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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2007-CP-23-3206
Appellate Case No. 2013-001607

International Paper Company, Inc., ...Appellant,

v.

South Carolina State Energy Office,.....Respondent.

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Administrative Law Judge

Case No. 12-ALJ-30-0086-CC
Appellate Case No. 2013-000114

International Paper Company, Inc., ...Appellant,

v.

South Carolina State Energy Office,.....Respondent.

RECORD ON APPEAL – VOLUME I
(Proceedings Before The Administrative Law Court)

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NOTE: This Record on Appeal includes several motions and memoranda that have duplicative attachments and exhibits. To avoid significant duplication in this Record, any lengthy attachments and exhibits have been reproduced only once and cross-references to where the document may be found in this Record have been inserted.

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Inc., Petitioner, vs. South Carolina State Energy Office Respondent.	)	Docket No. 12-ALJ-30-0086-CC **ORDER**

This matter comes before the Administrative Law Court (ALC or Court) pursuant to a Motion to Dismiss (Motion to Dismiss) filed by Respondent State Energy Office (State Energy Office) on October 3, 2012.[1] This Motion was filed in response to the request filed by Petitioner International Paper Company, Inc. (IP) for a contested case hearing pursuant to Rule 11, SCALCR. IP challenges the State Energy Office's denial of its application for a tax credit under S.C. Code Ann. § 12-6-3620 (Supp. 2011) for taxpayers who purchase and install equipment used to create energy for commercial use from a fuel consisting of no less than ninety percent biomass resource (Biomass Resource Credit). In its Motion to Dismiss, the State Energy Office argues that the "Budget and Control Board, State Energy Office," is not an executive agency and is not subject to the jurisdiction of this Court pursuant to Title 1, Chapter 23 of the South Carolina Code. On October 15, 2012, IP filed a Memorandum in Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction (Memorandum in Opposition), in which IP contends that this Court has de novo[2] jurisdiction or alternatively, appellate jurisdiction, over State Energy Office decisions.

This Court held a hearing on the State Energy Office's Motion to Dismiss in Columbia, S.C. on October 17, 2012. The State Energy Office filed a Memorandum in Support of Motion to Dismiss (Memorandum in Support) at that hearing. Subsequently, based upon the issues raised by the parties, the Court, sua sponte, requested that both parties address specific questions related to the Court's jurisdiction in these proceedings. On October 29, 2012, IP filed

[1] Also on October 3, 2012, the State Energy Office filed a Motion to Quash Subpoena and a Motion for Protective Order.

[2] The Court will refer to this jurisdiction as "subject matter jurisdiction."

Petitioner's Supplemental Memorandum in Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction (Supplemental Memorandum in Opposition), in which it asserts, in addition to arguments made in its initial Memorandum in Opposition, that IP has a protected property interest in the Biomass Resource Credit for due process purposes under Article I, section 22 of the South Carolina Constitution, and that the State Energy Office must, under S.C. Const. art. I, § 22, provide IP due process rights, including: (1) providing adequate notice of a hearing; (2) a hearing prior to rendering a final decision concerning IP's credit applications; (3) the right to introduce evidence; (4) and the right to confront and cross-examine witnesses. IP also asserts that should the Court conclude that it does not have de novo jurisdiction but does have appellate jurisdiction, IP should be allowed to amend its request for a contested case hearing to a notice of appeal pursuant to Rule 18(C), SCALCR.

Also on October 29, 2012, the State Energy Office filed Respondent's Second Memorandum in Support of Motion to Dismiss (Second Memorandum in Support), in which it argues that the Court lacks jurisdiction under S.C. Code Ann. § 1-23-600(A) because the State Energy Office is not a department of the executive branch of government as defined in Section 1-30-10; that this Court lacks jurisdiction under Section 1-23-600(A) or (D) because the certification process administered by the State Energy Office is not a contested case; that the Court also lacks appellate jurisdiction under Section 1-23-600(D) because IP did not file an appeal pursuant to Section 1-23-600(D); that IP does not have a protected property interest because the certification of the tax credit application was merely discretionary, and even after a tax credit amount was certified, the statute warns that it is not vested because the amount can be repealed at any time; that no law mandated the State Energy Office to conduct a trial-type proceeding before denying certification of an application for a biomass energy tax credit; that even if S.C. Const. Art. I § 22 applies, due process does not require a trial-type process to decline certification of a tax credit application but only the process afforded by the applicable statute; and that IP abandoned the process that the State Energy Office gave it by filing a request for a contested case hearing with the ALC after the State Energy Office asked IP for further information. The allegation that the State Energy Office gave IP process, or even had a process to have allowed IP to respond to the State Energy Office's review of its applications, is disputed by IP in Petitioner's Memorandum in Response to Respondent's Second Memorandum in

Support of Motion to Dismiss (Petitioner's Final Memorandum), which IP filed on October 31, 2012.

For the reasons set forth below, the State Energy's Office's Motion to Dismiss is granted.

DISCUSSION

Subject Matter Jurisdiction

The State Energy Office argues that this Court lacks subject matter jurisdiction over this matter. I agree.

S.C. Code Ann. § 1-23-600(A) (2011) states in pertinent part:

> An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases . . . .

In its Memorandum in Opposition, IP concedes that though the Department of Revenue is listed as an executive branch department under Section 1-30-10, the State Energy Office is not. Nevertheless, IP argues that S.C. Code Ann. § 1-23-600(A) should still apply because the State Energy Office is performing an administrative function in the tax credit certification process under S.C. Code Ann. § 12-6-3620, and is assisting and acting on behalf of the South Carolina Department of Revenue in this capacity. I agree that the State Energy Office is a state agency for purposes of the Administrative Procedures Act (APA). S.C. Code Ann. § 1-23-505(2) defines "agency" as "a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge. . . ."

While it is true that "[t]he State Energy Office must not function as a regulatory body" (S.C. Code Ann. § 48-52-410 (2011)), the State Energy Office is indisputably an office under the South Carolina Budget and Control Board, which is a state agency. See S.C. Code Ann. § 1-11-180 (B) ("The Budget and Control Board may **promulgate regulations** necessary to carry out this section") (emphasis added). The authority to promulgate regulations is clearly an attribute of the powers of a state agency. See Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 474, 636 S.E.2d 598, 609 (2006) ("Under the APA, a '[r]egulation' means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. . . S.C. Code Ann. § 1-23-10(4) (2005)."). Moreover, the State Energy Office has statewide functions and responsibilities given to it by the General Assembly.

The State Energy Office's primary purpose is to develop and implement a well-balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy. S.C. Code Ann. § 48-52-410 (2011). The State Energy Office also has the duties and responsibilities over the administration of state tax credit certifications in the statute at issue here and in other statutes. See S.C. Code Ann. §§ 12-6-3600, -3610, -3620, -3631. For these reasons, the State Energy Office is a state administrative agency under the APA.[3]

Furthermore, though I disagree with the State Energy Office that this Court lacks subject matter jurisdiction because this matter does not involve a contested case, I agree with the State Energy Office that this Court lacks subject matter jurisdiction to hear this matter as a contested case in the ALC. Although a matter may not be heard by this Court as a "contested case," when appropriate, that same matter clearly can be reviewed as a contested case in a state agency and subsequently heard by this Court in its appellate jurisdiction. A cursory review of Section 1-23-600 (A) to (D) establishes that some cases are heard as contested cases only in the state agency and others only in the ALC.

