

“tailrace excess” means an amount equal to whichever is the lesser of £3,500,000 or one half of the amount by which the total of all payments made under Bechtel Contract No. 4545-100, entered into the 17th day of July 1963 between Her Majesty the Queen in respect of the Government of New Zealand, of the one part, and Utah Construction and Mining Co., W. Williamson Construction Co. Ltd., and Burnett's Motors Ltd., a joint venture, of the other part, and all amendments thereto exceeds £13,700,000, being the estimate made for the Crown as at the 6th day of May 1966 of the said total:

“the Inventory” means the Inventory appearing at the foot of this Schedule:

“total progressive capital investment Stage II” means the total for the time being of the net debit balances in Capital Account No. 1, Capital Account No. 2, Capital Account No. 3, and Capital Account No. 4:—

2. Clause 2 of the Schedule shall be varied by omitting the word “and” immediately before paragraph (b) thereof, and by adding at the end thereof the following paragraphs:

“(c) Where reference is made in this Schedule to an item within the categories listed in the Inventory, or in a Part of the Inventory, that reference shall include an item not within those categories but which the parties hereto agree would be appropriate to be included in the Inventory, or in the Part thereof, as the case may be; and

“(d) (i) Until the beginning of the calendar quarter next following the date on which the Crown is first obliged under the agreement to make available to the company, pursuant to paragraphs (c), (d), (e), and (f) of clause 5 of the agreement, electrical power exceeding five 100-megawatt blocks ‘total installed capacity’ means 700,000.

“(ii) On and after the beginning of the said calendar quarter ‘total installed capacity’ in respect of any quarter means the number which equals the sum of 700,000, plus the number of kilowatts in excess of five 100-megawatt blocks which the Crown, in pursuance of notices given by the company under paragraphs (c), (d), (e), and (f) of clause 5 of the agreement, is obliged to make available at the commencement of that quarter.”

3. The Schedule shall be varied by omitting clauses 4, 5, 6, and 7, and substituting—

“4. For the purpose of calculating the price payable by the company, for electrical power under the agreement, the Crown shall, as may be necessary, establish and maintain accounts, as provided in clauses 5, 6, 7, 8, 9, and 10 hereof.

“5. Subject to the provisions of clause 9 hereof, the Crown shall debit Capital Account No. 1 with the following amounts, item by item:

“(a) at the end of the construction period relating to any particular item within the categories listed in Part I of the Inventory (or at such later time as any of them is respectively expended), capital amounts (excluding interest during construction) expended by the Crown from time to time since the 31st day of January 1963 on that item, and expended directly and necessarily in connection with the initial development of the water resources; provided that the amount debited in respect of the payments made under the said Bechtel Contract No. 4545-100 shall not exceed the sum of £13,700,000 and twice the tailrace excess;

“(b) as at the date when the first generating unit to be installed by the Crown at the power station at Lake Manapouri is installed ready for use, the capital amount payable to the company under clause 15 or under clause 16 of the agreement and the capital amount which may be payable to the company under clause 17 of the agreement (excluding in all cases interest thereon);

“(c) as at balance day, £4,730,000, or such other amount as the Minister and the company on or prior to balance day may agree;

“(d) as at the commencement of Stage II, £2,950,000.

“6. Subject to the provisions of clause 9 hereof, the Crown shall debit Capital Account No. 2 with the following amounts, item by item:

“(a) at the end of the construction period relating to any particular item within the categories listed in Part II of the Inventory (or at such later time as any of them is respectively expended) capital amounts (excluding interest during construction), expended by the Crown from time to time, since the 31st day of January 1963, on that item and expended directly and necessarily in connection with the initial development of the water resources;

“(b) as at balance day, £1,220,000, or such other amount as the Minister and the company on or prior to balance day may agree.

“7. Subject to the provisions of clause 9 hereof, the Crown shall debit Capital Account No. 3 with the following amounts, item by item:

“(a) at the end of the construction period relating to any particular item within the categories listed in Part I of the Inventory (or at such later time as any of them is respectively expended), capital amounts (excluding interest during construction) expended by the Crown from time to time, since the 31st day of January 1963, on that item and expended directly and necessarily in connection with the development of the water resources beyond the initial development of the water resources;

“(b) at the end of the construction period relating to an item within the categories listed in Part I of the Inventory, interest during construction on capital amounts expended by the Crown on that item and expended directly and necessarily in connection with the development of the water resources beyond the initial development of the water resources.

