networks Canada Ltd.

Mark Warren  
Manager, Asset Deployment

## **Appendix 5**

### **Transmission License Agreement**

## TRANSMISSION LICENSE AGREEMENT

<b>CONTRACT ID</b> <b>SHAW</b>
<b>REG #:</b> 63
<b>BARCODE:</b> 00000508

THIS AGREEMENT made as of the 1<sup>st</sup> day of July, 1999.

BETWEEN:

WEST KOOTENAY POWER LTD., a corporation duly incorporated by Special Act of the Legislature of the Province of British Columbia, having its head office at 1290 Esplanade, PO Box 130, Trail, BC V1R 4L4

(hereinafter called "WKP")

AND:

SHAW CABLESYSTEMS LTD., a general partnership formed under the laws of the Province of Alberta, having as its mailing address at 630 3<sup>rd</sup> Avenue SW Calgary, AB T2P 4L4

(hereinafter called "Shaw")

WITNESSES THAT WHEREAS:

- A. Shaw furnishes telecommunications service to subscribers in areas also supplied by WKP and has requested the use of WKP Transmission Poles to attach telecommunications cable;
- B. WKP is willing to grant Shaw a non-exclusive license to attach its facilities to WKP Transmission Poles in accordance with the terms and conditions set forth in this Agreement;
- C. WKP and Shaw have a separate license agreement for the attachment of Shaw facilities to WKP Distribution Poles (the "Distribution License Agreement").

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

## 1. DEFINITIONS

- (a) **“Transmission Pole”** means a WKP owned pole on which WKP supplies electricity at greater than 35,000 volts.
- (b) **“Transmission Pole Contact”** means a Transmission Pole which is attached or contacted by the Shaw Facilities with the express written consent of WKP.
- (c) **“Low Voltage Transmission Pole Contact”** means a Transmission Pole which is being contacted by Shaw with the express written consent of WKP, and supports conductor energized at above 35,000 volts but less than 130,000 volts.
- (d) **“High Voltage Transmission Pole Contact”** means a WKP Transmission Pole which is being contacted by Shaw with the express written consent of WKP, and supports conductor energized at above 130,000 volts.
- (e) **“Distribution Pole”** means a pole owned by WKP on which the maximum voltage of any energized conductor does not exceed 35,000 volts. Specifically excluded from this definition are poles where a circuit energized at 35,000 volts or less has been underbuilt on a pole supporting a circuit energized in excess of 35,000 volts.
- (f) **“Good Utility Practice”** means any of the practices, methods and acts engaged in, or approved by, a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted by electric utilities in the Province of British Columbia.

- (g) **“Shaw Facilities”** means any and all works, including cables, conduits, wires, meters, communications transmission facilities and all related or appurtenant attachments or equipment owned by and required by Shaw to carry out its business and undertaking.

## **2. SCOPE AND TERM OF AGREEMENT**

- 2.01 This Agreement sets forth and is intended to govern all relationships between the parties concerning shared use of Transmission Poles. The Distribution License Agreement governs all relationships between the parties concerning shared use of Distribution Poles.
- 2.02 Unless sooner terminated under the provisions of subsection 14.01 hereof, this Agreement shall remain in force for an initial term of ten (10) years commencing January 1, 1996, and this agreement shall be deemed to be renewed pursuant to the same terms and conditions as otherwise set out in the Agreement for a further ten year term and subsequent ten year terms thereafter until one party gives the other written notice of termination which shall not be effective earlier than the expiration date of the immediately succeeding term.
- 2.03 WKP hereby grants to Shaw, and Shaw shall have the right and license, subject to the terms and conditions of this Agreement, to install, construct, inspect, use, operate, maintain, remove, relocate, repair and replace the Shaw Facilities on, Transmission Pole Contacts and in, under and over the rights of ways on which they reside (collectively, the “ROW”), in accordance with Section 3 of this Agreement.

### **3. PLACEMENT OF SHAW'S FACILITIES**

#### **3.01 Standards**

- (a) All Transmission Poles and all equipment fixed to them and the construction, installation and maintenance of Transmission Poles shall conform at the time of installation with the minimum standards set by the Canadian Standards Association and shall also conform at the time of installation to such additional or higher standards as may be determined by WKP from time to time.
- (b) Shaw's cables installed on WKP Transmission Poles will only be self supporting non-metallic fibre optical cables unless authorized in writing by WKP.

#### **3.02 Attachment of Facilities**

WKP will only permit Shaw's Facilities to be attached to WKP Transmission Poles when all of the following conditions are met:

- (a) Shaw has requested in writing that the Shaw Facilities be attached to WKP Transmission Poles and an authorized WKP employee has agreed to the attachment in writing;
- (b) Shaw has paid to WKP costs that are reasonably incurred by WKP with respect to its engineering, design, and legal work or other professional fees and disbursements to review the proposed attachment of the Shaw Facilities to the Transmission Poles as required by WKP to satisfy its engineering standards and requirements and/or the standards of competent regulatory bodies having jurisdiction; all as estimated in advance by WKP, acting reasonably;
- (c) Shaw has paid to WKP all construction, installation and additional costs, such as guying and anchoring of the Transmission Poles, plus a 15 % premium of such costs, which are in WKP's reasonable opinion required as a result of attachment of the Shaw Facilities to the Transmission Poles by Shaw and all as estimated in advance by WKP, acting reasonably. Any adjustments to be made in the construction, installation and additional costs shall be made between the parties hereto within 60 days of the final

determination of such costs; and

- (d) Conduit, cable, and related supports connecting underground installations to Shaw's Facilities on the Transmission Poles may only be installed by WKP in accordance with standards set by WKP, as may be modified from time to time. Shaw shall ensure that all of Shaw's Facilities are grounded in accordance with Canadian Electrical Code specifications. Shaw shall not perform maintenance on the Shaw Facilities attached to the Transmission Pole Contacts except in the junction boxes at the base of Transmission Pole Contacts, or on Transmission Pole Contacts to a height not to exceed 10 feet above ground level, and in no case within the applicable limits of approach to live conductors, as determined by WKP, without the consent of WKP.

### 3.03 Maintenance of Equipment

If Shaw requires maintenance of the Shaw Facilities attached to Transmission Pole Contacts, including, without limitation, removal, attachment, or replacement of Shaw's cable, then such maintenance will be performed by WKP or its agent and Shaw shall be responsible for all WKP's costs that are reasonably incurred in connection with the same plus a 15% premium. WKP will use reasonable efforts to perform requested maintenance in a timely fashion. If WKP can schedule maintenance for Shaw concurrent with maintenance of its own equipment, then Shaw will only be charged for WKP's incremental costs, plus 15%, and will not be charged for mobilization.

Where it is necessary for cable splicing or repair to be performed, such work will be performed by Shaw, under the supervision of WKP, with WKP's costs that are reasonably incurred being reimbursed at WKP's supervision costs plus 15%.

The above notwithstanding, Shaw may maintain power supplies installed on Low Voltage Transmission Pole Contacts, without WKP's supervision.

Shaw Facilities installed on a Transmission Pole Contacts shall be maintained at Shaw's cost to the satisfaction of WKP.

#### 3.04 Ownership of Shaw's Facilities

Any and all of Shaw's Facilities attached to or located on a Transmission Contact Pole shall be deemed not to be a fixture and the Shaw Facilities shall remain at all times the property of Shaw notwithstanding any attachment or affixation to the Transmission Pole. The use of space on a Transmission Pole Contact by Shaw does not include or imply a transfer of any right, title or interest in or to the Transmission Contact Pole other than the rights granted to Shaw under this Agreement. Care, maintenance, repair, custody and control of the Transmission Poles shall at all times remain with WKP.

3.05 WKP warrants and represents that the construction and installation work shall be carried out in a good and workmanlike manner.

### **4. INVENTORY AND ADMINISTRATION OF TRANSMISSION CONTACTS**

#### 4.01 New Transmission Pole Contacts

If Shaw wishes to have an existing WKP Transmission Pole become a Transmission Pole Contact, Shaw shall advise the WKP Director of Transmission and Distribution of the same in writing. If WKP decides the WKP Pole in question is suitable for shared use, Shaw will be notified in writing within 30 days of the receipt of the request and WKP will make reasonable efforts to accommodate the request after Shaw has paid the estimated cost of attachment in accordance with Section 3.02. Only WKP personnel will attach Shaw Facilities to WKP Transmission Poles, unless otherwise authorized in writing by WKP's Director of Transmission and Distribution.

#### 4.02 Voluntary Abandonment

Shaw may abandon its use of a Transmission Pole Contact only with 90 days prior notice to WKP. All costs that are reasonably incurred with respect to removal will be borne by Shaw, and will be billed to Shaw at WKP's full cost plus 15% premium. WKP will use reasonable efforts to comply with Shaw's request in a timely fashion.

- 4.03 On or before January 30<sup>th</sup> of each calendar year, WKP shall provide Shaw with an adjusted count of Transmission Pole Contacts as of December 31 of the previous calendar year (the "Adjusted Count") reflecting changes in the number of Transmission Pole Contacts during the previous year.
- 4.04 If Shaw disputes WKP's Adjusted Count as set out in the January 30<sup>th</sup> statement, the parties will jointly perform an inventory of the Transmission Pole Contacts by June 30<sup>th</sup> of the calendar year following the calendar year in question. Each party hereto shall bear its own costs of conducting such inventory. The results of such joint inventory shall determine the number of Transmission Pole Contacts and shall be binding on the parties hereto.

## **5. POLE RENTAL**

- 5.01 Shaw shall pay an annual pole rental based on a charge of \$12.40 for each Low Voltage Transmission Pole Contact in 1999 and \$40.00 for each High Voltage Transmission Pole Contact, both adjusted annually by the percentage change in the all items consumer price index for British Columbia as determined by Statistics Canada, or its successor, for the prior calendar year.
- 5.02 Shaw shall pay an annual pole rental to WKP for Transmission Poles Contacts which shall be an amount equal to the product of the applicable pole rental rates for the calendar year as set out in subsection 5.01 hereof and the averages of the number of Low Voltage and High Voltage Transmission Pole Contacts established by the Adjusted Count as of December 31 of the previous calendar year and the Adjusted Count as of December 31 of the current calendar year.

The annual pole rental shall be calculated and invoiced by WKP in the following manner:

- (i) The estimated annual pole rental for each calendar year shall be calculated by WKP in January of such calendar year and invoiced as of May 30th by multiplying the applicable pole rental rates for the prior calendar year by the averages of the actual numbers of High Voltage and Low Voltage Transmission Pole Contacts established by the Adjusted Count on December 31 of the previous calendar year;
- (ii) The actual pole rental amount for each calendar year shall be invoiced by WKP on or before January 30<sup>th</sup> of the following calendar year and shall be calculated as in subsection 5.02, using the average numbers of actual Low Voltage and High Voltage Transmission Pole Contacts as determined by the Adjusted Count for such calendar year and the Adjusted Count for the previous calendar year. The amount invoiced by WKP pursuant to subsection 5.02 (i) above shall be deducted from the actual pole rental for the year determined by this paragraph and the resulting difference, where it represents an amount owing by Shaw, shall be the balance owing for the annual pole rental for the previous calendar year and shall be paid by Shaw on or before 30 days from the date of the calculation. Where the resulting difference represents an amount owing to Shaw, WKP shall pay to Shaw the difference on or before 30 days from the date of the calculation.

## **6. PAYMENT**

6.01 The invoices issued on or about January and May 30th of each year shall be paid within 30 days of mailing of the invoice.

6.02 Unless disputed pursuant to subsection 4.04 hereof, any amount required to be paid which is not paid within the time required shall be deemed to be in arrears and shall bear interest at the rate of 2% above the prime rate set by the Bank of Montreal, for its most credit worthy commercial customers from the date payment was due.

6.03 If any payment due from Shaw to WKP is in arrears for more than 60 days, WKP may give notice of such non-payment to Shaw and may, on the 30th day following such notice, commence whatever procedures it considers necessary to cause the removal of Shaw Facilities from Transmission Pole Contacts, unless Shaw has, during the said notice period, either paid the amount in arrears with interest or provided notice of dispute to WKP of all or part of the amount due.

