

SCHEDULE A

Court File No. CV-13-480939 -00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

JACQUELINE COFFIN and SANDRA LOWRY

Plaintiffs

- and -

ATLANTIC POWER CORPORATION,
BARRY WELCH and TERRENCE RONAN

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed

DEFINED TERMS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Atlantic**” means Atlantic Power Corporation;
- (b) “**Cash Available for Distribution**” is a non-**GAAP** financial measure reflecting cash distributions received from **Atlantic**’s projects used to evaluate the results of its business and its ability to pay dividends.
- (c) “**Class**” and “**Class Members**” means all persons, except for **Excluded Persons**, who purchased or otherwise acquired securities of **Atlantic** during the **Class Period** and held some or all of those securities at the close of trading on February 28, 2013;
- (d) “**Class Period**” means the period from November 5, 2012 through February 28, 2013, inclusive;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (f) “**Debentures**” means any one of the following debentures: (a) **Series D Debentures**; (b) 6.50% Convertible Subordinated Debentures; (c) 6.25% Convertible Subordinated Debentures; (d) 5.75% Convertible Subordinated Debentures; or (e) 5.60% Convertible Subordinated Notes;
- (g) “**EDGAR**” means the system for electronic document analysis and retrieval of the **SEC**;
- (h) “**Excluded Persons**” means **Atlantic** or its subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, **Welch, Ronan**, and any member of Welch’s and Ronan’s families and any entity in which any of them has or had during the **Class Period** any legal or de facto controlling interest;
- (i) “**GAAP**” means Generally Accepted Accounting Principles;
- (j) “**IFRS**” means the International Financial Reporting System;
- (k) “**Impugned Documents**” (each being an “**Impugned Document**”) means, collectively, the Q3 2012 Interim Financial Statements and Q3 2012 MD&A, filed on **SEDAR** on November 5, 2012; the press release filed on **SEDAR** on November 5, 2012; the **Prospectus**, the material change report (Form 8-K), filed on **SEDAR** on December 28, 2012, and the material change report (Form 8-K) filed on **SEDAR** on February 1, 2013;

- (l) “**Lowry**” means Sandra Lowry;
- (m) “**MD&A**” means Management’s Discussion and Analysis;
- (n) “**Offering**” means the public offering by way of the **Prospectus** in each of the provinces and territories of Canada other than Quebec of \$100 million aggregate principal amount of **Atlantic’s Series D Debentures**;
- (o) “**OSA**” means the *Securities Act*, RSO 1990 c S 5, as amended;
- (p) “**PPA**” means a power purchase agreement;
- (q) “**Prospectus**” means **Atlantic’s** December 3, 2012 prospectus supplement to the short form base shelf prospectus dated August 17, 2012 which qualified the distribution of \$100,000,000 aggregate principal amount of the **Series D Debentures**;
- (r) “**Prospectus Class Members**” means Class Members who, during the period of distribution, purchased or otherwise acquired **Series D Debentures** of **Atlantic** offered by the **Prospectus**;
- (s) “**Ronan**” means Terrance Ronan;
- (t) “**Secondary Market Class Members**” means **Class Members** who purchased or otherwise acquired securities of **Atlantic**, other than purchases or acquisitions of **Series D Debentures** pursuant to the **Prospectus**;
- (u) “**Securities Legislation**” means, collectively, the *OSA*, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (v) “**SEC**” means the US Securities and Exchange Commission;
- (w) “**SEDAR**” means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;
- (x) “**Series D Debentures**” means the 6.00% Series D Extendible Convertible Unsecured Subordinated Debentures due 2019;
- (y) “**Welch**” means Barry Welch.