Nevertheless, under Section 1-23-600(A), this Court can only preside over hearings of contested cases involving the departments of the executive branch of government **as defined in Section 1-30-10.** Though the Budget and Control Board and the State Energy Office are state agencies, neither is a department listed under Section 1-30-10. Therefore, IP's case cannot be heard as a contested case before this Court. Consequently, since IP filed a request for a contested case with this Court, this Court has no subject matter jurisdiction to hear this case and must therefore dismiss it.

Appellate Jurisdiction

The issue of the Court's appellate jurisdiction is a separate question from its subject matter jurisdiction to hear this case as a contested case. Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188, 714 S.E.2d 547 549 (2011) ("the question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction."). Under S.C. Code Ann. § 1-

[3] State Energy Office has even acknowledged, in its Notice of Motion and Motion to Dismiss filed with this Court regarding IP's January 28, 2011 request for the Biomass Resource Credit for the tax year 2010, that it is capable of making a final agency decision and determination concerning the [Biomass Resource Credit.]" That position is thus binding upon State Energy Office is this matter. Binkley v. Burry, 352 S.C. 286, 295-96, 573 S.E.2d 838, 843 (Ct. App. 2002) ("Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.").

23-600(D), with several exceptions not applicable to this case, "[a]n administrative law judge . . . shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law . . . ." (emphasis added).

The State Energy Office argues that this Court lacks appellate jurisdiction because this matter is not a contested case under Section 1-23-600(D). However, as expressed above, Section 1-23-600(D) sets forth that the ALC hears all appeals from final decisions of contested cases pursuant to the APA or Article I, Section 22. A review of the jurisdiction of the ALC is instructive as to the inclusion of Article I, Section 22. Under the APA, S.C. Code Ann. § 1-23-310 (3) (2011) defines "contested case" as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." In Garris v. Governing Bd. of S.C. Reinsurance Facility, the South Carolina Supreme Court found that "Article I, Section 22 [of the Constitution of the State of South Carolina] requires an administrative agency to give procedural due process to parties that come before it even though a matter may not be a 'contested case' as defined in the APA." 333 S.C. 432, 440-41, 511 S.E.2d 48, 52 (1998).[4] Article I, Section 22 of the S.C. Constitution states: "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; . . . nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review."[5]

With the creation of the Administrative Law Court, the right to either a contested case or Article I, Section 22 hearing has evolved. Under Section 1-23-310(3), a "contested case" is still defined as "a proceeding, including but not restricted to, ratemaking, price fixing, and licensing,

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[4] Notably, though the courts have treated the due process requirement under Article I, Section 22 as distinct from a "contested case," Article 1, Section 22 of the South Carolina Constitution appears to be a law which requires an administrative agency to hold a hearing regarding a person's "private rights."

[5] The Court notes that South Carolina Constitution, Art. I, Section 22 seems to provide due process rights beyond the basic due process protections afforded under the Due Process Clauses of the South Carolina and United States Constitutions (S.C. Const. art. I, § 3 and U.S. Const. amend. XIV, §1, respectively). S.C. Const. Art. I, Section 22 protects "private rights" by requiring "due notice and an opportunity to be heard" before a judicial or quasi-judicial decision of an administrative agency affecting those rights can bind a person. This Section then separately provides for the standard, minimum due process protection of "liberty or property," requiring that any deprivation thereof be by a "procedure prescribed by the General Assembly" and have judicial review thereof.

in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." However, in 2008, the General Assembly specifically defined a "contested case" under the jurisdiction of ALC. S.C. Code Ann. § 1-23-505(3) (2011). Section 1-23-505(3) added Article I, Section 22 to the definition of "contested case." Specifically, the phrase, "or by Article I, Section 22, Constitution of the State of South Carolina, 1895," was added after "required by law," and "or the Administrative Law Court" was added after "by an agency" in Section 1-23-505(3). The inclusion of Article I, Section 22 in the language reflects the intent of the General Assembly to incorporate into contested cases what the Supreme Court required in Garris, which is that an agency provide at the very least a procedural due process hearing. This new definition is consonant with the Supreme Court's interpretation of the old definition of "contested case" – "one in which an agency is required by law to determine a party's rights after an opportunity for a hearing." Garris, 333 S.C. 432 at 440, 511 S.E.2d at 52.

Here, while there is presently no statutory law that specifically states that the State Energy Office is to hold hearings, because the State Energy Office is a state agency, Article I, Section 22 of the S.C. Constitution nevertheless requires, by way of S.C. Code Ann. § 1-23-505(3) (2011), a procedural-due-process contested case hearing. Thus, the State Energy Office was required to afford IP an opportunity for a hearing to determine whether a party's application for a Biomass Resource Credit will be certified. The State Energy Office nonetheless argues that the certification of a tax credit is not a vested property interest for due process purposes. First, due process under Art. I, Section 22 of the S.C. Constitution is not limited to the protection of property (or liberty) interests, but also includes the protection of "private interests." As the State Energy Office points out, "due process is flexible and calls for such procedural protections as the particular situation demands." Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008). It would seem an absurdity that a situation in which millions of dollars are at stake for a tax credit applicant would not call for any procedural protections to safeguard such an interest, especially in light of the broad due process protection afforded by Art. I, Section 22.

Secondly, the Supreme Court in Garris cited two cases involving statutory and regulatory certification processes that were not "contested cases" as defined by the APA, and thus did not entitle the parties seeking certification a hearing under the APA, but nevertheless gave rise to an

entitlement to notice, a hearing, and judicial review under Art. I, Section 22. See Garris, 333 S.C. at 440, 511 S.E.2d at 52 (citing League of Women Voters of Georgetown County v. Litchfield-by-the-Sea, 305 S.C. 424, 409 S.E.2d 378 (1991) (vacated on other grounds by Brown v. S.C. Dep't of Health and Envtl. Control, 348 S.C. 507, 522 n.14, 560 S.E.2d 410, 418 n.14 (2002);[6] Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health and Envtl. Control, 305 S.C. 90, 93, 406 S.E.2d 340, 342 (1991)). See also Smith v. S.C. Dep't of Mental Health, 329 S.C. 485, 500, 494 S.E.2d 630, 638 (Ct. App. 1997) ("Administrative agencies are required to meet minimum standards of due process") (citing S.C. Const. art. 1, § 3; Stono River Envtl. Prot. Ass'n, supra). Therefore, parties seeking certification from the State Energy Office of their applications for the Biomass Resource Credit are entitled to at least notice, a hearing (an opportunity to be heard in a meaningful way) before an impartial and unbiased adjudicator, and judicial review.[7] Kurschner, 376 S.C. at 350, 656 S.E.2d at 171 ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."); Young v. Charleston County Sch. Dist., 397 S.C. 303, 310, 725 S.E.2d 107, 110

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[6] It is worth noting that in League of Women Voters of Georgetown County, the South Carolina Coastal Council's certification determinations were not binding upon DHEC, the permitting agency. Yet the Supreme Court nevertheless concluded that as an administrative agency, the Coastal Council had to comport with the standards of due process set forth in Art. I, Section 22 of the S.C. Constitution, reasoning that "we are constrained to safeguard the interests of the parties at all stages of the application process since Council's certification determination may be accorded significant weight by the permitting agency in deciding whether or not to grant a permit." In the instant case, the State Energy Office's certification decision is not merely advisory, but is determinative of whether a tax credit can be granted. If the State Energy Office declines to certify an application for the Biomass Resource Credit, for instance, then the applying party cannot receive that tax credit. Therefore, this Court is all the more constrained to safeguard, at all stages of the application process, the interests of parties applying to the State Energy Office for certification for tax credits.