## **7. EASEMENTS AND RIGHTS-OF-WAY**

7.01 Subject to the provisions of this Agreement, WKP hereby grants, during the term of this Agreement, Shaw, its employees, contractors and agents the right to access and egress on, under or over the ROW to do all acts and exercise all rights granted to Shaw in this Agreement to the extent permitted by the ROW held by WKP.

7.02 WKP shall be responsible for acquisition and maintenance of all easements, rights-of-way and permits relating to the location, use, and access for maintenance and repair of the Transmission Poles and shall use reasonable efforts to ensure that its ROW includes the right by a third party to use the ROW and Transmission Poles for the purposes granted to Shaw in this Agreement. Any costs reasonably incurred by WKP outside the ordinary course of its business to obtain such easements or amendments to its ROW in favour of Shaw shall be Shaw's responsibility subject to Shaw first approving in writing the costs for the same.

7.03 If WKP is unable to obtain an easement, right-of-way, or permit which grants to Shaw the necessary rights as contemplated by this Agreement, Shaw shall be responsible for obtaining its own easement, right-of-way or permit for access to the property. In such cases WKP shall cooperate with Shaw in good faith and provide Shaw with reasonable assistance in obtaining Shaw's own right of way and hereby consents to Shaw's use of such ROW for the purposes set out in this Agreement.

7.04 Notwithstanding the reasonable efforts of WKP pursuant to subsection 7.02, if relocation or removal of a Transmission Pole is required because of inadequate rights-of-way, easements or permits relating to the location, use and access for maintenance and repair of Transmission Contacts, each party shall be responsible for the cost of transferring its own equipment to a relocated pole, or for the cost of installation for any alternate facilities.

## **8. RELOCATION, REPLACEMENT AND REPAIR OF TRANSMISSION CONTACTS**

8.01 In any case deemed by WKP to constitute an emergency, WKP may relocate or transfer Shaw's equipment upon notice to the emergency contact as provided by Shaw and Shaw shall, on demand, reimburse WKP for any expense hereby incurred. Notwithstanding any other provision contained in this Agreement including, without limitation, the foregoing, if any relocation of the Shaw Facilities is required by a third party, WKP shall use its reasonable efforts to ensure that the third party pays for all the costs incurred by Shaw to carry out such relocation and WKP shall reimburse Shaw for any and all costs of relocating or transferring Shaw's Facilities which WKP recovers from any third party.

8.02 If Shaw damages the equipment of WKP, WKP shall report to Shaw the cost of repair or replacement required solely because of that damage, and Shaw shall reimburse WKP for the cost of repair or replacement reasonably incurred by WKP within 30 days of invoicing.

8.03 If WKP damages the Shaw Facilities by an act or omission of one of its employees, contractors or agents, WKP shall reimburse Shaw for the costs of repair reasonably incurred, but WKP shall not be responsible for lost revenue or any other indirect losses that may be incurred by Shaw. If Shaw damages WKP equipment by an act of one of its employees, contractors, or agents, Shaw shall reimburse WKP for the costs of repair reasonably incurred, but when acting in compliance with the requirements of this Agreement, Shaw will not be responsible for lost revenue or any other indirect losses that may be incurred by WKP.

8.04 If damage is caused to a Transmission Pole Contact by the action or omission of a third party, costs of repairing the Transmission Pole Contact will be borne by WKP, and each party will bear the costs of repairing or replacing its own equipment.

8.05 If WKP requires a Transmission Pole Contact for its own use without contact by Shaw, or wishes to replace or relocate a Transmission Contact Pole, and such relocation or replacement is required so that WKP can operate its equipment in accordance with Good Utility Practice, WKP shall give Shaw a minimum of 90 days' written notice to remove the Shaw Facilities from the Transmission Pole Contact, or as much additional notice as the circumstances warrant. The notice shall stipulate a date by which all Shaw Facilities will be removed. WKP will bill Shaw for the costs that are reasonably incurred by WKP plus a premium of 15% in removing the Shaw Facilities.

## **9. EXPROPRIATION OR PREVENTION BY PUBLIC AUTHORITY**

If a Transmission Pole Contact is expropriated or if through any act or omission of a public authority of competent jurisdiction or if because of an order of a court of competent jurisdiction either party is prevented from using a Transmission Pole Contact as contemplated by this Agreement, each party shall bear its own losses and costs which result from the prevention, subject to the provisions of subsection 8.01 hereof.

## **10. TAXES**

Shaw shall promptly pay all taxes, assessments and levies relating to the Shaw Facilities and its use of the Transmission Pole Contacts as levied by a taxation authority having jurisdiction. Neither party hereto shall be required to contribute to the payment of any taxes, assessments or levies relating to the property of the other party.

## **11. INDEMNIFICATION AND INSURANCE**

11.01 Except as provided in subsection 8.03, Shaw shall not make any claim against WKP with regard to Transmission Pole Contacts, and shall indemnify and hold harmless WKP and its representatives and each of them from and against any and all liability whatsoever for losses, damages, claims, liens, charges, and expenses, including reasonable legal fees, that WKP may at any time sustain, arising as a result of the attachment of Shaw's Facilities on Transmission Contact Poles, caused or claimed to have been caused by Shaw, its servants or agents whether negligent or not. Shaw agrees at its expense to defend or provide such assistance to WKP as may be required to defend any claim, suit or other proceeding and promptly pay any and all costs, charges, legal fees and other expenses incurred by WKP relating thereto.

Neither Shaw nor WKP shall be liable for special, indirect or consequential damages.

11.02 If WKP receives notice of the commencement or assertion of any claim by a third party, WKP shall give Shaw reasonably prompt written notice thereof, but in any event such notice shall be given no later than 30 days after receipt of such notice of such claim by a third party. Such notice to Shaw shall describe the claim by a third party in reasonable detail and shall indicate, if reasonably practicable, the estimated amount of the loss that has been or may be sustained by Shaw. Shaw shall have the right to participate in the conduct of the defense and WKP will keep Shaw advised and consult with Shaw on strategic and tactical decisions.

11.03 Each party will use all reasonable efforts to make available to the other party those employees whose assistance, testimony or presence is necessary to assist either party in evaluating and in defending any claim by a third party; and all documents, records and other materials in the possession of either party reasonably required by the other party for its use in defending any claim by a third party, and shall otherwise cooperate with the party defending such claim by a third party. Each

party shall be responsible for all reasonable expenses associated with making such documents, records and materials available.

11.04 Shaw shall maintain, at its expense, comprehensive general liability insurance in an amount of not less than \$5,000,000 all inclusive of any one occurrence protecting WKP against any claims arising directly or indirectly out of shared use by Shaw under this Agreement. A certificate of insurance shall be furnished to WKP not less than 30 days prior to the proposed date for attaching any facilities on any poles. WKP shall be named an additional insured and the policy shall contain a standard cross-liability clause. The policy shall provide that the insurance shall not be cancelled, reduced, restricted or changed in any way without the insurer giving at least 30 days' notice in writing to WKP.

## **12. LABOUR DISPUTES**

If either party becomes involved in a strike, lockout or other labour dispute which affects the use by the other party of a Transmission Pole Contact or its equipment on a Transmission Pole Contact, the party involved in the labour dispute will use its best efforts to make reasonable provisions so that the other party's access to Transmission Pole Contacts and to the equipment attached to them is not impeded, and the normal business operations of the other party is not interrupted.

## **13. RESOLUTION OF DISPUTES**

If the parties are unable to resolve promptly any difference or dispute regarding any matter arising under this Agreement other than the pole rental rates calculated in accordance with the provisions of section 5.01, either party may request that the difference or dispute be settled by submission to arbitration. After giving the notice of the request to the other party, the parties shall refer the difference or dispute to a single arbitrator for determination. The procedure to be followed in connection with the submission shall be that set out in the Commercial Arbitration Act (British Columbia), and the decision of the arbitrator shall be final and binding on both parties.

#### **14. TERMINATION WITHOUT CAUSE**

14.01 Notwithstanding the provisions of subsection 2.02, at any time after June 30, 1998 WKP may give notice to Shaw of its intention to terminate this Agreement without cause, and upon the giving of such notice this Agreement shall terminate at a time stated in that notice which shall not be earlier than ten years from the date of giving notice.

14.02 If notice of termination is given pursuant to subsection 14.01, Shaw will pay WKP's costs that are reasonably incurred of removal of the Shaw Facilities plus a premium of 15%.

14.03 Notwithstanding termination of this Agreement representations, warranties, and liabilities for all events and costs relating to events which occurred prior to the termination date shall survive termination and continue in full force and effect for the benefit of the parties respectively after the termination date until one year beyond any statutory requirement therefor.

#### **15. TERMINATION FOR CAUSE**

15.01 If either party commits a material breach of this Agreement and does not remedy that breach after reasonable notice has been given, the other party may give written notice of intention to terminate and if that notice is given this Agreement shall terminate at a date specified in the notice which shall not be less than 90 days after the giving of the notice.

15.02 For the purposes of this section, an event of material breach may include, without limiting generality, an act of bankruptcy or receivership, an act or a known intention to dissolve or wind up, or failure after due notice to make payments required by this Agreement.

**16. REMOVAL OF EQUIPMENT**

At the end of the Term, Shaw shall be entitled to remove the Shaw Facilities in accordance with section 3.03 hereof.

**17. INVOLUNTARY TERMINATION AND TERMINATION BY MUTUAL AGREEMENT**

The parties may at any time mutually agree to terminate this Agreement at any date satisfactory to both parties, and there shall be no payment of lost cost, and matters relating to abatement of payments, removal of equipment, and survival shall be governed as if termination had occurred pursuant to section 15.

**18. FURTHER ASSURANCES**

Each of the parties shall, from time to time and at all times hereafter, upon every reasonable written request so to do, make, do, execute and deliver, or cause to be made, done, executed and delivered all further acts, deeds, assurances and things as may be necessary in the opinion of the other party or counsel to the other party the intent of this Agreement. Shaw and WKP shall, at all times, comply with all laws, regulations, by-laws, orders, decisions, rules, standards and directions of any public authority in Canada having jurisdiction

**19. NON WAIVER OF RIGHTS**

The failure of either party to pursue any remedy resulting from a breach of this Agreement by the other party shall not be construed as a waiver of that breach by that party or any other party, or as a waiver of any subsequent or other breach.

## **20. ENTIRETY**

Except when specifically excluded from the provisions of this Agreement by an agreement in writing) there are no representations, warranties, agreements or covenants made by either of the parties to this Agreement and not contained in it, and this Agreement supersedes all prior agreements, whether written or oral, between the parties and constitutes the entire agreement of the parties relating to the matters to which it pertains.

## **21. ASSIGNMENT**

Except pursuant to clause 21, subsections (1), (2), (3) and (4), this Agreement and the rights herein granted and the obligations undertaken may not be assigned by Shaw, in whole or in part, without the prior written consent of WKP. Such consent shall not be unreasonably withheld.

A partial assignment of Shaw's Facilities to any person shall not constitute an assignment for the purposes of this Agreement and the partial assignment shall not relieve Shaw from its obligations for pole rental and all other contractual arrangements in this Agreement.

Shaw may assign all or any part of this Agreement without the prior written consent of WKP subject to the following conditions:

- (1) sale or assignment of all or part of Shaw's equipment does not constitute a release of Shaw's obligation for payment of pole rental and all other contractual arrangements in this agreement except to the extent that such assignee has assumed in writing with WKP such obligations. The non-assigning party shall be provided with documentation satisfactory to it, in its sole reasonable discretion, to confirm that the assignee will have the financial assets to assume all of the terms and conditions of this Agreement.
- (2) Shaw is required to inform the purchaser or assignee in writing of WKP's rights under this agreement and
- (3) the provisions of subsection 7.03 will apply equally to Shaw and the purchaser or assignee.

- (4) Shaw shall provide WKP with the name and address of the purchaser, or assignee, and proof that section 21 (2) has been satisfied within 30 days of the assignment or purchase

**22. ENUREMENT**

This Agreement shall be binding upon and shall enure to the benefit of the parties and their respective successors and permitted assigns.