CLAIM

2. The plaintiffs claim on their behalf and on behalf of the Class:
 - (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing the plaintiffs as the representative plaintiffs of the Class;
 - (b) a declaration that the defendants made a misrepresentation in the Impugned Documents and oral statements with respect to Atlantic's cash flow, Cash Available for Distribution and ability to pay dividends, as set out below;
 - (c) a declaration that the defendants made the misrepresentation negligently;
 - (d) a declaration that the defendants failed to make timely disclosure concerning Atlantic's cash flow, Cash Available for Distribution and ability to pay dividends;
 - (e) a declaration that the defendants were negligent in advancing the Offering or acquiescing in the Offering;
 - (f) a declaration that Atlantic is vicariously liable for the acts and omissions of Welch, Ronan and its other officers, directors and employees;
 - (g) an order granting leave to proceed with the statutory claim for misrepresentation under Part XXIII.1 of the *OSA* or alternatively the corresponding provisions of the other Securities Legislation;
 - (h) on behalf of the Prospectus Class Members, damages for negligence, negligent misrepresentation and pursuant to section 130 of the *OSA* (or alternatively the corresponding provisions of the other Securities Legislation) in the amount of \$50 million or such other sum as this court finds appropriate at the trial of the common issues or at a reference or references;
 - (i) on behalf of the Secondary Market Class Members, damages for negligent misrepresentation and pursuant to s. 138.3 of the *OSA* (or, alternatively, the corresponding provisions of the other Securities Legislation) in the amount of \$200 million or such other sum as this court finds appropriate at the trial of the common issues or at a reference or references.
 - (j) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
 - (k) prejudgment interest and postjudgment interest, pursuant to sections 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C-43;
 - (l) costs of this action on a full indemnity basis, or in an amount that provides substantial indemnity, plus pursuant to s. 26(9) of the *CPA*, the costs of notices and of administering the plan of distribution of the recovery in this action; and
 - (m) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. Atlantic is a dividend paying power and infrastructure company that sells electricity to utilities and other large commercial customers. From 2004 to the end of the Class Period, Atlantic repeatedly stated that its primary corporate objective was to generate consistent levels of cash flow to sustain its dividend payout to shareholders (“the Corporate Objective”).

4. Atlantic stated that its shareholders are primarily focused on income from dividends, and secondarily on the appreciation in the value of Atlantic shares. As a result, Atlantic’s share price is dependent on its ability to distribute consistent levels of dividends to shareholders.

5. Atlantic’s ability to pay dividends is dependent on its consolidated cash flow, that is, cash that Atlantic receives from its various power generation plants.

6. Throughout the Class Period, the defendants were aware of challenges to Atlantic’s cash flow, and the negative effect of those challenges on Atlantic’s ability to fulfill its Corporate Objective. The defendants misled investors by failing to disclose that Atlantic’s project cash flow was unstable, that its Cash Available for Distribution to shareholders was not sustainable, and thus it was not able to maintain its level of dividends.

7. On February 28, 2013, the end of the Class Period, Atlantic released its 2012 Annual Report and MD&A and issued a press release. These documents disclosed for the first time significant challenges to Atlantic’s business and, that, as a result, Atlantic was slashing its annual dividend from \$1.15 to \$0.40, a reduction of 65%.

8. This announcement had a dramatic and immediate impact on the value of Atlantic’s securities:

- (a) the price of Atlantic's common shares declined from \$10.26 at the close of trading on February 28, 2013 to \$7.30 on March 1, 2013. Atlantic's share price continued to fall in the next few days as the market absorbed the new negative disclosure, closing at \$5.82 on March 5, 2013 – a 43% fall in the share price.
- (b) the prices of the Debentures declined in one day by approximately 8% (on average) from the closing prices on the previous trading day, and continued to decline in the days following.

9. The plaintiffs claim for themselves and the other Class Members damages that were incurred as a result of the defendants' misrepresentation and the defendants' failure to disclose material information.

PARTIES

10. Coffin resides in Alberta. On February 15, 2013, she purchased 260 Atlantic common shares for \$11.74 per share and on February 22, 2013 she purchased 186 Atlantic common shares at \$10.79 per share. She held all of those shares at the close of trading on February 28, 2013.

11. Lowry resides in Toronto, Ontario. On November 30, 2012, she purchased \$30,000 of Series D Debentures offered by the Prospectus during the period of distribution and held some or all of them at the close of trading on February 28, 2013.

12. Atlantic is a utilities company formed pursuant to the *Business Corporations Act* (British Columbia), SBC 2002, c 57. Atlantic is, and was at all material times, a reporting issuer in all provinces and territories of Canada and a registrant with the SEC. At all material times, Atlantic's common shares were listed for trading on the Toronto Stock Exchange (ticker symbol: "ATP") and the New York Stock Exchange (ticker symbol: "AT"), and also traded on various alternative trading markets in Canada. At all material times, Atlantic's debt securities traded in the secondary market in Canada.

13. As a reporting issuer in Ontario, Atlantic was required to issue and file on SEDAR:
- (a) within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with IFRS;
 - (b) within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with IFRS; and
 - (c) contemporaneously with each of the above, an MD&A for each of the above financial statements.

14. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects, including the company's ability to sustain its dividend level. The MD&A must disclose important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in future.