[7] In Respondent's Second Memorandum in Support of Motion to Dismiss, the State Energy Office cites Garris, supra, Triska v. Dep't of Health and Envtl. Control, 292 S.C. 190, 355 S.E.2d 531 (1987), and S.C. Ambulatory Servs. Surgery Center Assoc. v. S.C. Workers' Comp. Comm'n, 389 S.C. 380, 699 S.E.2d 146 (2010) in arguing that some law must mandate that the agency conduct a hearing prior to rendering a final decision regarding the legal rights, duties, or privileges, of a party. Garris and Triska relied on the definition of "contested case" under then Section 1-23-310(2), which required a hearing that was required by law only. The major change that took place when Section 1-23-505(3) was enacted, was that hearings required pursuant to S.C. Const. art. I, § 22 were included in the definition of "contested cases" so that if no hearing was otherwise required under any other law, one would still be necessary if Article I, Section 22 so required. Therefore, though the rule cited from Garris and Triska – that "a 'contested case' does not exist where there is no requirement deriving from South Carolina or Federal law that there be no opportunity for a hearing" – is still good law, this rule may be misleading in their contexts. Now, a statutory law does exist (Section 1-23-505(3)) that requires in contested cases a hearing when appropriate under Art. I, Section 22 of the S.C. Constitution, even when no other law provides for a hearing by a state agency, which is consistent with the very holding in Garris. As for the citation to S.C. Ambulatory Servs., the Court simply pointed out that Surgery Centers only mentioned "contested case" hearing in its brief, but did not provide a legal basis for its entitlement thereto. Indeed, Surgery Centers "failed to set forth any specific argument establishing that" a contested case was required." S.C. Ambulatory Servs., 389 S.C. at 388, 699 S.E.2d at 151.

(2012) ("An indispensable component of procedural due process is that the persons legally responsible for making a decision must be informed and unbiased.") (internal citation omitted). Moreover, "[i]n cases where important decisions turn on questions of fact, due process at least requires an opportunity to present favorable witnesses." Smith, 329 S.C. at 500, 494 S.E.2d at 638 (citing Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 391 S.E.2d 866 (1990).[8]

Therefore, though this matter is not properly before the ALC as a contested case, this matter would be a contested case as defined in Section 1-23-505(3) (2011) and thus could be heard as an appeal under Section 1-23-600(D). Nevertheless, the Court lacks appellate jurisdiction in this matter. Clearly, this matter was not filed as an appeal of a decision of the State Energy Office. IP nonetheless argues that Rule 18(C), SCALCR would allow the Court to convert IP's request for a contested case into a notice of appeal. This rule states that "[a]ny pleading, paper or document can be amended at any time upon motion and for good cause shown, unless the amendment would substantially prejudice any other party in the presentation of its case." However, to apply Rule 18(C), SCALCR would go beyond a mere amendment of a pleading, paper, or document, and would instead allow substitution of an entirely different document and implicate entirely different procedural rules.[9] Because IP failed to adhere to the Court's rules of appellate procedure, and instead filed a request for a contested case hearing in this Court, the Court has no appellate jurisdiction in this matter.

Therefore, this Court has neither contested case subject matter jurisdiction nor appellate jurisdiction in this matter.

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[8] The Court does not decide in the instant case whether due process requires that tax-credit applicants before the State Energy Office be given trial-type hearings, as "[d]ue process does not require a trial-type hearing in every conceivable case of government impairment of a private interest." Kurschner, 376 S.C. at 172, 656 S.E.2d at 350. Nevertheless, at a fundamental level, due process requires that tax-credit applicants before the State Energy Office must, at the very least, be given notice, a hearing (an opportunity to be heard in a meaningful way) before an impartial and unbiased adjudicator, and judicial review. And if important decisions turn on questions of fact, then the applicants must also be given an opportunity to present favorable witnesses.

[9] Not only could this lead to abuse of the rules but it would also undermine the timeliness safeguards of the Court's appellate procedure. For instance, if Rule 18(C) were interpreted as IP suggests, nothing could prevent an unscrupulous attorney seeking to appeal to the ALC, who knows that he or she cannot have the case heard as a contested case at the ALC, from purposefully filing a case as a request for a contested hearing in order to buy himself or herself more time to prepare for the appeal.

Previous Order

This Court issued a previous Order in this case, finding that State Energy Office had issued a "final determination."[10] However, because this Court has no subject matter jurisdiction to hear this matter as a contested case, the Court therefore had no subject matter jurisdiction when it issued its previous Order. Therefore, the Court must vacate its prior Order and remand this case back to State Energy Office. See, e.g., Rowe v. City of West Columbia, 334 S.C. 400, 411, 513 S.E.2d 379 (Ct. App. 1999) (citing Allen v. Foss, 255 S.C. 336, 339, 178 S.E.2d 659, 660 (1971) ("Since the court below was without jurisdiction of the subject matter, it follows that its orders are void and must be vacated.")).

The State Energy Office's Remaining Motions

The State Energy Office also filed a Motion to Quash Subpoena and a Motion for Protective Order. Nevertheless, because the Court has granted the State Energy Office's Motion to Dismiss, which is dispositive, the Court need not address the remaining Motions.

ORDER

IT IS THEREFORE ORDERED that State Energy Office's Motion to Dismiss is **GRANTED** and that this case is **REMANDED** to State Energy Office.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

December 19, 2012
Columbia, South Carolina

[10] State Energy Office had argued in its Notice of Motion and Motion to Dismiss filed prior to the Court's previous Order that "the available administrative remedies ha[d] not been exhausted in that [it had] not issued a final agency decision with respect to the tax credit and its amount, if any to be allowed the International Paper Company . . . [,]" and that the case should be remanded to the State Energy Office for further proceedings. The Court's previous decision that the State Energy Office had issued a final determination was made before the State Energy Office challenged this Court's contested case review. In light of the discussion above, it is now clear that a contested case hearing was required before any final determination could have been issued.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioners, vs. South Carolina State Energy Office, Respondents.	Docket No. 11-ALJ-30-0192-CC **ORDER CONSOLIDATING CASES**

This matter is before me pursuant to a request to consolidate the above named case with Docket No. 12-ALJ-30-0086-CC, International Paper Company vs. South Carolina State Energy Office. On April 25, 2012, counsel for Petitioner made a Motion to Consolidate the two cases based on the fact that they involve common questions of law and fact. Furthermore, although the cases concern different tax years, there are common equipment costs such that the same evidence is relevant and material to the matters at issue in each case. Counsel for the South Carolina State Energy Office consents to consolidation. Therefore,

IT IS HEREBY ORDERED that this case is consolidated with Docket No. 12-ALJ-30-0086-CC.

IT IS FURTHERMORE ORDERED that all documents pertaining to Docket No. 11-ALJ-30-0086-CC are hereby incorporated into Docket No. 12-ALJ-30-0192-CC.