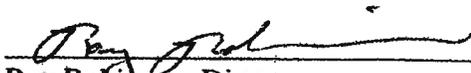
**23. SEVERABILITY**

If any provision of this Agreement or the application of a provision to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement or the application of that provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed under seal.

WEST KOOTENAY POWER LTD.

Per:

  
Ray Robinson, Director  
Transmission & Distribution

Per:

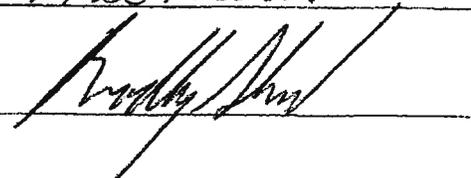
  
Robert Hobbs, Director  
Regulatory & Government Affairs

SHAW CABLESYSTEMS LTD.

Per:

  
Bill Meud

Per:

  
\_\_\_\_\_

## **Appendix 6**

### **2004 Memorandum of Understanding**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this 8<sup>th</sup> day of November, 2004, by and among Shaw Cablesystems Limited ("Shaw"), Big Pipe Inc. ("Big Pipe") and FortisBC Inc. ("FortisBC") with respect to (a) Big Pipe's granting to FortisBC of an indefeasible right to use certain fiber-optic strands contained within fibre-optic facilities owned and installed by Shaw pursuant to the Licences (as hereinafter defined) and over which Big Pipe has certain rights of use between Vernon, British Columbia and Penticton, British Columbia; (b) FortisBC's construction on behalf of Shaw, pursuant to the Licences, of fiber-optic facilities between Penticton, British Columbia and Okanagan Falls, British Columbia (the "RGA Fibre") and Big Pipe's granting to FortisBC of an indefeasible right to use certain fibre-optic strands contained within such facilities, once constructed; and (c) the sale by Big Pipe of certain material and fiber-optic cable equipment to FortisBC for the purpose of FortisBC's proposed construction of fiber-optic facilities, to be owned by FortisBC, between Okanagan Falls, British Columbia and Oliver, British Columbia, and FortisBC's granting to Shaw of an option to purchase such facilities;

**Background**

- A. FortisBC is constructing the new Vaseux Lake Terminal Station ("Vaseux") in the south Okanagan in conjunction with FortisBC's South Okanagan Supply Reinforcement Project (the "Project");
- B. As part of the Project FortisBC is required to provide a communication system for the protection and control of the interconnection of FortisBC's and the British Columbia Transmission Corporation's system;
- C. Shaw owns fiber-optic facilities between Penticton and Vernon that are attached to FortisBC's power transmission facilities under the provisions of a Licence Agreement for Use of Poles dated December 3, 1990 and a Transmission License Agreement dated July 1, 1999 (together, the "Licences");
- D. Pursuant to an arrangement between Shaw and Big Pipe, Big Pipe has certain rights of use over Shaw's fibre-optic facilities described in Recital C above;
- E. FortisBC and Big Pipe have agreed in principle that, subject to the negotiation of commercial arrangements agreeable to both parties, Big Pipe will grant to FortisBC an indefeasible right to use certain fibre-optic strands contained within Shaw's existing fiber-optic facilities between Penticton and Vernon;
- F. FortisBC owns power transmission facilities between Penticton and Okanagan Falls, and FortisBC and Shaw have agreed, subject to Shaw's compliance with the conditions set out in the Licences, that FortisBC shall grant Shaw the right to attach fiber-optic facilities to such FortisBC power transmission facilities, that FortisBC will construct the fiber-optic facilities on Shaw's behalf, and that once such fibre-optic facilities are constructed, Big Pipe will grant to FortisBC an indefeasible right to use certain fibre-optic strands contained within those fiber-optic facilities; and
- G. Big Pipe has agreed to sell to FortisBC and FortisBC has agreed to purchase from Big Pipe the fiber-optic cable and splicing materials, fiber enclosures and vaults required by FortisBC to construct fiber-optic facilities between Okanagan Falls and FortisBC's Oliver

substation, and FortisBC has agreed to grant to Shaw an option to purchase such facilities, once constructed.

Now therefore, in consideration of the mutual covenants and agreements hereinafter set out, the parties agree as follows:

### **Agreements**

1. Big Pipe agrees to grant to FortisBC the exclusive right to use six (6) fiber-optic strands contained within Shaw's fiber-optic facilities from FortisBC's R.G. Anderson substation in Penticton ("RGA") to BC Hydro's Vernon substation, for a monthly fee of \$8,993.71, plus GST which includes basic and emergency maintenance services for the fiber-optic strands, and a 6 fiber interconnect in Kelowna to the Fortis demarcation point at 2850 Benvoulin Road, for a term of 15 years unless one party gives the other written notice of termination, provided that the right to terminate is only available to either party in the event the other party is in material default of its obligations under the IRU agreement. The IRU agreement may be renewed at FortisBC's election, on the same terms and conditions as set out in the original term for a further 15 year term. FortisBC will be responsible for the cost of making such fiber-optic strands available, including all interconnections to its facilities, including without limitation the costs to splice the fiber-optic strands, the demarcation of the fibers and all costs related to any lateral fibre builds required to complete interconnections, and provision of access to FortisBC's facilities and/or buildings.
2. FortisBC and Shaw agree to construct new fiber-optic facilities between RGA and Okanagan Falls. It is agreed that Shaw will pay for the cost of supplying the fiber-optic cable and suspension assembly facilities necessary for the construction of this particular fiber build between RGA and Okanagan Falls and FortisBC will be responsible for the costs of design work and the costs of construction of such fiber-optic facilities and attaching them to its existing power transmission facilities and/or the purchase and installation of new power transmission facilities, including without limitation installing all fiber, duct structure and splice vaults and demarcation of the fibers but excluding the costs for Shaw splicing fiber at each splice point, which will include termination points at RGA and Okanagan Falls. FortisBC acknowledges that it has acquired all easements, rights-of-ways and permits underlying its power transmission facilities located between the termination points at RGA and Okanagan Falls and that the same include rights for use for telecommunications purposes. In the event the parties are required to acquire any additional permits and rights of access, FortisBC and Shaw will share the costs of obtaining such additional permits and rights of access to properties underlying the power transmission facilities in proportion to the number of fiber-optic strands allocated to FortisBC divided by the total number of fiber-optic strands in the RGA Fibre. FortisBC agrees that if, within 5 years after completion of construction of the fibre build described in this paragraph, FortisBC replaces its Line No. 40 (on which the fibre build is proposed to be installed), it will reimburse Shaw for all reasonable costs actually incurred by Shaw in moving the fibre-build to a replacement or other FortisBC transmission line.
3. Big Pipe agrees to grant to FortisBC the exclusive right to use twelve (12) fiber-optic strands contained within Shaw's fiber-optic facilities running from RGA to the termination point at Okanagan Falls, once construction thereof is completed, at no cost to FortisBC for a term of 15 years with an option to renew for a further 15 years on the

same terms as the first term. The pole rental payments due under the Licenses for contacts on the transmission facilities between RGA and Okanagan Falls will be the then current annual pole rental multiplied by a factor of 5/6 for so long as FortisBC has the exclusive right to use the twelve (12) fiber-optic strands between RGA and Okanagan Falls.

4. Big Pipe agrees to sell to FortisBC such 72 strand ADSS fiber-optic cable at a rate of \$7.50 per meter (without any overhead recovery) and all other material, including but not limited to, splice vaults, conduit, and fiber optic splice cabinets at Big Pipe's cost (plus 15% overhead recovery), as may be required by FortisBC to construct fiber-optic facilities between the termination point at Okanagan Falls and FortisBC's Oliver substation.
5. FortisBC agrees to provide Shaw with an irrevocable, exclusive option to purchase FortisBC's fiber-optic facilities running from Okanagan Falls to the termination point at Oliver for an amount equal to the net book value of FortisBC's fibre-optic facilities, inclusive of the materials described in paragraph 4 above, at the time of the exercise of the option. If Shaw wishes to exercise the option to purchase, it must do so within 15 years from the completion of the construction of FortisBC's fiber-optic facilities from Okanagan Falls to the termination point at Oliver.
6. A condition of Shaw's purchase of FortisBC's fiber-optic facilities from Okanagan Falls to the termination point at Oliver is that Big Pipe must grant to FortisBC the exclusive right to use twelve (12) fiber-optic strands contained within Shaw's fiber-optic facilities from Okanagan Falls to the termination point at Oliver for a term equal to fifteen (15) years minus the number of years the FortisBC's fiber-optic facilities from Okanagan Falls to the termination point at Oliver have been constructed, subject to payment by FortisBC to Big Pipe of the IRU fees together with all other fees and impositions customarily paid under an IRU and subject to all other terms and conditions to be negotiated at the time of granting of the IRU for these twelve (12) fiber-optic strands.
7. Shaw and Big Pipe will cooperate with FortisBC in the demarcation of the fiber-optic facilities to be used by FortisBC so that FortisBC will have exclusive access and control of such facilities, in accordance with the requirements of the Western Electricity Coordinating Council.
8. Shaw, Big Pipe and FortisBC agree to cooperate and use their commercially reasonable efforts to formulate the necessary work schedule and budget estimates as soon as possible, so as to be able to complete the demarcation of the existing fiber-optic facilities between RGA and Vernon and construction of the new fiber-optic facilities between RGA and Okanagan Falls.
9. It is the intention of the parties to negotiate in good faith with a view to finalizing, within ninety (90) days of the date of execution of this Memorandum of Understanding, such formal commercial agreements and other documents as may be necessary to carry out the intent of this Memorandum of Understanding (the "Agreements"). This Memorandum of Understanding shall serve as a binding agreement between the parties until such time as the Agreements are executed by FortisBC, Shaw and Big Pipe, as applicable. If FortisBC, Shaw and Big Pipe are unable to complete and execute the Agreements on or before the foregoing date, such delay will not prejudice the binding nature of this

Memorandum of Understanding and the parties shall continue to work in good faith to conclude the Agreements. By execution of this Memorandum of Understanding, the parties authorize the commencement of the construction at the RGA Fibre and granting of an IRU between Vernon, British Columbia and Penticton, British Columbia with the effective date being the date of this Agreement.

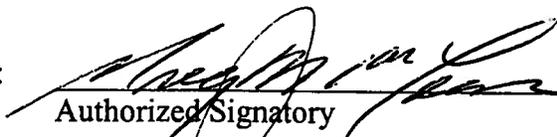
10. Notwithstanding any provision contained herein to the contrary, FortisBC represents and warrants that it shall not at any time during the term of its use of any fibre provided to it by Big Pipe as contemplated under this Memorandum of Understanding provide telecommunications services to end users, including without limitation, residential and business customers and/or telecommunications common carriers. For the purpose of this Memorandum of Understanding the term "telecommunications services" has the meaning set forth in the *Telecommunications Act* and shall include without limitation:

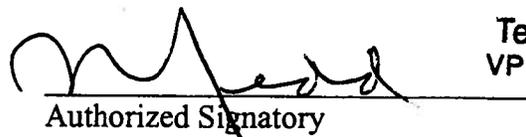
- (a) the sale, transfer, assignment, lease, license or grant of an indefeasible right to use any or all of the fibre-optic strands it receives from Big Pipe to any other telecommunication common carrier (as that term is defined in the *Telecommunications Act*), including without limitation a party licensed to provide a broadcasting and/or distribution undertaking (as those terms are described in the *Broadcasting Act*), including cable services, video pay per view or other programming services;
- (b) the business of a competitive access provider, competitive local exchange carrier, or a s a provider of non-residential long distance telephone services;
- (c) switched and routed telecommunication services, both voice and data and local or long distance;
- (d) local dedicated access and private line transmission services, both voice and data;
- (e) voice and data application services, including, but not limited to application hosting, e-commerce hosting, unified messaging, networking security, virtual private networking and PKI/certificate authority; and Internet access services.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be duly executed as of the date first above written.

BIG PIPE INC.

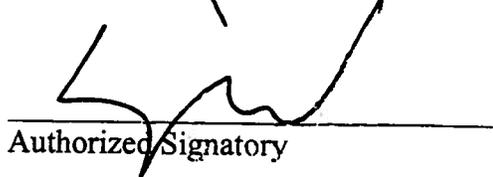
SHAW CABLESYSTEMS LIMITED

By:   
Authorized Signatory

By:   
Authorized Signatory

Terry Medd  
VP Operations

By:   
Authorized Signatory

By:   
Authorized Signatory



FORTISBC INC.