15. Welch has been Atlantic's president and chief executive officer since October 2004, and a director of Atlantic since June 2007. At all relevant times, Welch was an officer and director of Atlantic within the meaning of the Securities Legislation.

16. Ronan has been Atlantic's chief financial officer and executive vice president since August 2012. At all relevant times, Ronan was an officer of Atlantic within the meaning of the Securities Legislation.

ATLANTIC'S BUSINESS, OPERATIONS, CORPORATE STRATEGY AND OBJECTIVES

17. Atlantic owns and operates hydro, natural gas and coal fired power generation and infrastructure plants in Canada and the United States.

18. Atlantic sells electricity generated by its power plants to utilities and other large commercial customers principally under long-term PPAs. Its other option is to sell its electricity in the spot market which involves a significant market risk related to finding purchasers and volatile pricing.

19. Since 2004, the Corporate Objective has been re-iterated year after year by Atlantic and has driven investment in the company.

20. A dividend is a profit-sharing mechanism for the distribution of company profits to the shareholders of the company. The payment of dividends are important to shareholders who expect to realize financial gain from dividends and to financial analysts and investment brokers who often use the dividend per share as an indicator of a company's overall financial profitability. Investors, analysts and brokers rely on the annual dividend per share figure as a reliable indicator of economic health.

21. Atlantic knows that its shareholders are primarily focused on income generated through shareholder dividends. During the Class Period, Atlantic's share price and debenture price reflected its dividend policy and annual dividend of \$1.15 per share that was in place since November 2011.

22. The primary factor influencing Atlantic's Cash Available for Distribution is the cash flow that Atlantic receives from its projects. Atlantic discloses that Cash Available for Distribution is generally funded from Project Adjusted EBITDA generated by its power plant projects, reduced by project-level debt service and capital expenditures, and adjusted for changes in project-level working capital and cash reserves. Project Adjusted EBITDA is defined as project income plus

interest, taxes, depreciation and amortization (including non-cash impairment charges) and changes in fair value of derivative instruments.

23. Atlantic's cash flow is generated from its power generation projects through PPAs and by maintaining stable operating margins. Any event that affects Atlantic's PPAs and its operating margins directly impacts Atlantic's cash flow and Cash Available for Distribution and, as a result, Atlantic's ability to pay dividends.

IMPORTANCE OF LONG-TERM POWER-PURCHASE AGREEMENTS (PPAs)

24. The power generation industry is intensely competitive. Atlantic competes with utilities, industrial companies and other independent power producers for PPAs. This competition increased in the years just prior to the Class Period.

25. PPAs are fundamental to Atlantic's business model, and, in particular, its Corporate Objective. They are the most significant determinant of future cash flow from its projects and therefore the sustainability of Cash Available for Distribution.

26. When a PPA approaches its expiry date, Atlantic enters into negotiations to renew its PPA or for a new PPA, either with the existing counter-party or a new party. This process starts well in advance of the expiration date. For example, Atlantic disclosed in its 2011 Annual Report, released February 29, 2012, that it was already in discussions with potential counterparties regarding new PPAs for its Lake and Auburndale facilities in Florida which had PPAs expiring in 2013.

27. According to Atlantic's Annual Report, in 2011:

- (a) Atlantic's geographic megawatt production portfolio was 15% in Canada (approximately 9% in Ontario) and 85% in the United States (23% in the South East segment, Florida); and
- (b) Atlantic was negotiating new contracts for its Lake and Auburndale projects in Florida, whose PPAs were expiring in 2013.

28. From at least the beginning of the Class Period, the defendants knew that the prospects of securing certain new or profitable PPAs in Ontario and in Florida had declined and therefore it would have to significantly reduce the dividend level. As set out further below, Atlantic failed to disclose this until after the Class Period.

ATLANTIC'S ONTARIO AND FLORIDA PPAS

29. Atlantic's Ontario facilities are in the company's Northeast Segment. In 2011 and 2012, and during the Class Period, Atlantic owned five power generation projects in Ontario with PPA expiration dates ranging from 2014 to 2022.

30. The Ontario electricity market is highly regulated, a process that involves many regulators and quasi-governmental entities. From 2004 to 2012, the regulatory process for the power industry in Ontario changed significantly. Ontario also went from a period of severe undersupply in 2004 to projected oversupply in 2012 and following, mainly as a result of excess capacity and reduced consumption as a result of the financial crisis of 2008-2009 and conservation measures.