IT IS FURTHERMORE ORDERED that Docket No. 11-ALJ-30-0192-CC is DISMISSED.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Administrative Law Judge

May 1, 2012
Columbia, South Carolina

May 1, 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Appellant, vs. SC State Energy Office, Respondent.	)	Docket No.: 11-ALJ-30-0192-CC **ORDER DENYING MOTION TO DISMISS**

On December 14, 2011 Respondent, State Energy Office, filed a Motion to Dismiss this case pending a final agency decision or, in the alternative, to provide such further relief as will accord with the statutory and decisional laws of the State of South Carolina. Two affidavits in support of the motion were subsequently filed by Respondent on January 11, 2012. The grounds for the motion are that Petitioner failed to exhaust its administrative remedies. Respondent asserts it had not issued a final agency determination or decision with respect to Petitioner's application for a tax credit because it did not receive sufficient information from Petitioner with which to make a decision under South Carolina Code § 12-6-3620 for the tax year 2010.[1] Respondent further contends that, pursuant to the discovery in this matter, it has received over 1775 additional documents from the Petitioner and now has finally received sufficient information to make a final determination as to the tax credit, if any, which it will certify on behalf of Petitioner, International Paper. Petitioner argues Respondent's Motion should be denied because it exhausted its administrative remedies after Respondent issued a final agency determination which is now ripe for review.[2]

March 5, 2012

[1] The Respondent Energy Office also has another motion pending to remand the matter as a result of error, omission or mistake which has not been heard. The motion was filed together with a second affidavit by the Director of the Energy Office. That motion is not addressed or decided herein.

[2] Petitioner filed a Response in Opposition to Respondent's Motion to Dismiss on December 28, 2011, together with a Motion to Continue Hearing Date.

DISCUSSION

On January 31, 2011 Petitioner filed an Application for Biomass Resource Credit under South Carolina Code § 12-6-3620 for the tax year 2010 with Respondent. On March 1, 2011 Respondent issued a notification (Notification) to Petitioner which indicated that:

> Upon review of the application, the South Carolina Energy Office (SCEO) has determined the following allowable credits included in the request submitted by International Paper for tax credits for biomass equipment that is used to create heat, power, steam, electricity or some other form of energy for commercial use.
>
> * * *
>
> **International Paper must provide documentation that shows the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.**

(Emphasis in original).

Respondent contends that the Notification was not a final agency determination and that it has now obtained information through discovery in this case which will enable it to issue a final determination. In order for an agency action to be final:

> First, the action must mark the "consummation" of the agency's decision-making process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which "rights or obligations have been determined," or from which "legal consequences will flow."

Professor Richard H. Seamon and Hon. Paige J. Gossett, Administrative Agencies: General Concepts & Principles, in South Carolina Administrative Practice and Procedure 2nd, 96-97 (Randolph R. Lowell ed. 2008) quoting Bennett v. Spear, 520 U.S. 154, 177-78 (1997).

Here, it appears on its face that that Respondent's Notification was a final determination and this matter is ripe for judicial review. Respondent's Notification specifically enumerated the allowable credits it had "determined." Respondent was also required by South Carolina Code § 12-6-3620(D)(1) to notify Petitioner of whether it qualified for the credit and the amount of the credit by March 1st. Respondent issued the Notification pursuant to that statute on March 1st. Nevertheless, the Notification did not set forth the dollar amount of allowable credits and also requested certain additional information from Petitioner to verify the percentage of equipment expenditures which would qualify for allowable credits. After this case was filed with the Court, Respondent received additional information from Petitioner which Respondent contends is relevant to a determination of the amount of credit, if any, to be allowed Petitioner under South Carolina Code § 12-6-3620 for the tax year 2010. Moreover, in an affidavit submitted in support

of its request to dismiss this case, the State Energy Office Manager of Renewable Energy Programs, Erika H. Myers, averred that:

> [Respondent was] provided with partial and incomplete information in what I believe was an attempt to both withhold information and to provide responses to questions which were designed to mislead me into making a favorable [sic] recommendation. . . . My initial recommendations to Ashlie Lancaster were based upon the selected information provided to me and were certainly not based upon full and complete responses to my queries by International Paper. I believe that International Paper provided misleading answers and very incomplete information.

Analogously, S.C. Code Ann. § 1-23-380(3) provides that an appeal may be remanded for the presentation of additional evidence if the evidence is material and "there were good reasons for the failure to present it in the proceeding before the agency." Similarly, S.C. Code Ann. § 12-60-510 provides that if the taxpayer fails to timely provide the Department of Revenue with the "facts, law, and other authority supporting his position," the Administrative Law Court may remand the case for reconsideration in light of the new facts. Here, though this case is heard *de novo*, it is a review of the specific determinations by the Respondent regarding tax credits. Based on the foregoing,

IT IS HEREBY ORDERED THAT:

1. Respondent's Motion to Dismiss is denied, but
2. Respondent is granted leave to file an amended Final Decision with the Court on or before March 16, 2012 regarding its tax credit certification based upon the new evidence received; and
3. Petitioner's Motion to Continue Hearing Date is granted.

AND IT IS SO ORDERED.

Ralph K. Anderson, III
Chief Administrative Law Judge

March 5, 2012
Columbia, South Carolina

From: Lancaster, Ashlie [mailto:ALancaster@energy.sc.gov]
Sent: Tuesday, March 01, 2011 8:07 AM
To: Robert E Shands; Tracy L Bolger
Cc: Myers, Erika
Subject: International Paper - Biomass Resource Credit

March 1, 2011

Mr. Robert Shands
State Tax Manager
International Paper Company
6400 Poplar Avenue
c/o Tax Department
Memphis, TN 38197

Dear Mr. Shands,

Please find attached a detailed review by the South Carolina Energy Office (SCEO) in conjunction with the Budget and Control Board's Office of General Counsel of allowable credits requested by International Paper under SC Code 12-6-3620, known as the Biomass Resource Credit. Also attached are letters of concurrence from the South Carolina Department of Agriculture and the South Carolina Institute for Energy Studies with whom the law allows consultation regarding applicable credits.

Please review this information and provide the SCEO with the requested documentation as soon as possible so that we may move forward with processing your application. In addition, we have notified the South Carolina Department of Revenue of your pending application.

If you have any questions, please call me at 803-737-9822.

Sincerely,

Ashlie Lancaster
Director

Ashlie Lancaster
SC Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
803-737-9822

RE: Application for Biomass Resource Credit for International Paper Company, Fed EI No. 13-0872805

Upon review of the application, the South Carolina Energy Office (SCEO) has determined the following allowable credits included in the request submitted by International Paper for tax credits for ***biomass equipment*** that is used to create heat, power, steam, electricity or some other form of energy for commercial use. . As a "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels, credits are only allowable for equipment that is directly in contact with biomass energy production equipment.

Additionally, allowable credits are for the ***creation of*** new biomass generation, and therefore the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements as noted below will be applied to calculate allowable credits. ***International Paper must provide documentation that shows the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.***

The following details by project number which portions of the tax credit application are allowable. Please note the follow-up documentation required prior to tax credit approval.

GEORGETOWN MILL

A. 025908C695C GT Wood Yard Reconfiguration

Understanding that the reconfiguration of the wood yard was essential to take in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

B. 025908H624C EEI 6 Warm Water Supply to DI Units

As the demineralized water is essential to steam production, the percentage of costs that correlates to the percentage of DI water used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

C. 025909A423C KAMYR/Pine DRC Conversion

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 025909A580C KAMYR Wash Heater Replacement

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the

percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 025909A687C No. 1 Lime Kiln Trunion & Drive Gear Upgrade
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

F. 025909H758C EE17-Lime Kiln Multi Fuel Burner Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

G. 025910A050C #3 Causticizer Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

H. 025910G008C Greenhouse Gas Monitoring
Based on the information provided, the EPA requirement for monitoring greenhouse gas emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the EPA. These expenses will therefore not be included in the tax credit assessment.

I. 025910G035C Excess Emission Reduction
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the US Court of Appeals. These expenses will therefore not be included in the tax credit assessment.

J. 025910G915C CEMS Upgrade for No. 2 Recovery Boiler
Based on the information provided, the regulatory requirement for monitoring emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the International Paper permit. These expenses will therefore not be included in the tax credit assessment.