By: *D. L. Debienne*  
Authorized Signatory

D. L. Debienne .  
Vice President, Operations

## **Appendix 7**

### **2008 Agreement (8 Principles)**

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**From:** Sam, Doyle  
**Sent:** Wednesday, September 03, 2008 1:41 PM  
**To:** 'Mike Hall'  
**Cc:** Gibney, Bob; Lee, Chuck; Gill, Navdeep  
**Subject:** RE: Business Terms on Grand Forks Fiber

Hi Mike:

This memo confirms our agreement in principle to the terms outlined below. Navdeep has started thinking about what agreements we will need to enact and I would suggest a conference call to confirm this as well as discuss the effective date, which we would like to see by year end.

Bob also suggested that in addition to Shaw working with INAC and OIB, you may also wish to engage the Okanagan Nation Alliance (ONA).

Thks, doyle

---

**From:** Mike Hall [mailto:mike.hall@sjrb.ca]  
**Sent:** Tuesday, August 26, 2008 4:11 PM  
**To:** Sam, Doyle  
**Subject:** Fw: Business Terms on Grand Forks Fiber

Hi Doyle, forgot to ask and similar to yourself we just started our holidays today. Do you know when you might be able to get back to us with your email confirmation? I don't want Chris Ewasiuk to contact the OIB until we hear from you and ensure you and I are aligned. Thanks.

-----  
Mike Hall  
Vice President Operations  
Shaw Cablesystems G.P.  
p: 403.750.4511

---

**From:** Mike Hall  
**To:** Sam, Doyle  
**Sent:** Mon Aug 25 15:15:55 2008  
**Subject:** Business Terms on Grand Forks Fiber

Hi Doyle, further to our call today, we confirm we've agreed on the following points related to the Oliver to Grand Forks fiber build:

1. Shaw would own 36 fibres in the Oliver to Grand Forks fibre build. Fortis would own the remaining 36 fibres in the same build. Fortis would pay Shaw approximately \$812,000.00 for the 72 ADSS fibre used in connection with this fibre build.
2. Shaw would pay Fortis an annual fee of \$160,000.00 (the "Kettle Valley Access Fee") over 17 years to reimburse Fortis for the \$1.7 Million of construction costs incurred by Fortis on Shaw's behalf in connection with the fibre build costs.
3. Shaw would maintain the fibre along the Oliver to Grand Forks build. Fortis would pay Shaw annual maintenance payments at the fair market rates of \$11,000.00 for its 36 fibres along the Oliver to Grand Forks build.
4. Shaw would secure its own 28(2) Right of Way permit with Indian and Northern Affairs Canada and the Osoyoos Indian Band (OIB) for Shaw crossing of OIB territory along the Oliver to Grand Forks build. (10 to 20 km of the 80 km build crosses OIB territory.) This settlement is conditional upon Shaw securing access over the OIB territory through a 28(2) permit on terms acceptable to Shaw.

5. Shaw would sell Fortis the 6 fibre strands between Vernon to Penticton that Fortis has otherwise secured through an IRU from Shaw under the 2004 MOU as part of the consideration paid by Fortis for the fibre purchased in point 1 above. (This is in exchange for the 36 fibres that Fortis would recognize belong to Shaw between Oliver to Grand Forks.) Fortis would continue to pay the annual maintenance fees of \$29,150.00 for this 6 fibre.
6. Fortis would recognize the non-competition covenant between Vernon to Penticton and Penticton to Okanagan Falls, B.C. such that it would not use the fibre for telecommunications purposes beyond its own internal communications requirements.
7. Fortis would grant Shaw a right of first refusal to purchase or lease any of the excess 36 fibres belonging to Fortis between Oliver to Grand Forks that it may otherwise make available in the market.
8. Fortis would grant Shaw the requisite rights of way for access, maintenance, repair, operation, use and replacement of Shaw's facilities located on Fortis' property in Grand Forks.

Thanks Doyle and we look forward to your email confirmation as agreed to on our call.

Cheers and have a great holiday!

**Mike Hall**

Vice President Operations

Shaw Cablesystems G.P./Shaw Business Solutions Inc.

630 - 3rd Avenue SW, Calgary, Alberta T2P 4L4

Telephone: (403) 750-4511 // Fax: (403) 536-7736

mike.hall@sjrb.ca

ACCOUNTABLE BALANCE CUSTOMER FOCUSED INTEGRITY LOYALTY POSITIVE, CAN DO ATTITUDE TEAM PLAYER

**Appendix 8 – Notices of Termination**

**(a) February 13, 2009 Termination Notice**

**(b) April 3, 2009 Termination Notice – Lines 50 and 54**

**(c) April 3, 2009 Termination Notice – Lines 40 and 76**



Doyle Sam  
VP, Engineering & Operations

FortisBC Inc.  
Suite 100, 1975 Springfield Rd.  
Kelowna, B.C. V1Y 7V7  
Phone: (250) 469-8086  
Fax: (866) 614-1339  
doyle.sam@fortisbc.com  
www.fortisbc.com

**“hand delivered”**

February 13, 2009

Shaw Communications Inc.  
Suite 900, 630 – 3<sup>rd</sup> Ave  
Calgary, Alberta T2P 4L4

Dear Sirs/Mesdames:

Attention: Mike Hall

**Re: Transmission License between West Kootenay Power Ltd. (“FortisBC Inc.” or “FortisBC”) and Shaw Cablesystems Ltd. (“Shaw”) dated July 1, 1999 (the “Agreement”)**

---

Please be advised that FortisBC is providing Shaw with immediate notice as of the date indicated above that FortisBC shall terminate the Agreement without cause pursuant to section 14.01 of the Agreement as of February 13, 2019 (the “Effective Date”).

Therefore, Shaw is required to remove all of the Shaw Facilities as defined in the Agreement on or before the Effective Date, failing which FortisBC shall remove the same and seek recovery from Shaw of the costs incurred in doing so and charge a premium of 15% pursuant to section 14.02 of the Agreement.

We trust you will find the enclosed to be in order.

Yours truly,

**Doyle Sam**  
Vice-President, Engineering & Operations  
FortisBC Inc.



Doyle Sam  
VP, Engineering & Operations

FortisBC Inc.  
Suite 100, 1975 Springfield Rd.  
Kelowna, B.C. V1Y 7V7  
Phone: (250) 469-8086  
Fax: (866) 614-1339  
doyle.sam@fortisbc.com  
www.fortisbc.com

**“registered mail”**

April 3, 2009

Shaw Communications Inc.  
Suite 900, 630 – 3<sup>rd</sup> Ave  
Calgary, Alberta T2P 4L4

Dear Sirs/Mesdames:

Attention: Mike Hall

**Re: Transmission License Agreement between West Kootenay Power Ltd. (“FortisBC Inc.” or “FortisBC”) and Shaw Cablesystems Ltd. (“Shaw”) dated July 1, 1999 (the “Agreement”)**

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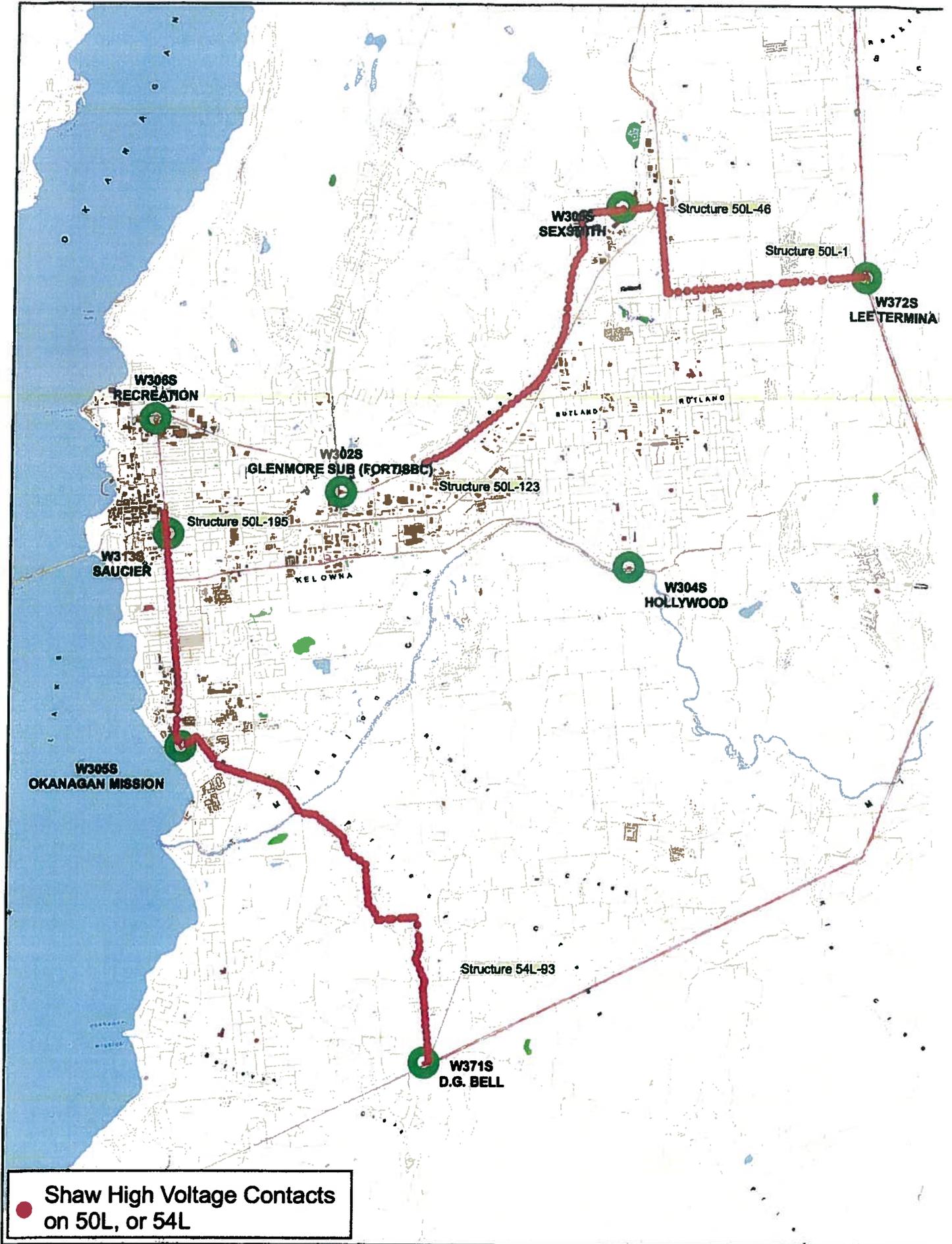
Please be advised that FortisBC is providing Shaw with immediate notice as of the date indicated above that FortisBC requires the Shaw Facilities shown on the enclosed diagram to be removed by April 3, 2010 (the “Effective Date”) pursuant to section 8.05 of the Transmission License Agreement. Specifically, FortisBC requires the space currently occupied by the Shaw Facilities on the Transmission Pole Contacts to install new infrastructure that will allow FortisBC to operate these assets in accordance with Good Utility Practice.

FortisBC shall remove the Shaw Facilities on or shortly after the Effective Date and seek recovery from Shaw of the costs incurred in doing so and charge Shaw a 15% premium pursuant to section 8.05 of the Agreement.

We trust you will find the enclosed to be in order.