31. Prior to the Class Period and at all times during the Class Period, Atlantic owned four power projects in Florida. The PPAs for its Lake and Auburndale plants with Progress Energy Florida (a/k/a Duke Energy Florida) were due to expire in July 2013 and December 2013 respectively. These two PPAs generated 22% of Atlantic's 2011 adjusted project EBITDA. The

PPA for its Pasco plant in Dade City with Tampa Electric Company was scheduled to expire in January 2018.

32. In its 2011 Audited Financial Statements, Atlantic disclosed that its PPA sales to Progress Energy Florida provided approximately 52% of its 2011 total consolidated revenue.

33. In its Third Quarter 2012 Interim Financial Statements, Atlantic disclosed that Progress Energy Florida related revenues from the relevant PPAs generated 28% of Atlantic's total consolidated revenues and 26% of Atlantic's total consolidated revenues for the nine months of 2012.

EVENTS AND MISREPRESENTATIONS DURING THE CLASS PERIOD

34. The defendants knew from the beginning of the Class Period that due to declining prospects of securing new PPAs in Ontario and the inability to renew PPAs with Progress Energy Florida, Atlantic's project cash flow was no longer stable and its Cash Available for Distribution and dividend level would be significantly reduced. However, during the Class Period the defendants failed to make timely disclosure of these material facts and their impact on Atlantic's project cash flow, Cash Available for Distribution or its dividend level.

35. During the Class Period, Atlantic understood that through to 2014, electricity supply in Ontario would exceed demand. Therefore, Atlantic knew or ought to have known that any new PPAs in Ontario, if available, would necessarily be at significantly lower prices for power and on less favourable terms.

36. During the Class Period, the defendants also knew that the financial returns from the Florida PPAs were declining and uncertain because of continuing projections of a weak Florida

market, its failure to renew its PPAs with Progress Energy Florida and the absence of realistic prospects to secure profitable PPAs in the near future.

37. This adverse information and its impact on Atlantic's dividend was improperly withheld from investors. Instead of making full and true disclosure, during the Class Period Atlantic continued to make misleading disclosure about its business and operations.

38. On November 5, 2012, Atlantic issued and filed on SEDAR its Q3 2012 financial statements and MD&A. Welch and Ronan authorized, permitted or acquiesced in the release of the Q3 2012 financial statements and MD&A and each certified the accuracy of each document in their capacities as chief executive officer and chief financial officer, respectively by signing Form 52-109FS.

39. Atlantic acknowledged on November 5, 2012 in its MD&A for the three and nine month periods ended September 30, 2012 that the future cash flow from the Pasco project would be substantially lower and that its most significant exposure with respect to future cash flows would be at its Lake and Auburndale projects. However, the Q3 2012 financial statements and MD&A failed to state that Atlantic's cash flow was unstable and that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends. This omission constituted a material misrepresentation, in that these facts were required to be stated in these documents and were necessary to make these financial statements and MD&A not misleading.

40. Accompanying these documents was a press release issue by Atlantic, which stated that Atlantic expected the overall levels of operating cash flows in 2012 to improve over 2011. This was untrue and misleading.

41. In the press release, Atlantic referred to expected substantial decreases in cash flow from its Lake and Auburndale Projects in Florida because the PPAs were due to expire on July 31 and December 31 of 2013, respectively. Despite these events, Atlantic stated that it expected, based on growth assumptions, that there would be additional contributions from acquisitions and dispositions sufficient to support its continued ability to pay its dividend. This was untrue and misleading. The defendants failed to state in the press release that its cash flow was unstable and that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends.

42. On November 6, 2012, Atlantic hosted a conference call for investors, analysts and media representatives. During the call, Welch addressed the sustainability of the dividend, stating, “We’re confident in our ability to sustain the current dividend level”. This constituted a misrepresentation since it was an untrue statement of material fact. As of November 6, 2012, Atlantic could not sustain its current dividend level. The defendants knew or ought to have known that this representation was false, inaccurate or misleading.

43. On December 3, 2012, Atlantic issued the Prospectus. By way of the Prospectus, Atlantic distributed the Series D Debentures in all provinces and territories of Canada, other than Quebec.

44. The Prospectus was misleading because it failed to state that Atlantic’s cash flow was unstable and that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends. This omission constituted a material misrepresentation, in that these facts were required to be stated in the Prospectus and were necessary to make the Prospectus not misleading. As a result, the Prospectus did not provide full, true and plain disclosure of all

material facts relating to the Atlantic securities that were qualified and distributed pursuant to the Prospectus.