“8. Subject to the provisions of clause 9 hereof, the Crown shall debit Capital Account No. 4 with the following amounts, item by item:

“(a) at the end of the construction period relating to any particular item within the categories listed in Part II of the Inventory (or at such later time as any of them is respectively expended), capital amounts (excluding interest during construction) expended by the Crown from time to time, since the 31st day of January 1963, on that item and expended directly and necessarily in connection with the development of the water resources beyond the initial development of the water resources.

“(b) at the end of the construction period relating to an item within the categories listed in Part II of the Inventory, interest during construction on capital amounts expended by the Crown on that item and expended directly and necessarily in connection with the development of the water resources beyond the initial development of the water resources.

“9. (a) The sum of the amounts debited to Capital Account No. 1, pursuant to paragraph (c) of clause 5 hereof, and to Capital Account No. 2, pursuant to paragraph (b) of clause 6 hereof, shall not exceed £5,950,000.

“(b) The term “Shoreline treatment” in Part I of the Inventory shall include any measures taken to preserve natural scenery and to raise the low-lying areas of Te Anau township. Notwithstanding the capital amounts expended by the Crown on the said measures, the total of the amounts debited in respect thereof to Capital Account No. 1 and Capital Account No. 3 shall not, except as otherwise may be agreed between the Minister and the company, exceed the net amount which the company would have been obliged to expend for these purposes if—

“(i) the 1960 agreement had continued in force; and

“(ii) the company had exercised its powers under that agreement so as to control the levels of Lakes Manapouri and Te Anau, as indicated in the letters signed by the Honourable W. S. Goosman, Minister of Works, and the letters signed by Mr D. J. Hibberd, Director of Consolidated Zinc Proprietary Ltd., copies of which are set out in the Appendix hereto; and

“(iii) the company had carried out its intentions expressed in clause 22 of the 1960 agreement in relation to the preservation of the scenic qualities of the said lakes and certain rivers, and had complied with the requirements made by the Minister of Works pursuant to that clause, which requirements are set out in his said letters.

“(c) The said Capital Accounts shall not include any item which comprises only construction equipment (as hereinafter defined). Net expenditure by the Crown on construction equipment expended directly and necessarily in connection with the development of the water resources shall be apportioned between appropriate items in accordance with good accounting principles, and the amount so apportioned to an item shall be deemed to be expended on that item. As and when construction equipment is sold, disposed of, or appropriated to a use other than the development of the water resources, the Crown shall credit against each of the items in respect of which expenditure on that construction equipment had been debited a proportion (determined in accordance with good accounting principles) of the amount so debited. In this paragraph ‘construction equipment’ means machinery, plant, equipment, buildings, works, and other assets and goods acquired by the Crown for, or in connection with, the development of the water resources, but not being, or incorporated in, works which are a permanent part of the development of the water resources.

“(d) None of the said Capital Accounts shall be debited with any amount expended by the Crown on or in connection with the repair, reinstallation, replacement, or re-equipment of any item, except in any case where such repair, reinstallation, replacement, or re-equipment is necessitated by fair wear and tear of the item concerned and is not necessitated as a result of fire, flood, storm, or tempest, or any other act of God, or any other cause beyond the control of the Crown.

“(e) Each of the amounts debited to Capital Account No. 1, pursuant to paragraphs (c) and (d) of clause 5 hereof, shall be apportioned at the time it is so debited between the items within Capital Account No. 1 so that the proportion debited in respect of an item bears the same proportion to that amount as the total of the amounts debited by balance day, and estimated to be debited between balance day and apportionment day, in respect of the item, pursuant to paragraph (a) or paragraph (b) of clause 5 hereof, bears to the total of the amounts debited by balance day, and estimated to be debited between balance day and apportionment day, to Capital Account No. 1, pursuant to the said paragraph (a) and paragraph (b).

“(f) The amount debited to Capital Account No. 2, pursuant to paragraph (b) of clause 6 hereof, shall be apportioned between the items within Capital Account No. 2 so that the proportion debited in respect of an item bears the same proportion to that amount as the total of the amounts debited by balance day, and estimated to be debited between