Yours truly,

**Doyle Sam**  
Vice-President, Engineering & Operations  
FortisBC Inc.



● Shaw High Voltage Contacts on 50L, or 54L



Doyle Sam  
VP, Engineering & Operations

FortisBC Inc.  
Suite 100, 1975 Springfield Rd.  
Kelowna, B.C. V1Y 7V7  
Phone: (250) 469-8086  
Fax: (866) 614-1339  
doyle.sam@fortisbc.com  
www.fortisbc.com

**"registered mail"**

April 3, 2009

Shaw Communications Inc.  
Suite 900, 630 – 3<sup>rd</sup> Ave  
Calgary, Alberta T2P 4L4

Dear Sirs/Mesdames:

Attention: Mike Hall

**Re: Transmission License Agreement between West Kootenay Power Ltd. ("FortisBC Inc." or "FortisBC") and Shaw Cablesystems Ltd. ("Shaw") dated July 1, 1999 (the "Agreement")**

---

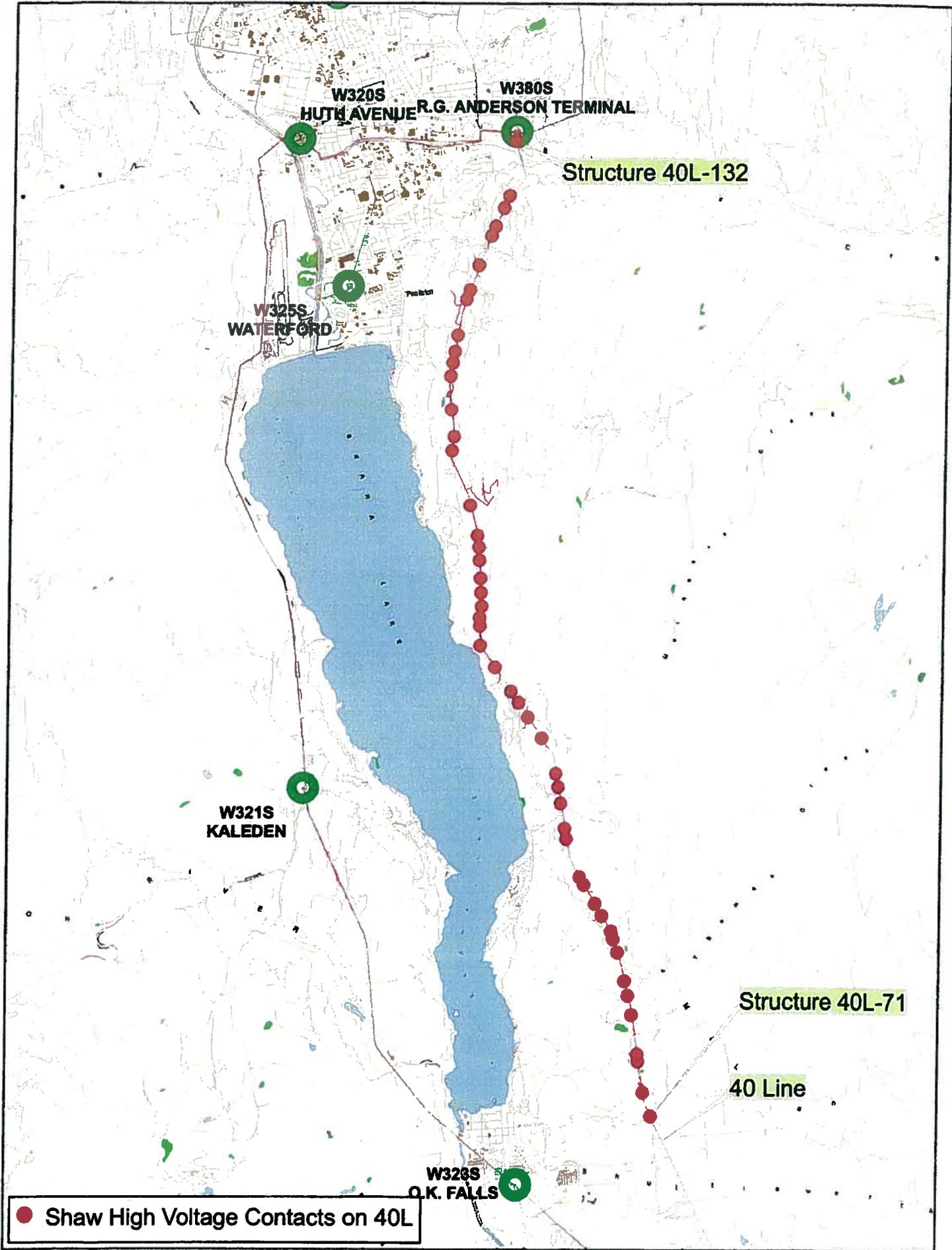
Please be advised that FortisBC is providing Shaw with immediate notice as of the date indicated above that FortisBC requires the Shaw Facilities shown on the enclosed diagram to be removed by October 31, 2010 (the "Effective Date") pursuant to section 8.05 of the Transmission License Agreement. Specifically, FortisBC is in the process of decommissioning its transmission line shown on the enclosed diagram in accordance with Good Utility Practice. We also advise for informational purposes that FortisBC will be decommissioning its transmission line from OK Falls to Oliver.

FortisBC shall remove the Shaw Facilities on or shortly after the Effective Date and seek recovery from Shaw of the costs incurred in doing so and charge Shaw a 15% premium pursuant to section 8.05 of the Agreement.

We trust you will find the enclosed to be in order.

Yours truly,

**Doyle Sam**  
Vice-President, Engineering & Operations  
FortisBC Inc.



W320S HUTT AVENUE W380S R.G. ANDERSON TERMINAL

Structure 40L-132

W325S WATERFORD

W321S KALEDEN

Structure 40L-71

40 Line

W328S O.K. FALLS

● Shaw High Voltage Contacts on 40L

## **Appendix 9**

### **Representative Pole Attachment Schematic**





4

3

2

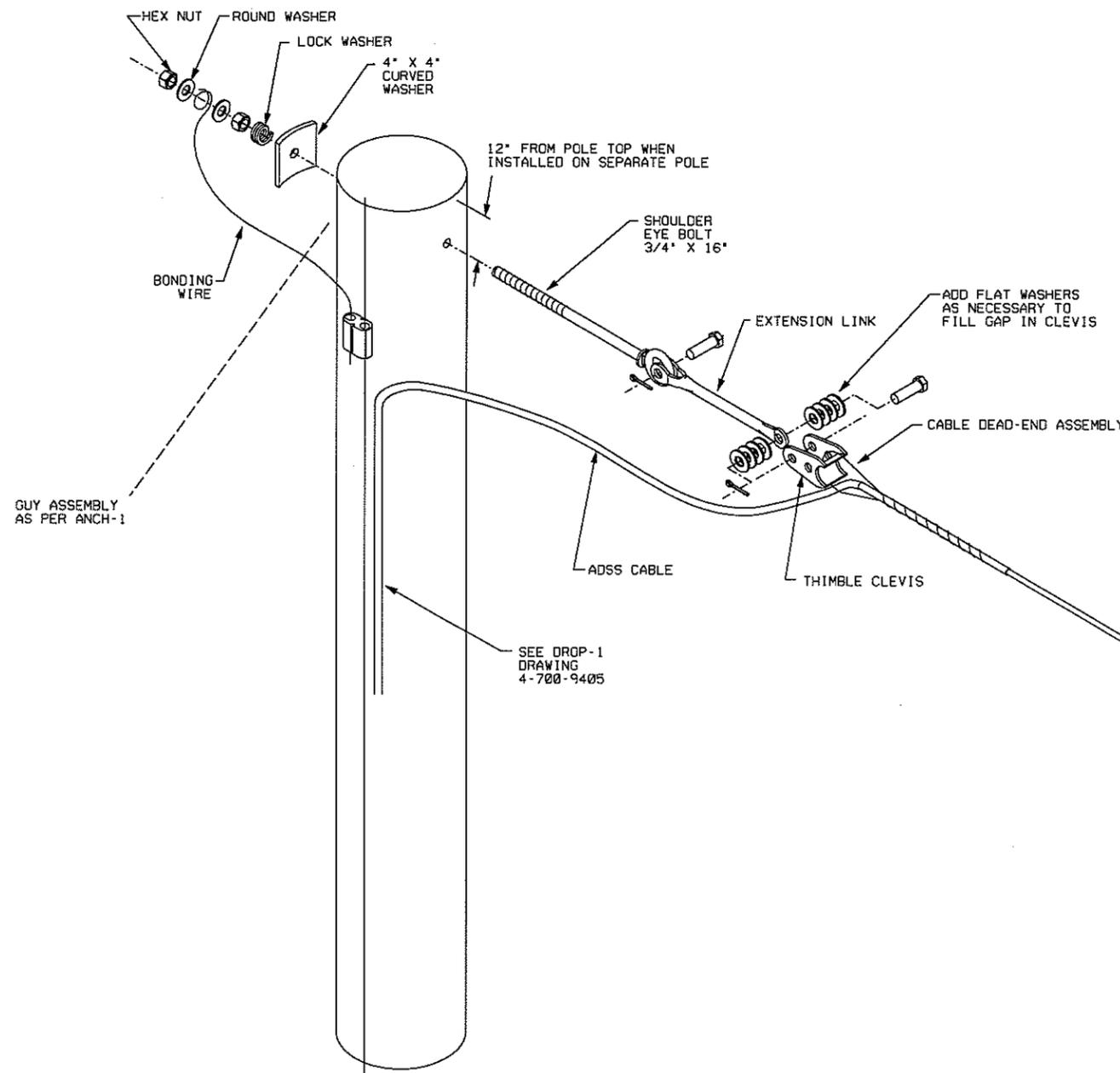
1

BILL OF MATERIAL

QUANTITY	ITEM DESCRIPTION
1	CABLE DEAD END ASSEMBLY C/W THIMBLE CLEVIS AND EXTENSION LINK
1	SHOULDER EYE BOLT, 3/4" X 16", C/W NUT
1	4" X 4" CURVED WASHER
1	HEX NUT, 3/4"
2	ROUND WASHER, FOR 3/4" BOLT
1	DOUBLE COIL LOCK WASHER FOR 3/4" BOLT
8	WASHER, ROUND, FOR 5/8" PIN
3M	BONDING WIRE, #4 CU
1	SQUEEZE-ON FOR #4 CU TO #4 CU

NOTE:

- 1 - CABLE CJB (11 LINE) USES DEADEND ASSEMBLY
- 2 - SEE LOCATION DRAWING AND STRUCTURE LIST FOR LOCATION ON POLE
- 3 - HARDWARE WITHIN 6" OF ONE ANOTHER SHALL BE BONDED TOGETHER



ISSUED FOR PRELIMINARY CLIENT REVIEW

ACCEPTED

ACCEPTED AS NOTED, DESIGN MAY PROCEED

NOT ACCEPTED, RE-SUBMIT CHANGES FOR REVIEW BEFORE PROCEEDING

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

No	REVISION DESCRIPTION	DATE (Y/M/D)	INITIALS: * DESIGNED ** APPROVED
A	ISSUED FOR PRELIMINARY CLIENT REVIEW	07-03-07	

PERMIT TO PRACTICE STAMP

PROFESSIONAL SEAL



SNC-Lavalin ATP Inc.  
Part of SNC-Lavalin T&D  
1035 - 7 Ave. S.W.  
Calgary, Alberta  
Canada T2P 2M4