45. On December 28, 2013, Atlantic issued a material change report announcing that “recently”, Atlantic’s response to a request for proposal by a Florida utility for a PPA for the Lake project was not accepted. As a result, Atlantic announced that it had taken a non-cash impairment charge of approximately \$50 million related to the Lake project. Accompanying this report was a press release that stated that Atlantic’s “corporate strategy is to increase the value of the Company through accretive acquisitions in North American markets while generating stable, contracted cash flows from its existing assets.”

46. The December 28, 2012 material change report failed to state that Atlantic’s cash flow was unstable and that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends. This omission constituted a material misrepresentation. The omission of these material facts made the material change report misleading.

47. The uncertainties concerning financial returns at Atlantic’s Florida-based assets prompted it to sell the Auburndale, Lake and Pasco projects because it knew that the Florida energy market was not anticipated to recover enough in the near future to allow secure economic PPAs and it was unable to contract for new PPAs. On January 30, 2013, Atlantic issued a material change report announcing that it had entered into an agreement to sell three Florida projects: the Auburndale, Lake and Pasco projects.

48. Accompanying this report was a press release in which Welch reiterated that “[Atlantic’s] business model is focused on achieving stable, predictable cash flows from contracted power generation.”

49. The January 30, 2013 material change report failed to state that Atlantic's cash flow was unstable and that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends. This omission constituted a material misrepresentation. The omission of these material facts made the material change report misleading.

50. Throughout the Class Period, Atlantic made monthly announcements of a constant dividend per common share (\$0.09583/share, equal to \$1.15 per annum). These announcements made it an attractive investment to the Class Members, particularly those looking for a stable rate of return on their investments, because those announcements reinforced Atlantic's representation of sustainable Cash Available for Distribution. This representation was false.

THE TRUTH IS REVEALED

51. On February 28, 2013, after the markets closed, Atlantic issued its 2012 Annual Report and MD&A and a news release stating that in order to "target a lower, more sustainable payout ratio that balances yield and growth", Atlantic's board of directors had approved a 65 percent reduction in the annual dividend.

52. On February 28, 2013, Atlantic also disclosed that:

- (a) it had experienced significant challenges in negotiating new contracts for its Ontario facilities;
- (b) its prospects of recontracting the PPA for the Selkirk project in New York had declined;
- (c) the increase in trans-Canada pipeline tolls had reduced operating margins at four of Atlantic's Ontario facilities because those projects were fueled by gas transported by pipeline from Alberta;
- (d) its initially estimated post-PPA cash flow from the Florida projects and its decision to sell three projects had negatively affected its cash flow;

- (e) the expected sale of a transmission line had further negatively affected its project cash flow;
- (f) the Cash Available for Distribution was not sustainable;
- (g) it did not have the required liquidity for future acquisitions; and
- (h) its ability to deliver on its strategic and financial objectives was impaired.

53. The defendants knew or ought to have known of these facts from the beginning of the Class Period and ought to have disclosed them as part of interim reporting in early November 2012 and in a material change report. The cumulative effect of this adverse information constituted a change in the business, operations or capital of Atlantic that was reasonably expected to have a significant effect on the market price or value of Atlantic's securities.

54. This announcement has a significant adverse impact on Atlantic's securities:

- (a) the price of Atlantic's common shares dropped from \$10.26 at the close of trading on February 28, 2013, to \$7.30 at the close of trading on March 1, 2013 and to \$5.91 on March 4, 2013;
- (b) the price of Atlantic's debt securities decreased as follows:
 - (i) the price of the 6.50% Convertible Debentures due 2014 declined from \$99.79 at the close of trading on February 28, 2013 to \$90 at the close of trading on March 1, 2013;
 - (ii) the price of Atlantic's 6.25% Convertible Debentures due 2017 declined from \$97.11 at the close of trading on February 28, 2013 to \$89 at the close of trading on March 1, 2013;
 - (iii) the price of Atlantic's 5.60% Convertible Debentures due 2017 declined from \$91.77 at the close of trading on February 28, 2013 to \$86.98 at the close of trading on March 1, 2013; and
 - (iv) the price of Atlantic's Series D Debentures declined from \$93.34 at the close of trading on February 28, 2013 to \$85.14 at the close of trading on March 1, 2013.