K. 025910H786C EE17 – GT Kamyr Wash Transition Screen
As the continuous digester and wash transition screen are important components of the pulping process and provide feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 025909G319C Bulk Fuel Oil Reconfiguration
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

M. 025910H340C EE17-RB Advanced Sootblower Controls
This technology is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

N. 025910A059C Infrastructure Improvements
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

O. 025910A048C #3 BC Heater Replacement
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 025910A678C RB Flooring Phase IV
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

Q. 025910G112C Infrastructure Improvements Phase II
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

R. 025910A062C RB2/PB Scrubber Structural Steel Repair
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

S. 025910A776C RB Flooring Phase V
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

T. 025910A108C GT Infrastructure Improvements Phase I
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

EASTOVER MILL
A.076908A386C No. 1 Evaporator 2nd Effect Heater Replacement
This project is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces energy consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

B. 076908H729C EE16 – No. 1 and No. 2 Recovery Boiler Shatter Jet Upgrade
This project is not directly related to the increased production of power from biomass energy, and is a maintenance procedure and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

C. 076909A678C K2 IV Arms and Digester Cone
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 076910A002C Evap Condensate Modifications 3rd, 4th, 5th Effect
As the evaporator is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 076910A028C No. 2 Chipper Disk Replacement
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

F. 076910A039C #2 RB PPT Drag Scraper Drive System (East Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide***

Invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.

G. 076910A136C #2 Debarking Drum
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

H. 076910A137C Portal Crane Wheel Installation
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

I. 076910A138C #2 RB PPT Drag Scraper (West Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

J. 076910A368C No. 1 Sand Separator
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

K. 076910A740C West Portal Crane Gentry Drive Controls
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 076910A746C Sodium Analyzer
As the reduction of sodium levels in water is essential to steam production, the percentage of costs that correlates to the percentage of water impacted by this analyzer used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

M. 076910A780C LCI Drive Phases 1 & 2 Boiler Feedwater Pump
As water is essential to steam production, the percentage of costs that correlates to the feedwater pump is allowable, ONLY for the #1 recovery boiler. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

N. 076910A782C #2-1 Unclarified White Liquor Pump VF Drive
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

O. 076910A783C #2 Digester Outlet Device VF Drive
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 076910A792C K1 & K2 Digester Outlet Device Scraper Arms

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

Q. 076910A806C Lime Kiln Safety Platforms for 2-2 Conveyor and #1, #2 Lime Crushers
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

R. 076910A988C K2 Steaming Vessel Screw
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

S. 076910A993C #2 WL Causticizer Standpipe
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

T. 076910A996C K1 Low Solids Flow Meter
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is

allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

U. 076910A998C TRS Incinerator Reliability
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the permit. These expenses will therefore not be included in the tax credit assessment.

V. 076910G999C Woodyard Portal Crane Barriers
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

W. 076910H045C EE17 - #1 Evap Product Liquor Flash Tank Modification
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

X. 076910H659C EE17 – No. 1 RB Fouling Monitoring System and Supervisory Sootblowing
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

Y. 076910H992C EE17 - #1 Chipper #1 Transfer Conveyor Spillage Improvement Project
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

State of South Carolina
Department of Agriculture

Hugh E. Weathers
Commissioner

Wade Hampton Office Building
P.O. Box 11280
Columbia, S.C. 29211

Telephone: (803) 734-2190
Fax: (803) 734-2192
E-Mail: hweathe@scda.sc.gov

February 25, 2011

Ms. Ashlie Lancaster
Director
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Lancaster:

We have reviewed the International Paper application for biomass resource credits and the opinion of the Energy Office relative to the qualifications for those credits. While the Department's technical expertise is limited in this area, we find no substantive reason to object to the Energy Office's conclusion on this matter.

If we can provide additional information or assistance, please contact us.

Sincerely,

Larry J. Boyleston
Deputy Commissioner

CLEMSON
SOUTH CAROLINA INSTITUTE
FOR ENERGY STUDIES

200 Dillard Building • 400 Klugh Avenue • Clemson, SC 29634
Telephone: 864-656-2267 • Fax: 864-656-0142
http://www.clemson.edu/scies

February 25, 2011

Ms. Erika Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Myers:

This letter is to inform you that I have reviewed the application for biomass resource credit submitted by International Paper (Fed EI No. 13-0872805) and the opinion of your General Counsel regarding that application. I concur with the opinion as written.

Should you require additional information, please contact me.

Sincerely,

Robert Leitner

Robert Leitner
Director

The South Carolina Energy Office (SCEO) has made its final determination on allowable credits for the January 31, 2011 application filed by International Paper Company (IP) pursuant to the *S.C. Code Ann.* § 12-6-3620. This determination is based on an analysis of the claimed expenses for which a credit was requested in comparison to the eligibility requirements detailed in the statute. Each claimed expense along with supporting documentation subsequently provided by IP during the discovery process was compared to the statute and SCEO policy (attached) to determine the amount of allowable credit, if any. Additionally, the SCEO consulted with the Department of Agriculture regarding this final determination.

A detailed categorization of expenses submitted by IP and the application of SCEO policy in determining eligibility follows. Tables of expenses with an identification of the mill and location within the process from which the expense is derived are provided with an assessment of each expense in light of SCEO policy.

In addition to the required compliance with the statutory language, including definitions, the State Energy Office applied three key tests as one part of its assessment to determine whether your particular expenditures qualified for the 25% tax credit and these tests are as follows:

> Test 1. Since the only equipment that uses biomass resources as its primary fuel source[1] is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. § 12-6-3620 (A), eligible equipment must "create" energy using a "fuel consisting of no less than ninety percent biomass resource."
>
> Test 2. None of the chemical recovery process is eligible. (Green liquor processing to white liquor and the associated lime kiln processes). Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.
>
> Test 3. Those expenditures that do not produce or demonstrably contribute to an increased output of energy do not qualify for the incentive. § 12-6-3620 (A), eligible equipment must "create heat, power, steam, electricity, or another form of energy for commercial use."

Summary

Evaluation of the items submitted for certification by the Georgetown SC mill, using the criteria listed in the SC Energy Office policy result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00. The total amount submitted for certification by the Georgetown mill was $17,783,924.

[1] The "black liquor" fuel utilized by International Paper at its Eastover and Georgetown mills (which is injected into the Thomlinson recovery boilers for burning) does not meet the mandatory definition of a 90% "biomass resource" under the State statute. Regardless of that fact, a three part test was also utilized to determine if the expenditures would qualify if the "black liquor" met the statutory definition since International Paper has previously represented that the fuel utilized (the "black liquor") does meet the statutory definition.

Evaluation of the items submitted for certification by the Eastover SC mill, using the criteria listed in the SC Energy Office policy, result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00. The total amount submitted for certification by the Eastover mill was $3,690,729.

Section 1 Georgetown Mill expenditures

Georgetown Mill - Wood Yard Projects

The wood yard projects all fail the first test and the third test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 1. Georgetown wood yard projects.

Area of Mill	Descriptions	Project number	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Log handling	Surveillance Cameras Dist. Ctrl System & PLCs Gaitronix Comm. system Knuckle Boom Crane	025908C695C	$628,979	Fail	N/A	Fail
Debarking	Debarking Drums Bark Drum Collection Belt Bark Hog Discharge Conveyor Bark Drum in feed conveyor Bark Drum Discharge Conveyor	025908C695C	$1,226,881	Fail	N/A	Fail
Chipper	Chipper building Chipper feed conveyor New Carthage Chipper (Metso) Chipper Surge hopper Surge hopper	025908C695C	$630,421	Fail	N/A	Fail

	conveyor Chipper Control Station Chip Silo Platform					
		Total	$2,486,281.00			

Project 025908C695C Wood Yard Projects.