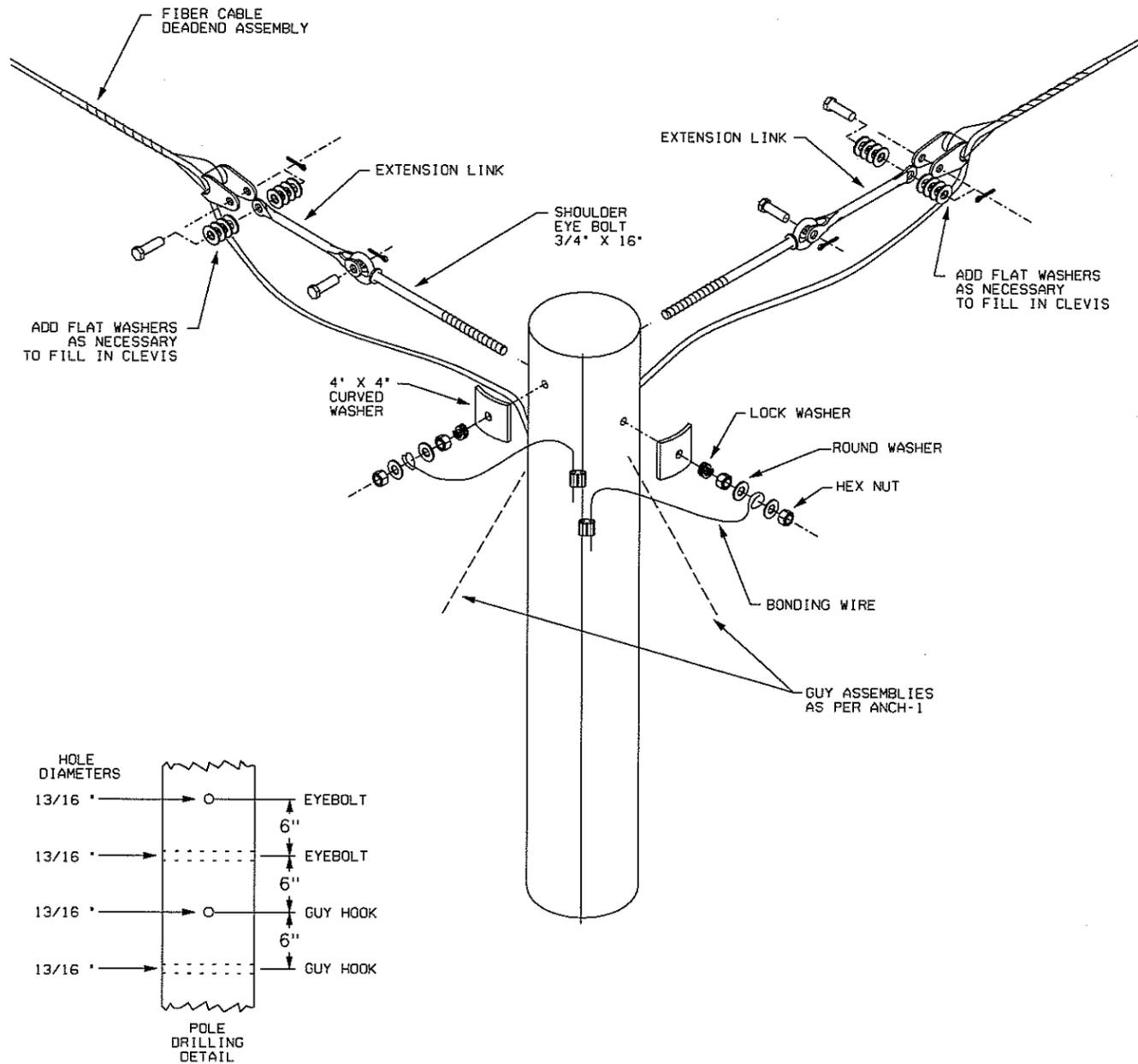


PREPARATION	
DESIGNED	H. BAKHSHI
DRAWN	L. GACEK
CHECKED	G. PERRY
DATE	07-03-07
SCALE	N.T.S.

CLIENT	FORTISBC
PROJECT	OLIVER-GRAND FORKS 161KV TRANSMISSION LINE
TITLE	DDE-1 FIBER OPTIC CABLE ONE-WAY DEADEND STRUCTURE ASSEMBLY
DOCUMENT No.	062976-11L-43DD-11155
REV	A







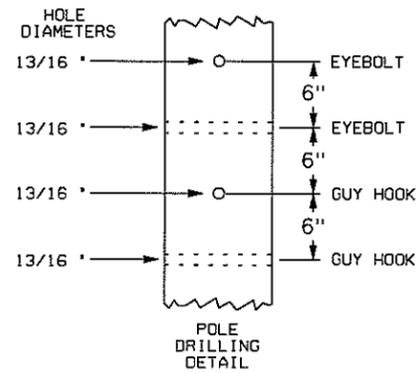
BILL OF MATERIAL	
QUANTITY	ITEM DESCRIPTION
2	CABLE DEADEND ASSEMBLY C/W THIMBLE CLEVIS AND EXTENSION LINK
2	BOLT, SHOULDER EYE, 3/4" X 16", 25 KIP, C/W NUT
2	WASHER, 4" X 4", CURVED
2	NUT, HEX, 3/4", GALVANIZED
4	WASHER, ROUND, FOR 3/4" BOLT
2	DOUBLE COIL LOCK WASHERS FOR 3/4" BOLT
16	WASHER, ROUND, FOR 5/8" PIN
	BONDING WIRE, #4 CU
2	SQUEEZE-ON FOR #4 CU TO #4 CU

- NOTE:
- 1 - DOUBLE DEADEND FOR TENSION CHANGES, WITH LINE DEFLECTION
  - 2 - CABLE CUB (11 LINE) USES DEADEND ASSEMBLY
  - 3 - SEE LOCATION DRAWING AND STRUCTURE LIST FOR LOCATION ON POLE
  - 4 - HARDWARE WITHIN 6" OF ONE ANOTHER SHALL BE BONDED TOGETHER
  - 5 - DRILL HOLES TO ALIGN WITH CABLE DEPARTURE FROM STRUCTURE (I.E. FIELD ADJUST DRILLING FOR ACTUAL LINE ANGLE)

**ISSUED FOR PRELIMINARY CLIENT REVIEW**

ACCEPTED  
 ACCEPTED AS NOTED, DESIGN MAY PROCEED  
 NOT ACCEPTED, RE-SUBMIT CHANGES FOR REVIEW BEFORE PROCEEDING

SIGNED: \_\_\_\_\_  
 DATE: \_\_\_\_\_



No	REVISION DESCRIPTION	DATE (Y/M/D)	INITIALS: * DESIGNED ** APPROVED
A	ISSUED FOR PRELIMINARY CLIENT REVIEW	07-03-07	

PERMIT TO PRACTICE STAMP

PROFESSIONAL SEAL

**SNC-LAVALIN T&D**

SNC-Lavalin ATP Inc.  
 Part of SNC-Lavalin T&D  
 1035 - 7 Ave. S.W.  
 Calgary, Alberta  
 Canada T2P 2M4

PREPARATION

DESIGNED: H. BAKHSHI  
 DRAWN: L. GACEK  
 CHECKED: O. PERRY  
 DATE: 07-03-07  
 SCALE: N.T.S.

CLIENT

**FORTISBC**

PROJECT: OLIVER-GRAND FORKS 161KV TRANSMISSION LINE

TITLE: DDE-4 FIBER OPTIC CABLE TENSION CHANGES WITH ANGLE

UTILICORP REF. DWG# 4-700-9404

DOCUMENT No. 062976-11L-43DD-11155

REV: A



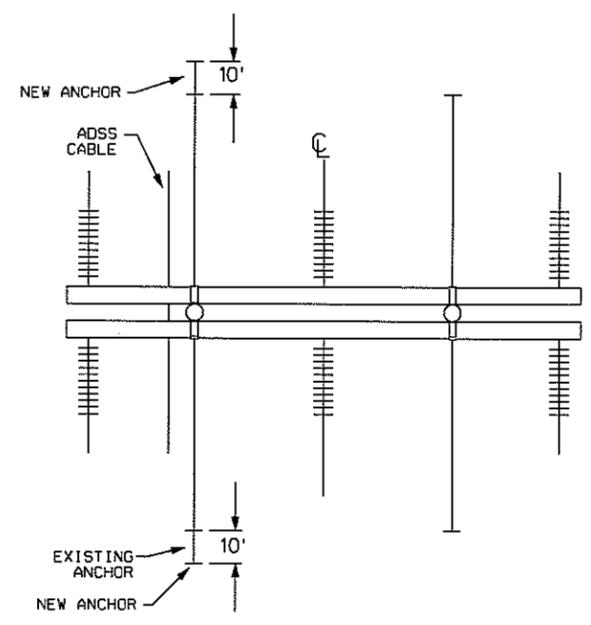
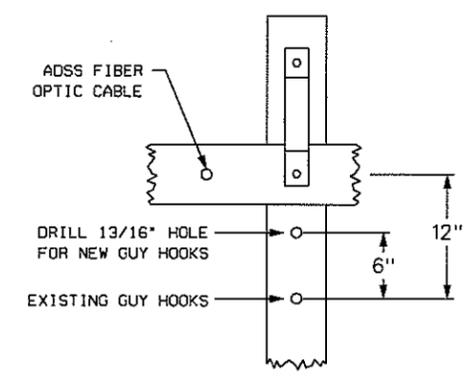


4 3 2 1

**BILL OF MATERIAL**

QUANTITY	ITEM DESCRIPTION
4	WASHER, CURVED, 4" X 4"
2	CABLE DEAD-END ASSEMBLIES, C/W THIMBLE CLEVIS AND EXTENSION LINKS
16	WASHER, ROUND, FOR 5/8" PIN
2	NUT, EYE, 3/4" GALVANIZED
2	NUT, HEX, 3/4" GALVANIZED
1	BOLT, DOUBLE ARMING, 3/4" X 36" C/W 4 NUTS

- NOTES:**
- DO NOT TIGHTEN NUTS ON DOUBLE ARM BOLT SUCH THAT THE ALUMINUM TUBE DEFORMS
  - CABLE CJB (11 LINE) USES SUSPENSION ASSEMBLY
  - HARDWARE WITHIN 6" (150MM) OF ONE ANOTHER SHALL BE BONDED TOGETHER
  - INSTALL ANCH-1'S BACK TO BACK ON THE SAME THROUGH BOLT



PLAN VIEW

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**PREPARATION**

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DRAWN: L. GACEK

CHECKED: G. PERRY

DATE: 07-03-07

SCALE: N.T.S. SHEET: 9 OF 13

**CLIENT**

**FORTISBC**

PROJECT: OLIVER-GRAND FORKS 161KV TRANSMISSION LINE

TITLE: DDE-5 2/2 DOUBLE DEAD-END FOR SDE TYPE STRUCTURES

UTILICORP REF. DWG# DDE-5 2/2

DOCUMENT No. 062976-11L-43DD-11155

REV: A

4 3 2 1









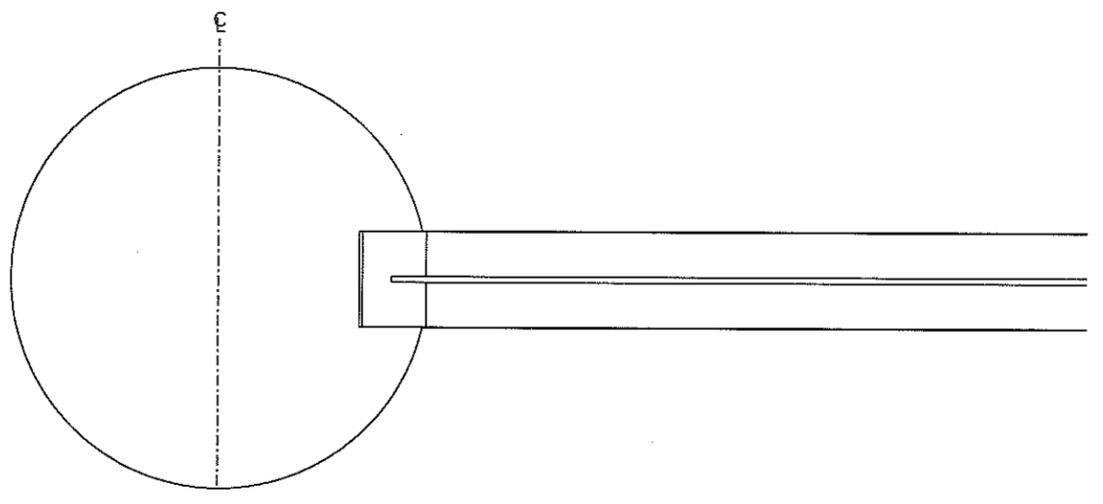
4 3 2 1

BORE HOLE VERTICALLY WITH MACHINE-BORING EQUIPMENT OR DIG BY HAND. BACKFILL HOLE & TRENCH WITH TAMPED NATIVE SOIL OR GRAVEL, IN 0.3m LIFTS MOUNDED TO ACCOMMODATE SETTLING AND TO PREVENT WATER FROM COLLECTING.