THE MISREPRESENTATION WAS INCORPORATED EFFICIENTLY INTO THE PRICE OF ATLANTIC'S SECURITIES

55. The issuance of the Impugned Documents and the defendants' public oral statements directly affected the price of Atlantic's Securities. Atlantic's disclosure documents, press releases and oral statements were the primary source of information concerning Atlantic's business and prospects, including the impact of the broader market and regulatory environment on Atlantic's business. The defendants were aware at all material times of the effect of Atlantic's disclosure and other public statements upon the price of its securities. The Impugned Documents were filed, among other places, on SEDAR and EDGAR, and with regulatory authorities in Canada and the United States, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

56. Atlantic routinely transmitted the information referred to above to the financial press, financial analysts and certain prospective and actual holders of its securities. Atlantic provided either copies of the Impugned Documents or links thereto on its website. Atlantic maintains a website in part to communicate with the Class and prospective investors.

57. Atlantic regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of its disclosure documents, including press releases on newswire services. Each time Atlantic communicated that new material information about its financial results to the public it directly affected the price of its securities.

58. Atlantic regularly held earnings conference calls with financial analysts and members of the investing public, on which it routinely discussed its business, operations, objectives and strategy, including the information referred to above.

59. Atlantic was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Atlantic's securities in such reports during the Class Period were based, in whole or in part, upon that information.

60. Atlantic's securities were and are traded, among other places, on the Toronto Stock Exchange and the New York Stock Exchange, which are efficient and automated markets. The price at which Atlantic's securities traded promptly incorporated material information from Atlantic's disclosures about Atlantic's business, operations, objectives and strategy, which were disseminated to the public through the documents referred to above and the various other means Atlantic chose and used to communicate that information to the public.

THE PLAINTIFFS' CLAIMS

Statutory Liability for Misrepresentation in the Prospectus (Section 130 OSA)

61. On behalf of the Prospectus Class Members, the plaintiffs assert the right of action found in section 130 of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation, against all defendants.

62. The Prospectus contained a misrepresentation within the meaning of Part XXIII of the *OSA* and the equivalent provisions of the other Securities Legislation, as particularized above.

63. The Prospectus did not constitute full, true and plain disclosure of all material facts relating to the Series D Debentures.

64. Atlantic issued the Series D Debentures, and Welch and Ronan signed the Prospectus.

65. Atlantic is liable for damages pursuant to section 130(1)(a) of the *OSA* and Welch and Ronan are liable for damages to the Prospectus Class Members pursuant to sections 130(1)(c) and (e) of the *OSA*.

Negligence

66. On behalf of the Prospectus Class Members, the plaintiffs assert negligence against all defendants.

67. Atlantic, and by virtue of their position of authority and responsibility within Atlantic, Welch and Ronan, each owed a duty to Class Members to ensure that the Prospectus made full, true and plain disclosure of all material facts relating to the securities offered thereby, and was materially accurate and complete. The defendants and the Prospectus Class Members were in a relationship of proximity and it was reasonably foreseeable to the defendants that an act or omission on their part would cause damage to the Prospectus Class Members.

68. At all material times, Atlantic, Welch and Ronan knew or ought to have known that the Prospectus was materially misleading in that it contained the misrepresentation particularized above. Welch and Ronan were senior officers at the time of the offering to which the Prospectus related, and Welch was a director. The Prospectus was created for the purpose of obtaining financing for Atlantic's operations. Welch and Ronan signed the Prospectus and certified that it made full, true, and plain disclosure of all material facts relating to the securities offered.

69. The reasonable standard of care expected in the circumstances required the defendants to act fairly, reasonably, honestly, candidly and with due care in the course of compiling and disseminating the information about the financial condition of Atlantic including the sustainable Cash Available for Distribution.

70. The defendants breached their duty of care to those Class Members who acquired Atlantic's securities pursuant to the Prospectus. As a result, those Class Members acquired Series D Debentures at artificially inflated prices and suffered damages as a result.

71. Had the defendants exercised reasonable care and diligence in connection with the distribution of the securities to which the Prospectus related, the securities regulators would not have issued a receipt for the Prospectus, or the prospectus that it supplemented, and that distribution would not have occurred, or would have occurred at reduced prices that reflected the true value of the Series D Debentures.

Statutory Liability for Continuous Disclosure (Part XXIII.1 OSA)

Liability for Misrepresentations in Documents

72. On behalf of the Secondary Market Class Members, the plaintiffs assert the rights of action found at subsection 138.3(1) of the *OSA* subject to section 138.8 of the *OSA*, and, if required, the equivalent provisions of the other Securities Legislation, against all defendants.