> *"The objective of this project is to reduce manufacturing costs by increasing the capacity of the GT woodyard to process longwood through one processing line while shutting down one random length and one shortwood handling line. Savings in wood, labor, and repair costs will translate into a **$13/finished ton reduction** in GT's production costs. "*

Additionally from the epad document:

> *"There are several additional factors that effect energy, specifically bark, related to project. The new woodyard will process more longwood and therefore this will lead to more bark. However, the new woodyard will be more efficient with less white wood going to the bark pile. In addition, the elimination of the flume will result in drier bark being sent to the bark boiler which will improve the boiler's efficiency. To capture these impacts, an energy balance was performed by Technology. The result was that the mill will need to purchase approximately 9000 tons/year of additional bark to maintain steam production."*

Georgetown Mill – Digester projects

The digester area projects all fail the first test and the third test criteria. The digester is not fueled by 90% biomass resource and does not create energy. It is used to create a uniform wood project for the purpose of paper-making. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 2 Georgetown Digester related projects

Description	Epad document for project	Requested Certification $	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Replace DRC system with modern DCS system	025909A423C	990,137	Fail	N/A	Fail
Wash heater replacement	025909A580C	394,580	Fail	N/A	Fail
Replacement of wash zone extraction screen	025910H786C	202,632	Fail	N/A	Fail
Key Element Survey (KES) improvements	025910A059C	59,079	Fail	N/A	Fail

#3 Bottom Circulation Heater Replacement	025910A048C	214,968	Fail	N/A	Fail
	Total	$1,861,396			

Project 025909A423C, Replace DRC system with modern DCS system.

> ***"Impact on Existing Products***
> *There will be no impact on existing products if the DRC system is replaced. The impact of not replacing the DRC system would be to continue to operate with an obsolete system and risk I/O hardware failure which could adversely affect production.*
> ***EHS Requirements and Plans***
> *Debottleneck any portion of the process? N*
> *Result in any pollutant reductions? N*
> *Require modification of any pollution control equipment? N"*

Project 025909A580C,

> *"The objective of this project is to maintain original design performance of the KAMYR Digester wash liquor heater by restoring original process configuration. The current heat exchanger tubes and shell are original to the KAMYR digester. Throughout the course of their 25 year service life, metal erosion and corrosion have progressed to the present condition where complete replacement is required. Replacing the Wash Heater will reduce the maintenance efforts and costs of unscheduled downtime resulting from the poor material used in the original design."*

Project 025910H786C

> *"Since 2006, the Georgetown Kamyr digester production has increased by 75 TPD in order to supply a greater demand for pine fiber due to the EDGE grade transformation. Because the existing wash screens are not capable of additional extraction, this modification will provide a benefit to the pine fiberline filtrate balance by permitting more cold blow to be used within the digester wash zone, reducing the amount of cold blow filtrate bypassing the digester to the evaporators."*

Project 025910A059C, Key Element Survey (KES) improvements. This project created expenses for safety improvements related to findings of a safety audit in 2009. Specific items included operator platforms, piping insulation and digester electrical infrastructure Improvements. The documentation makes a clear business and worker safety case for these improvements. There is not any energy production from biomass in the equipment detailed in this project.

Project 025910A048C, #3 Bottom Circulation Heater Replacements.

> ***"Project Objectives and Financials***
> *The objective of this project is to improve the reliability of the GT KAMYR Digester Bottom Circulation liquor heat exchangers to reduce the maintenance efforts and costs of unscheduled downtime resulting*

from tube leak plugging. The current heat exchangers are original to the KAMYR digester, and through the course of their 27 year service life, weld seam leaks requiring mechanical tube plugs and shell deterioration have progressed to the present condition where replacement is required."

Georgetown Mill – Recovery Boiler Projects

With the exception of the Regenerative Thermal Oxidation portion of the Excess Emission Reduction project, the recovery boiler projects meet test 1 as cited in the policy but fail test 3 as detailed below. Regenerative Thermal Oxidation also fails test 1

While all of the projects have an element of reliability and availability improvements, the individual projects do not explicitly claim to provide an increase in production as individual projects. Such projects taken together and when closely coupled to the production of energy from biomass could be expected to increase the availability of time for boiler operation. The increase in recovery boiler steam production from 2009 to 2010 was 4.1% as shown in Section 3. Compared to the average steam production data from 11 years of operation the increase in recovery boiler output was 2.7%. Both pieces of data support a net increase burning of black liquor (biomass) to produce energy in 2010. However, a direct correlation between the individual project and the increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, none of the $6,101,736 claimed in Table 3 as expenses qualify for the 25% South Carolina biomass to energy tax credit.

Table 3 Recovery boiler related projects at Georgetown

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Greenhouse Gas Monitoring	0259 10G008C	$184,342	Pass	N/A	Fail
Excess Emission Reduction (Regenerative Thermal Oxidation)	025910G035C	$2,151,096	Fail	N/A	Fail
Excess Emission Reduction (Other)	025910G035C	$1,486,439	Pass	N/A	Fail
CEMS Upgrade	025910G915C	$93,427	Pass	N/A	Fail
Advanced Sootblower controls RB1 & RB2	025910H340C	$807,211	Pass	N/A	Fail

Infrastructure Improvements Recovery boiler floor drains	025910A059C	$146,669	Pass	N/A	Fail
Recovery Boiler Flooring Ph. IV	025910A678C	$419,370	Pass	N/A	Fail
Infrastructure Improvements Phase II	0259100112C	$46,759	Pass	N/A	Fail
Precipitator and Scrubber structural steel repair	025910A062C	$541,982	Pass	N/A	Fail
Recovery Boiler Flooring Ph. V	0259 10A776C	$224,441	Pass	N/A	Fail
	Total	$$6,101,736.00~~6,101,736~~			

Project 025910G008C, Green house gas monitoring. This was an expenditure based on an EPA rule for continued operation of the recovery boiler under federal law. The executive summary makes this quite clear:

> ***"Project Objectives and Financials***
> *The EPA has finalized rules requiring sites with more than 25,000 tons of greenhouse gas emissions to begin tracking those emissions in January 2010 and report them annually starting in March 2011. In order to comply with this rule, the Georgetown mill will install more accurate fuel measurements for the recovery boilers, lime kilns, power boilers and RTO to be used in the reporting of GHG emissions. A stack flowrate monitor will also be installed as part of the power boiler continuous emission monitoring system for determining CO2 emissions. A Greenhouse Gas Monitoring Plan will be developed which will describe how greenhouse gas emissions will be monitored, measured and/or calculated. This is a must do project for 2010 in order to fully comply with the regulations."*

Project 025910G035C, Excess Emission Reductions.

> ***"Project Objectives and Financials***
> *The US Court of Appeals issued a mandate on October 15, 2009 which vacated the Startup, Shutdown and Malfunction (SSM) provisions of 40 CFR 63.6(f)(1) and 40 CFR 63.(h)()1). Emissions that occur during periods of SSM will no longer be "exempt" from the hazardous air pollutant emission standard. Facilities are required to comply with the air standard at all times (even during periods of SSM) and failure to comply will be a violation of the emission standard. EPA has indicated they will use enforcement discretion for events that results from startup, shutdown or malfunction."*

Project 025910G915C, Continuous Emission Monitoring System for the No. 2 Recovery Boiler.