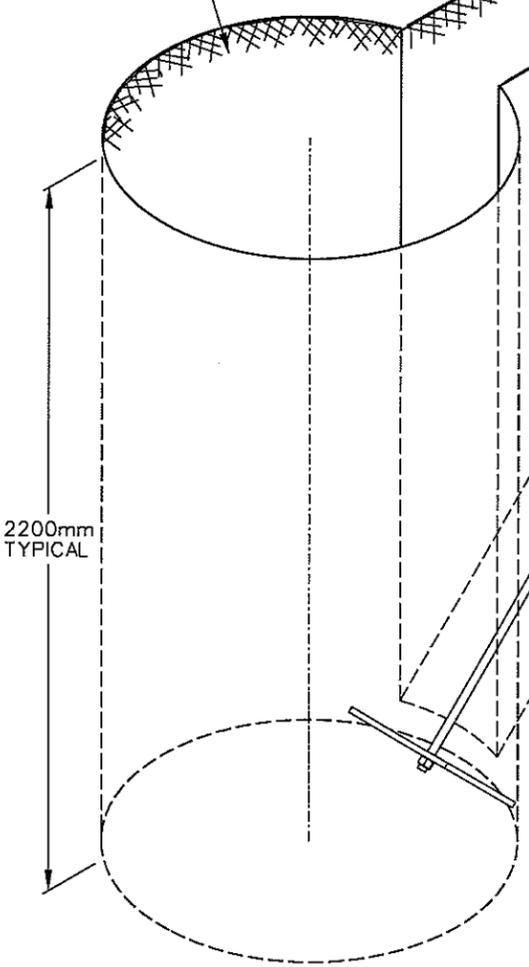
ANCHOR ROD TO STICK UP 150mm ABOVE GROUND LINE

ANGLE OF PULL

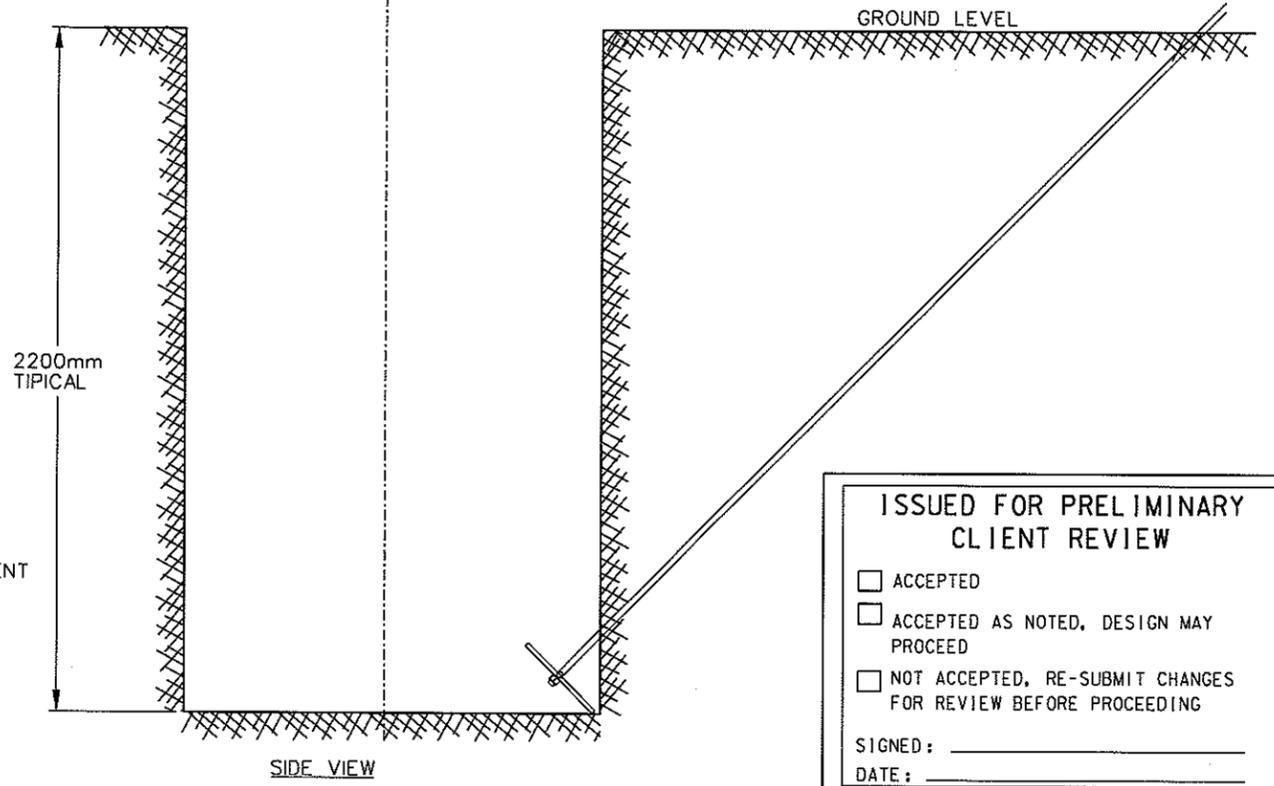
ANGLED TRENCH (MAXIMUM 200mm WIDE)



TOP VIEW



220mm TYPICAL



220mm TYPICAL

GROUND LEVEL

SIDE VIEW

- NOTE:
1. ANCHOR ROD SHOULD BE IN DIRECT LINE WITH GUY ATTACHMENT POINT ON THE POLE.
  2. ADJUST DEPTH BASED ON GUY ANGLE. FIELD ADJUST FOR DIFFERENT GUY ANGLES.
  3. PLATE ANCHOR 576 SQ IN STEEL

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A	ISSUED FOR PRELIMINARY CLIENT REVIEW	07-03-08	
REVISION REGISTER			

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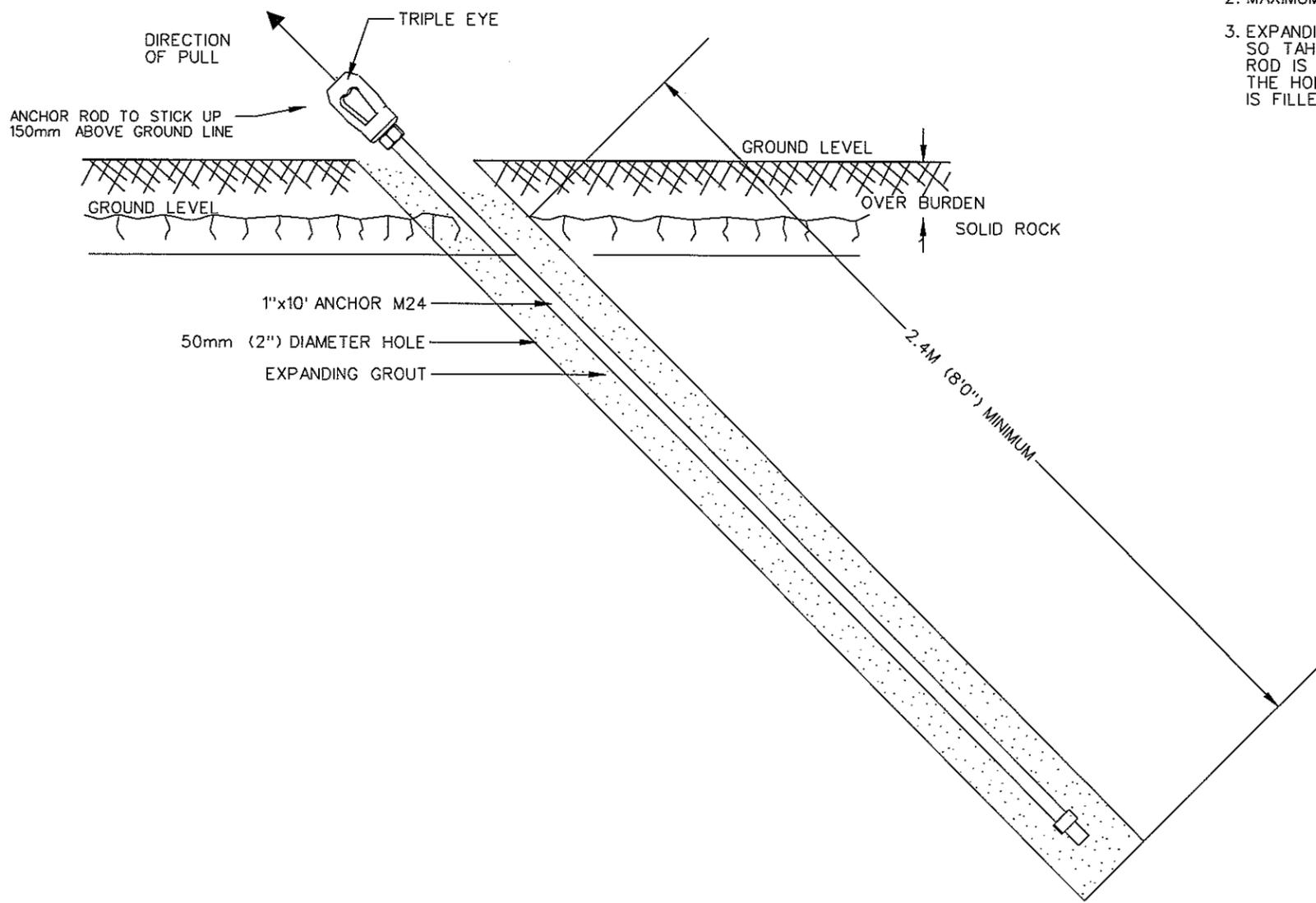


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PREPARATION	
DESIGNED	H. BAKHSI
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CHECKED	G. PERRY
DATE	07-03-08
SCALE	N.T.S.
SHEET	1 OF 1

CLIENT	<b>FORTISBC</b>
PROJECT	OLIVER-GRAND FORKS 161KV TRANSMISSION LINE
TITLE	PLATE ANCHOR DETAIL
DOCUMENT No.	FORTIS BC REF. DWG# 9920
REV	A
062976-11L-43DD-11430	



NOTE:

1. ANCHOR ROD EXTENSIONS AND COUPLERS CAN BE ADDED TO COMPENSATE FOR VARYING OVERBURDEN DEPTHS.
2. MAXIMUM RECOMMENDED STRENGTH FACTOR = 0.50
3. EXPANDING GROUT IS TO BE POURED INTO THE PREDRILLED 2" DIAMETER HOLE SO THAT THE BOTTOM TWO FEET OF THE HOLE IS FILLED. AFTER THE ANCHOR ROD IS INSERTED INTO THE HOLE, ADDITIONAL GROUT IS TO BE POURED INTO THE HOLE, WHILE TAPPING THE ROD TO REMOVE AIR BUBBLES; UNTIL THE HOLE IS FILLED.