73. The *OSA* and the other Securities Legislation imposed an obligation on the defendants to make full, true and plain disclosure of all material facts in the Impugned Documents, and to not make any statements or omit any statement that would render the Impugned Documents misleading. The misrepresentation particularized herein constituted a misrepresentation within

the meaning of applicable securities law. As particularized above, each of the Impugned Documents contained the misrepresentation.

74. Each of the Impugned Documents (except the November 5, 2012 press release) was a core document within the meaning of the Securities Legislation.

75. The November 5, 2012 press release was a non-core document within the meaning of the Securities Legislation.

76. Atlantic is a responsible issuer within the meaning of the Securities Legislation. Welch was a director and officer of Atlantic, and Ronan was an officer of Atlantic within the meaning of the Securities Legislation.

77. Each of Welch and Ronan authorized, permitted or acquiesced in the release of the Impugned Documents. Each of Welch and Ronan falsely certified the accuracy of each of Q3 2012 financial statements, Q3 2012 MD&A and the Prospectus in their capacities as, respectively, Atlantic's chief executive officer and chief financial officer.

78. Each of the defendants ought to have known of the misrepresentation in the Impugned Documents, and that it constituted a misrepresentation within the meaning of the Securities Legislation.

79. In the alternative, each of the defendants deliberately avoided acquiring knowledge that the November 5, 2012 press release contained the misrepresentation.

80. In the further alternative, each of the defendants, through action or failure to act, was guilty of gross misconduct in connection with the release of the November 5, 2012 press release.

Liability for Misrepresentations in Public Oral Statements

81. On behalf of the Secondary Market Class Members, the plaintiffs assert the rights of action found at subsections 138.3(2) of the *OSA* subject to section 138.8 of the *OSA*, and, if required, the equivalent provisions of the other Securities Legislation, against all defendants.

82. Welch made public oral statements that contained the misrepresentation, as particularized herein, within the meaning of Part XXIII.1 of the *OSA* and the equivalent provisions of the other Securities Legislation.

83. Welch had actual, implied or apparent authority to speak on behalf of Atlantic, and those oral statements related to the business or affairs of Atlantic. Ronan authorized, permitted or acquiesced in the making of those public oral statements. Atlantic is a responsible issuer within the meaning of the Securities Legislation.

84. When those public oral statements were made, each of the defendants ought to have known of the misrepresentation, and that those public oral statements constituted a misrepresentation within the meaning of the Securities Legislation.

85. In the alternative, each of the defendants deliberately avoided acquiring knowledge that those public oral statements were a misrepresentation.

86. In the further alternative, each of the defendants, through action or failure to act, was guilty of gross misconduct in connection with the release of those public oral statements.

Liability for Failure to Make Timely Disclosure

87. On behalf of the Secondary Market Class Members, the plaintiffs assert the rights of action found at subsections 138.3(4) of the *OSA* subject to section 138.8 of the *OSA*, and, if required, the equivalent provisions of the other Securities Legislation, against all defendants.

88. Atlantic's inability to sustain its current level of dividend constituted a material change within the meaning of the Securities Legislation. Pursuant to section 75 of the *OSA* and, if applicable, the equivalent provisions of the other Securities Legislation, the defendants ought to have disclosed the material change forthwith from the beginning of the Class Period, but failed to do so.

89. Atlantic was a responsible issuer, within the meaning of the Securities Legislation. Welch and Ronan were officers and directors of Atlantic, and authorized, permitted or acquiesced in the failure to make timely disclosure of the material change.

90. Welch and Ronan knew of the material change and that it constituted a material change within the meaning of the Securities Legislation, but failed to disclose it in a timely fashion.

Negligent Misrepresentation

91. The plaintiffs assert negligent misrepresentation against all defendants.

92. The defendants owed a duty of care to the Class Members because they were in a relationship of proximity and it was reasonably foreseeable that the Class Members would rely upon the misrepresentation of sustainable Cash Available for Distribution by purchasing or otherwise acquiring securities of Atlantic and would suffer damages as a result.

93. In addition, Atlantic is a reporting issuer in all provinces and territories of Canada and a registrant with the SEC. As such, at all material times Atlantic was subject to securities law in Canada and the United States.

94. The defendants had statutory obligations under applicable securities law to ensure that Impugned Documents represented fairly in all material respects Atlantic's financial condition, results of operations and cash flow. The defendants breached that duty by making the misrepresentation, and by falsely certifying so.

95. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase Atlantic's securities. The defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would reasonably rely to their detriment upon such documents in making the decision to purchase Atlantic's securities.