> ***"Project Objectives and Financials***
> *This project will upgrade the Continuous Emission Monitoring System for the No. 2 Recovery Boiler by installing a carbon monoxide analyzer and stack flow meter to the existing TRS CEMS. Implementing this project at this time is required to ensure continued compliance with existing permit limits on No. 2 Recovery Boiler."*

Project 025910H340C, Recovery Boiler Advanced Sootblower Controls.

> *"Project Objectives and Financials*
> *The objective of this project is to reduce 430# sootblowing steam consumption on the Georgetown No. 1 & No. 2 Recovery Boilers by installing an Intelligent Sootblowing (ISB) control system.* ***Total Installed Cost of this project is $821,500 with annual savings of $812,000, providing a simple ROI of 99%."***

Project 025910A059C, Recovery boiler floor drains infrastructure improvements.

> *"- improved floor drain system in the power boiler and recovery boiler area to address trip hazards and issues with chemical drips / spills that could damage equipment or endanger personnel."*

Project 025910A678C, Recovery Boiler flooring Phase IV.

> ***"Project Objectives and Financials***
> *The RB Flooring Project includes replacement of 2,338 square feet of concrete floor slabs. These floors have eroded in such a way and at such a high rate that they pose an infrastructure risk and safety hazard. These areas are located on the 6th floor, 10.5 floor, and 8th floor of the Recovery Boiler Building."*

Project 0259100112C, Infrastructure improvements Phase II.

> *"This project is the first phase of an effort to address "like-kind" items from the 2009 audit."Like-kind" items are items similar to those identified in the previous audit that could pose hazard to employees. The items identified in the 2009 audit can be grouped by general category; Guarding, Walking Surfaces, Electrical, Housekeeping, Insulation, Personnel Alarms, etc.. The objective of this project is to group together common "like-kind" items and addresses the highest priority items by modification or upgrade."*

Project 025910A062C, Scrubber and Precipitator structural steel repairs.

> *"This project will repair or replace structural members to restore the support structure integrity to its original design. In addition, the duct transition section is in poor condition and is also missing structural support members. Due to its condition and the missing support members, this transition section has shifted from its original position. Temporary support steel to support the transition section in its current position is included in this project."*

Project 0259 10A776C, Recovery Boiler Flooring Ph. V.

> *"This floor has been under erosion and chemical attack from atmosphere, steam, and boiler salt cake, causing break-down into rocks and sand and leaving dangerous holes. In addition, this slab has worn down much thinner than design, preventing equipment or maintenance supplies from being placed on the floor. Holes in the concrete are so extensive that steel grating is required to be placed over the holes for employee protection. Sections of concrete fall from the bottom of the floor, posing an additional safety and equipment risk below."*

Georgetown Mill – Causticizer & Lime Kiln Projects

The causticizer and lime kiln projects all fail the three test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 4. No. 3 Causticizer & Lime Kiln Projects

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 3. Causticizer Replacement	025910A050C	$436,030	Fail	Fail	Fail
No 1 Lime Kiln Trunion and Drive	025909A687C	$2,224,549	Fail	Fail	Fail
		$35,617	Fail	Fail	Fail
		$24,821	Fail	Fail	Fail
		$338	Fail	Fail	Fail
Lime Kiln 1&2 Multi fuel burner	025909H758C	$ 1,444,500	Fail	Fail	Fail
Green house gas monitoring	025910G008C	$ 87,320	Fail	Fail	Fail
Bulk Fuel oil Reconfiguration	025909G319C	$3,063,330	Fail	Fail	Fail
	total	$7,316,505.00			

Project 025910A050C, No 3. Causticizer Replacement.

Project Objectives and Financials

The # 1, 2 and 3 Causticizer tanks were installed in the late 1960's. The #4 causticizer tank was added during the mill reconfiguration project in the early 1980's. In 2002, the foundation supporting the #2 causticizer failed and the tank settled, requiring it to be taken out of service, demolished and then replaced with new pilings, a foundation and a new tank.

This problem has now occurred with the #3 causticizer tank. The original wood pilings used have deteriorated over time and no longer adequately support the weight of the tank and it's contents. As these tanks flow by gravity from one to another due to a small elevation difference, the tank is no longer usable once it has settled. The #3 causticizer has been blanked off and taken out of service until it can be replaced.

Project 025909A687C, No 1 Lime Kiln Trunion and Drive.

"Project Objectives and Financials

The drive gear on the #1 lime kiln is in poor condition and needs to be replaced. Over the past two years, the inspection history reports have shown continued wear on this gear. The gear has already been flipped, so this option has been eliminated. Therefore, a new gear must be purchased and installed. Due to the long delivery time (≈ 40 weeks) for the gear and other equipment associated with this project, the gear has been purchased in 2009 and will be installed during the 2010 outage....There will not be any savings associated with this project. However, there is a tremendous opportunity for cost avoidance. Any significant downtime with the kiln would severely impact the mill's profitability. From a chemical (lime) standpoint, a two week outage would impact the mill by over $ 473,795 and a gear failure would require a significantly longer time to get the kiln back operational."

Project 025909H758C, Lime kilns 1 and 2 multi fuel burner.

*"**Project Objectives and Financials***
The objective of this project is to install multi-fuel burners in both No. 1 and No. 2 lime kilns so that reburned lime can be produced in the most cost effective manner based on the price of fuels.
*Permission has been granted by the South Carolina Department of Health and Environmental Control (SCDHEC) to replace the existing burners with new burners during the March 2010 outage. These burners will have the capability to utilized either No. 6 fuel oil or natural gas at full kiln production rates **AND** can be retrofitted at a later date to burn petroleum coke. After the new burners are installed natural gas will be used on both No. 1 and No. 2 lime kilns."*

Project 025910G008C, Green house gas monitoring.

*"**Project Objectives and Financials***
The EPA has finalized rules requiring sites with more than 25,000 tons of greenhouse gas emissions to begin tracking those emissions in January 2010 and report them annually starting in March 2011. In order to comply with this rule, the Georgetown mill will install more accurate fuel measurements for the recovery boilers, lime kilns, power boilers and RTO to be used in the reporting of GHG emissions. A stack flowrate monitor will also be installed as part of the power boiler continuous emission monitoring system for determining CO2 emissions. A Greenhouse Gas Monitoring Plan will be developed which will describe how greenhouse gas emissions will be monitored, measured and/or calculated. This is a must do project for 2010 in order to fully comply with the regulations."

Project 025909G319C, Bulk Fuel oil Reconfiguration.

"Since these tanks were originally constructed, the mill's fuel mix has changed significantly. A project team determined that the current bulk storage requirement for #6 high sulfur fuel oil should be 500,000 gallons. It was also determined that the existing 200,000 gallon #6 low sulfur fuel oil day tank has adequate capacity to sustain mill operations. Based on guidance from Factory Mutual, unloading directly at the existing day tanks is prohibited. As part of this project, a method for unloading #6 low sulfur fuel oil directly to the low sulfur day tank will be established. This is the minimal effective design for this project. The intent of this project is to demolish the existing 1.5 million gallon #6 high sulfur and low sulfur fuel oil bulk tanks. A new, much smaller 500,000 gallon tank will be erected to store #6 high sulfur fuel oil, as there is a need for more storage of high sulfur than low sulfur fuel oil to meet mill demands in times of fuel curtailment."

Georgetown Mill – Multiple areas

The deionized water supply for the recovery boiler is included in this project (53%) and should be considered as part of the recovery boiler (test 1). Additionally, the recovery of low level heat from the process cooling tower provides a means of reducing steam demand from power and recovery boilers; however, a direct correlation between the individual project and the increase in energy production could

not be established (test 3). As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive.

