

PUBLIC VERSION

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT
AND THE 1976 UNCITRAL ARBITRATION RULES**

BETWEEN:

RESOLUTE FOREST PRODUCTS INC.

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

PCA CASE No. 2016-13

REJOINDER WITNESS STATEMENT OF JEANNIE CHOW

March 4, 2020

I, Jeannie Chow, of 1660 Hollis Street, the City of Halifax, in the Province of Nova Scotia, hereby AFFIRM as follows:

1. I submit this Rejoinder Witness Statement to address certain allegations in the December 6, 2019 Reply Memorial by Resolute Forest Product Inc. (“Resolute”). I do not respond to every statement made in Resolute’s Reply, but that should not be taken to mean that I agree with any characterization or statement not addressed in this witness statement.

RESOLUTE’S ALLEGATIONS REGARDING THE “APPROVAL” OF THE LOAD RETENTION RATE (“LRR”) BY THE MINISTER OF ECONOMIC AND RURAL DEVELOPMENT AND TOURISM

2. Resolute states in its Reply Memorial that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹

3. This is not correct. The Minister of Economic and Rural Development and Tourism (“ERDT”) has no authority to approve electricity rates in the Province. In the context of Port Hawkesbury, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³

¹ Claimant’s Reply, ¶ 49. Resolute refers to C-182, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] See Witness Statement of Jeannie Chow, 17 April 2019, ¶ 17.

² See e.g., C-346, [REDACTED]
[REDACTED]

³ C-182, [REDACTED]
[REDACTED]

4. This is akin to a bank stipulating certain conditions before releasing the funds to the borrower under a mortgage agreement, such as obtaining a home inspection report, an electrical compliance certificate and property surveys. Since a bank cannot control whether a home is structurally sound, compliant with the electrical code or built on residential zoned land, the bank will stipulate that proper and satisfactory certifications must be obtained by the borrower before loan money is disbursed. This is prudent lending practice, but it does not mean that the bank's approval was necessary to obtain those certifications from third parties or that it had any control over the outcome of those distinct processes.

RESOLUTE'S ALLEGATIONS REGARDING THE GNS' FINANCIAL SUPPORT FOR PORT HAWKESBURY

5. I would like to provide my views on other allegations in Resolute's Reply Memorial regarding the financial assistance provided to Port Hawkesbury.

6. Resolute makes various statements to the effect that the GNS intended to harm Resolute by providing Port Hawkesbury a "virtual guarantee to become immediately and remain in perpetuity North America's lowest cost producer."⁴ I do not believe this accurately reflects the motivations of Nova Scotia. We were focused on determining whether a reasonable amount of financial assistance could enable Port Hawkesbury to potentially operate profitably taking into account the potential market risks and opportunities as well as the negative impact on the Province's economy were the mill to close permanently. Whether the company would be profitable, let alone achieve its "lowest cost" goal, depended on many factors that were not in the control of the Government of Nova Scotia.

7. Resolute also states that the GNS [REDACTED]
[REDACTED]⁵ I do not think this is a fair or accurate characterization.

8. In assessing whether EDRT should provide financial support to a company through the Province's Jobs Fund (and if so, how much and under what terms), we would on occasion seek advice from outside consultants to inform us about the market and help us to analyze the

⁴ Claimant's Reply, ¶ 20.

⁵ Claimant's Reply, ¶ 141, referring to R-161, [REDACTED]

company's business plan. [REDACTED]


[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶ In my experience, such market predictions are uncertain because they operate without perfect information, especially with respect to other market participants and dynamics.

9. Based on our understanding of PWCC's business plan, [REDACTED]
[REDACTED]
[REDACTED]⁷ we were hopeful that Port Hawkesbury had a chance to successfully reopen without significant market disruption over the long-term. We recognized that there were many uncertainties and risks, including the possibility that the new owner of the mill would not be successful. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] In fact, I understand that Resolute's Kénogami mill is still operating today.

I affirm that the foregoing is true and correct.

Dated: March 4, 2020


Jeannie Chow

⁶ See e.g., R-161, [REDACTED]

⁷ C-163, [REDACTED]
[REDACTED]; C-167, [REDACTED] (" [REDACTED] ")