96. The defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of Atlantic's publicly traded securities such that the trading price of those securities would at all times reflect the information contained in the Impugned Documents.

97. Welch and Ronan certified that the Q3 2012 financial statement, Q3 2012 MD&A and the Prospectus did not contain any untrue statements of material fact or omit to state a material fact necessary to make the statement not misleading.

98. Welch made the misrepresentation by authorizing, permitting or acquiescing in the release of the Impugned Documents. Welch also made the misrepresentation in oral statements during conference calls with investors.

99. Ronan made the misrepresentation by authoring, permitting or acquiescing in the release of the Impugned Documents.

100. As such, the defendants owed Class Members a duty of care to ensure that Atlantic's disclosure documents did not misrepresent Atlantic's business, financials and affairs. That duty was informed by the Securities Legislation, subsidiary instruments, including NI 51-102, NI 52-109, NI 41-101, NI 44-101 and NI 44-102, as well as applicable United States securities law.

101. The defendants breached the standard of conduct expected in the circumstances and were negligent in that, among other things:

- (a) they knew or ought to have known that Cash Available for Distribution was not sustainable because of the continuing problems of weak demand and decreasing financial returns from the Ontario and Florida projects that formed major components of its business;
- (b) they knew or ought to have known that that it did not have sufficient Cash Available for Distribution to sustain its then level of dividends;
- (c) they failed to maintain appropriate internal controls to ensure that the released documents adequately and fairly presented the business and affairs of Atlantic, including the Cash Available for Distribution;
- (d) Welch and Ronan made or authorized the making of announcements, news releases, regulatory filings and other public documents when they knew or ought to have known that they contained the misrepresentation about sustainable Cash Available for Distribution; and
- (e) they failed to make timely disclosure of the material facts about the operation of Atlantic's power projects as described herein.

102. The defendants knew and intended that the Class Members would rely upon the misrepresentation because they knew that Atlantic's shareholders invested primarily for income from dividends and they knew that the dividend was an indicator of Atlantic's financial health which made its debentures attractive to investors.

103. The Class Members reasonably relied upon the misrepresentation in making their decision to purchase Atlantic securities. The defendants were aware of such reliance.

104. The Class Members also reasonably relied upon the misrepresentation by the act of purchasing or otherwise acquiring Atlantic securities during the Class Period. The defendants were aware of such reliance.

DAMAGES

105. The plaintiffs and Class Members suffered damages as a result of the defendants' breach of their duties at law by making the misrepresentation.

106. The Class Members suffered damages equivalent to the drop in market price or value of the securities as the truth about Atlantic's financial condition, results of operation and cash flow, their ability to maintain dividends and the other information particularized herein were disclosed. If the defendants had not made the misrepresentation, Atlantic's securities would not have traded at artificially high levels during the Class Period, and the Class Members would not have suffered losses when the truth was finally and belatedly revealed on February 28, 2013.

VICARIOUS LIABILITY

107. Atlantic is vicariously liable for the acts and omissions of Welch and Ronan, and of its other directors, officers and employees. Welch and Ronan engaged in the misconduct described

above while engaged in the management, direction, control and transaction of the business and affairs of Atlantic.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

108. The plaintiffs plead that this action has a real and substantial connection with Ontario, because, among other things:

- (a) Atlantic is a reporting issuer in Ontario;
- (b) Atlantic has an office, owns and operates assets, and is actively engaged in doing business in Ontario;
- (c) Atlantic's securities trade on the Toronto Stock Exchange and certain Canadian alternative trading venues, all of which are located in Ontario;
- (d) Atlantic's public disclosures were disseminated in Ontario;
- (e) a substantial proportion of the Class Members reside in Ontario;
- (f) a substantial portion of the damages sustained by the Class were sustained in Ontario; and
- (g) Lowry resides in Ontario.

SERVICE OUTSIDE OF ONTARIO

109. The plaintiffs may serve this statement of claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because it is:

- (a) a claim in respect of personal property in Ontario (para 17.02(a));
- (b) a claim in respect of damage sustained in Ontario from a tort wherever committed (para 17.02(h));
- (c) a claim authorized by statute to be made against a person outside of Ontario by a proceeding in Ontario (para 17.02(n)); and
- (d) a claim against a person ordinarily resident or carrying on business in Ontario (para 17.02(p)).

110. This action was commenced pursuant to the *Class Proceedings Act, 1992*.

May 22, 2013

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Court File No: CV-13-480939

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED
STATEMENT OF CLAIM**

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