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CLIENT  
**FORTISBC**

DESIGNED  
H. BAKHSI

PROJECT  
OLIVER-GRAND FORKS 161KV  
TRANSMISSION LINE

DRAWN  
L. GACEK

TITLE  
ROCK ANCHOR  
160 KN ULTIMANTE

CHECKED  
O. PERRY

FORTIS BC REF. DWG# 9925

DATE  
07-03-08

DOCUMENT No.  
062976-11L-43DD-11431

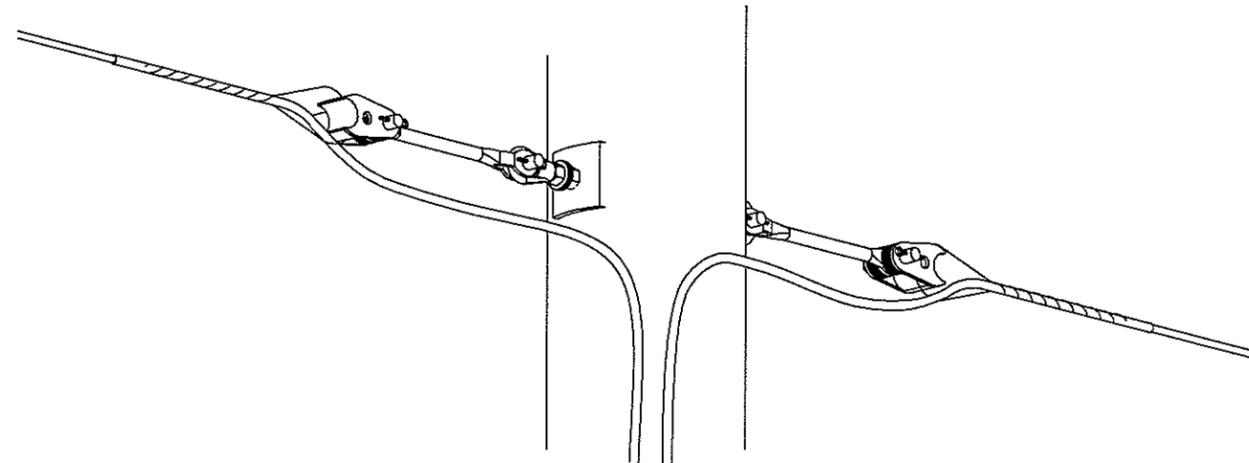
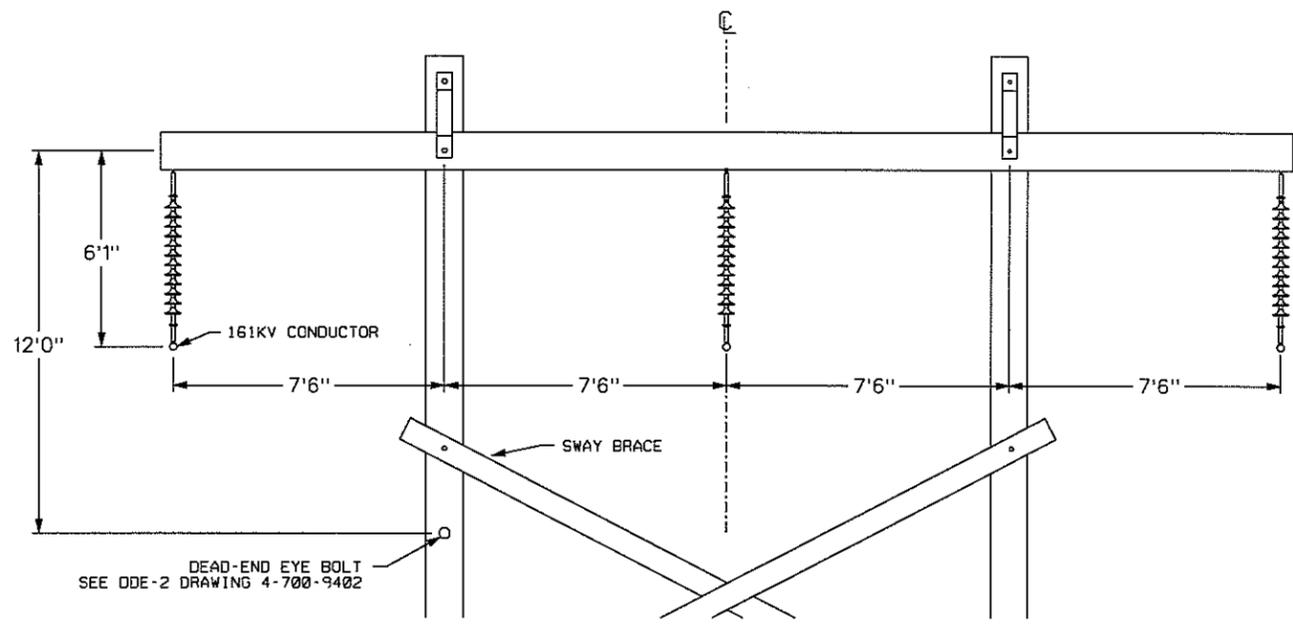
SCALE  
N.T.S.

SHEET  
1 OF 1

REV  
A







- NOTE:
- 1 - VIEW LOOKING TOWARDS INCREASING STRUCTURE NUMBERS
  - 2 - BOND EYE BOLT TO SWAY BRACE THROUGH BOLT. IF DOWNLEAD EXISTS, BOND TO IT

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REVISION REGISTER				REVISION REGISTER			

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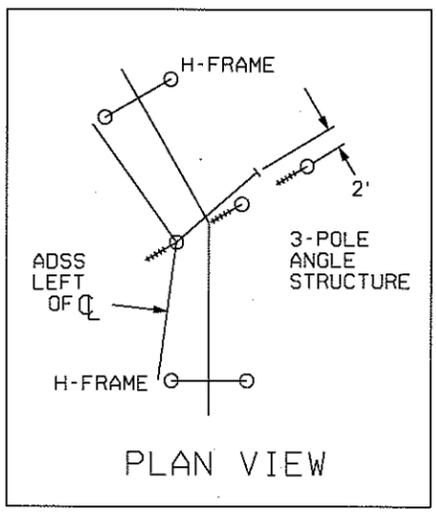
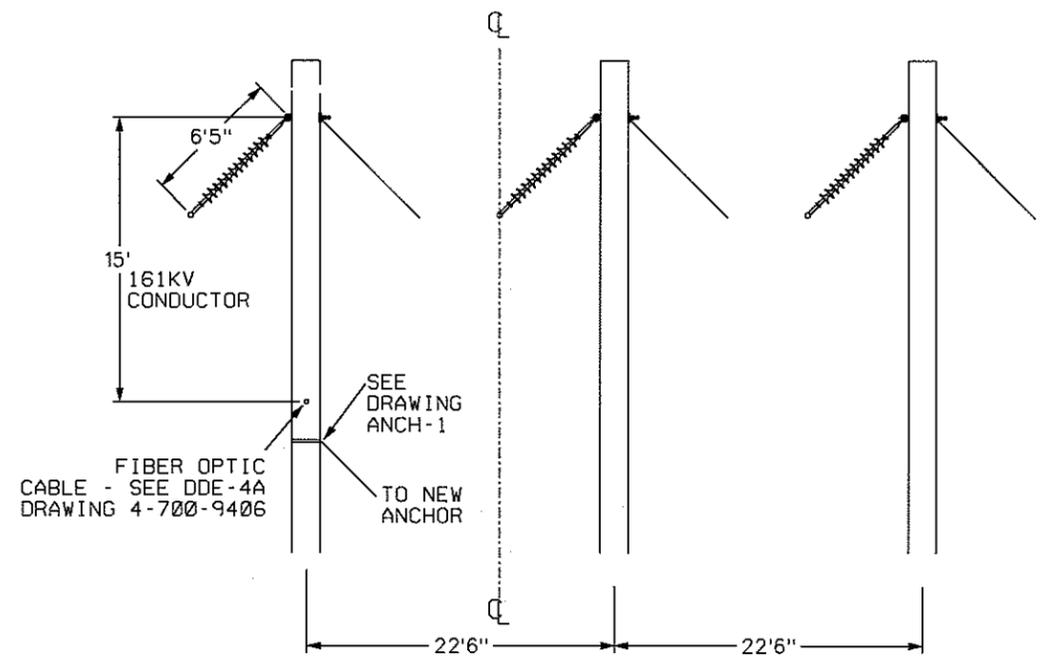
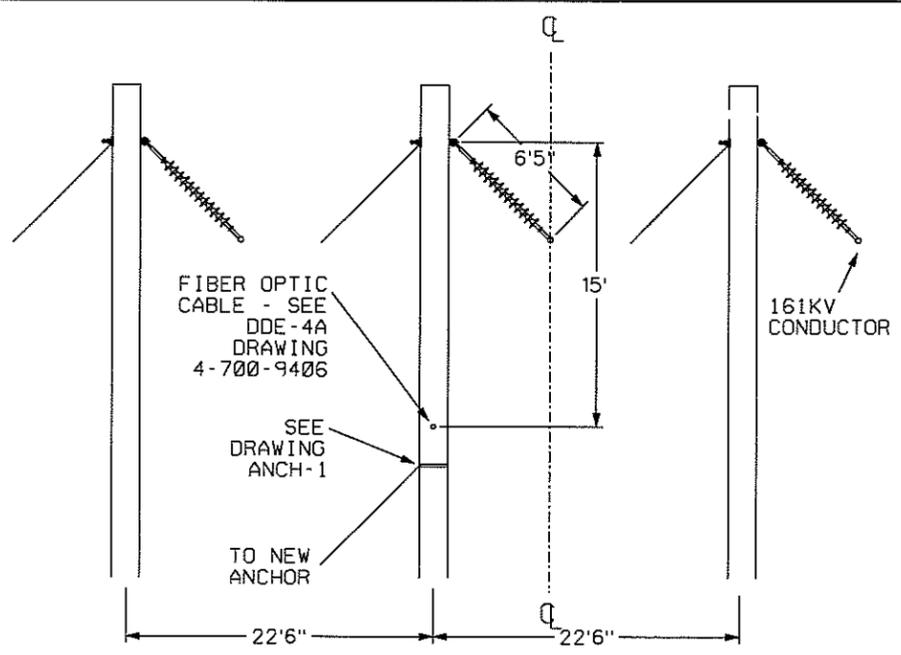
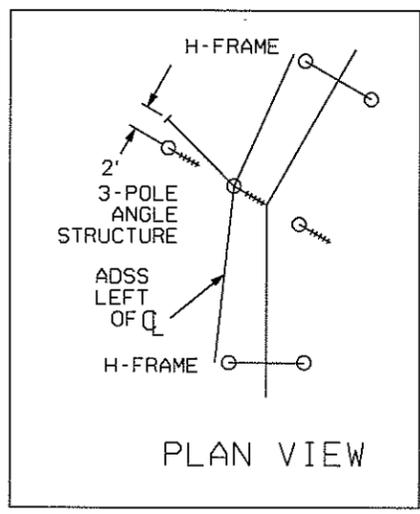
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PREPARATION	
DESIGNED	H. BAKHSI
DRAWN	L. GACEK
CHECKED	O. PERRY
DATE	07-03-07
SCALE	N.T.S.

CLIENT	<b>FORTISBC</b>
PROJECT	OLIVER-GRAND FORKS 161KV TRANSMISSION LINE
TITLE	LOC-2BA FIBER OPTIC CABLE FLOATING DEAD-END ATTACHMENT FOR 5126/5134/T1/T1X/T1S
DOCUMENT No.	062976-11L-43DD-11159
REVISION	A





- NOTE:
- 1 - BOND EYE BOLT TO ANCHOR FITTING BOLT
  - 2 - LOOKING IN THE DIRECTION OF INCREASING STRUCTURE NUMBERS
  - 3 - OFFSET ANCHORS 2' FROM 1/2 ANGLE BISECTOR TO ALLOW GUY WIRE TO CLEAR POLE
  - 4 - STRUCTURE IS A FLOATING DOUBLE DEAD-END GUYED ON THE HALF ANGLE

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DESIGNED: H. BAKHSHI

DRAWN: L. GACEK

CHECKED: D. PERRY

DATE: 07-03-08

SCALE: N.T.S.

PREPARATION

CLIENT: **FORTISBC**

PROJECT: OLIVER-GRAND FORKS 161KV TRANSMISSION LINE

TITLE: LOC-4BA FIBER OPTIC CABLE FLOATING DOUBLE DEAD-END ATTACHMENT TO 5232/LA

DOCUMENT No. 062976-11L-43DD-11161

REV A









## **Appendix 10**

### **Calculation of Annual Transmission Pole Attachment Charge**

## FortisBC-Shaw

### Current and Proposed Transmission Pole Attachment Charges

<u>Line</u>	<u>Existing Agreement</u>	<u>Pole Contacts</u> (1)	<u>2009 Rate (\$/Pole)</u> (2)	<u>Annual Cost</u> (3)
1	High Voltage	682	\$47.95	\$32,702
2	Low Voltage	460	\$14.86	6,836
3	<b>Total</b>	<u>1,142</u>		<u>\$39,538</u>

<u>Fortis Proposal</u>		<u>Pole Contacts</u> (1)	<u>Length per Contact (metres)</u> (2)	<u>Total Length (metres)</u> (3)	<u>Proposed Rate (\$/100 m)</u> (4)	<u>Annual Cost</u> (5)
4	High Voltage	682	220	150,040		
5	Low Voltage	460	90	41,400		
6	<b>Total</b>	<u>1,142</u>		<u>191,440</u>	\$484.00	<b>\$926,570</b>
7	<b>Increase - \$</b>					<b>\$887,032</b>
8	<b>Increase - %</b>					<b>2,244%</b>