Table 6. Multiple areas for Georgetown

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Warm Water supply to Deionized water system	025908H624C	$18,006	Partial 53%	N/A	Fail

Project 025908H624C, Warm Water supply to Deionized water system.

"Project Objectives and Financials
Low make-up water temperature to the demineralizer trains was identified during the 2005 Energy Audit. The objective of this project is to raise the water feed to the demineralizers from an yearly average of 76oF to 90oF. By raising the water temperature the mill will reduce steam usage to heat up DI water in the deaerators by 8300 lbs 60# steam/hr, thus providing a cost savings of $212,000/yr."

Section 2 Eastover Mill expenditures

Eastover Mill - Wood Yard Projects

The wood yard projects all fail the first test and the third test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 7 Wood yard, debarking, and chipper projects

Description	Epad document for project	Requested Certification $	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Portal Crane Wheel Installation	076910A137C	$80,140	Fail	N/A	Fail
W. Portal Crane Gantry Drive Controls	076910A740C	$261,850 $357,596	Fail	N/A	Fail
Woodyard Crane Barriers	076910G999C	$19,369 $79,928	Fail	N/A	Fail
#2 Debarking Drum	076910A136C	$235,003	Fail	N/A	Fail
No 2 Chipper disk Repl.	076910A028C	$317,875	Fail	N/A	Fail
No 1 Chipper Spillage Imp.	076910H992C	$56,671	Fail	N/A	Fail
	Total	1,408,432			

Project 076910A137C, Portal Crane Wheel Installation.

> *"The Eastover Woodyard Portal Cranes were originally commissioned in 1991 as part of the mill's Phase 2 expansion. These very large structure cranes move on bridge wheels that ride on rails. Over time the flanges on the bridge wheels wear down and have to be replaced as part of normal repairs. However, newer technology includes a set of guide wheels mounted next to the bridge wheels. The guide wheels will ride against the rails and help the crane from riding strongly against the wheel flanges, which will help them last longer. This project proposes to install guide wheels on both the East and West Portal Cranes. Adding these guide wheels will improve the life and availability of the cranes."*

Project 076910A740C West portal crane gantry drive and controls.

> ***"Project Objectives and Financials***
> *This project will replace the West Portal Crane drives and associated controls with newer and supportable technology. The control system is relay based, and will be converted to PLC.* ***There will be no increase in chip production as a result of this project.*** *The West Portal Crane is a part of the long wood storage and handling in the Woodyard. The four drives for the Hoist and Gantry and the controls are the original 1990 design with ABB THYRAK direct current (DC) drives and motors. The drives have been categorized obsolete by OEM in the mid 1990's, and there are no new spare circuit boards available and there is*

limited technical expertise available to troubleshoot these drives. These conditions and the recent failures have depleted all of our spares and salvaged parts from the East Crane, such that when the next failure occurs we have no spare parts to use. It is therefore necessary to get these drives replaced with available, newer and supportable technology. The Portal Cranes handle hardwoods logs to support the 1450 TPD K2 digester. The crane availability and reliability are an important part of Eastover. The new drives will provide reliable operation that will minimize logtruck line-ups and delays. There will be no increase in chip production budget or target, however, we will increase availability and up-time."

Project 076910G999C Woodyard portal crane barriers.

"Project Objectives and Financials
This project objective is to install barriers to protect personnel from heavy equipment hazards around the portal cranes in the Eastover Woodyard. The scope is to install concrete barriers along the North side of the two portal cranes and substantial handrailing along the South side. This will provide visual barriers of the restricted areas around the portal crane and wood truck unloading operations. These visual barriers will be consistent with the recommendations from a February 2010 Corporate Health and Safety Communication."

Project 076910A136C # 2 debarking drum rebuild.

"The Eastover No. 2 Debarking Drum was originally commissioned in 1991 as part of the mill's Phase 2 expansion. Funding is requested to restore and extend the useful life of the No. 2 Debarking Drum. This project will replace the chime rings, drive gearbox, and discharge gate actuator. All of these are major components of the drum and have substantially long life. Replacing them will extend the useful life of the No. 2 Debarking Drum"

Project 076910A136C No 2 Chipper disc replacement.

"Project Objectives

This project will purchase and install a new Chipper Disc for the No. 2 log line. The current disc has experienced numerous cracks. The last four inspections of the disc have discovered progressively worse cracks. According to CEM Machine Inc., since the disc run out is low these cracks are due to fatigue and not impact. Several cracks have been found in the last two years, two of which were ground out and then re-occurred prior to the following inspection. CEM has recommended that we do a full inspection at least every three months. Subhash Pati was at Eastover for the January 14th, 2010 inspection of the disc. He agreed that the disc is fatigued and should be inspected every three months.

During the inspection in September 2009 a new crack had formed in pocket #3. The crack (shown below) extended past the insert hole to the keyway. Without repair this crack would have grown through the entire pocket. It is not recommended for these critical weld repairs to take place in the field. However, Eastover does not have a spare chipper disc. Therefore the crack was ground out in the field to a depth of 1" and 5/16" wide and weld repaired. This project will purchase and install a new 116" 15 knife, 8" thick right hand chipper disc from CEM Machine Inc."

Project 076910H992C Chipper spillage improvement.

"This project will install a new style shroud around the #1 Transfer conveyor feed end that will reduce the spillage. This will also allow the mill to shut down the mill air used to push these chips out from under the conveyor. This will be accomplished by installing a new Lift Tube system developed by Stanam Industries inc. The plugging issue may not be completely resolved with this new shroud, however the spillage when the chute does plug will be greatly minimized."

Eastover Mill – Digester Projects

The digester projects all fail the first test and the third test criteria. The digester is not fueled by 90% biomass resource and does not create energy. It is used to create a uniform wood project for the purpose of paper-making. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 8 Eastover Mill digester projects

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Impregnation Vessel Arms and Digester Cone Replacements	076909A678C	$14.00	Fail	N/A	Fail
K2 Chip Chute Vent Stack Replacement	076910A039C	$375,919	Fail	N/A	Fail
No.1 Sand Separator	076910A368C	$98,209	Fail	N/A	Fail
No 2 digester outlet device Variable Freq drive	076910A783C	$112,383	Fail	N/A	Fail
K1 & K2 Digester Spare Outlet Device Scraper Arms	076910A792C	$93,100	Fail	N/A	Fail
		$217,800	Fail	N/A	Fail
K2 Steaming Vessel Screw Replacement	076910A988C	$201,184	Fail	N/A	Fail
K1 Low Solids Flow Meter Replacement	076910A996C	$27,455	Fail	N/A	Fail
	Total	$$1,126,064.00~~1,126,064~~			

Project 076909A678C, Impregnation Vessel Arms and Digester Cone Replacements.

> *"The outlet device scraper arm assembly in the K2 Impregnation Vessel must be replaced in 2009. This is due to extensive cracking in the arm to hub welds. The indications were inspected by Pat Morris and Jim Matson (IP Technology) during the Fall 2008 outage."*
>
> *"The digester cone will not be removed from the asset ledger since it will be saved for a future rebuild. The Impregnation Vessel outlet device arms have $9,300 left of depreciation, which will be accelerated over the next 6 months."*

Project 076910A039C, K2 Chip Chute Vent Stack Replacement.

> ***"Project Objectives and Financials***
> *This project will replace the 4' diameter by 147' tall vent stack on the K2 Digester Chip Chute Dump Tank. The stack is carbon steel from the original 1992 construction of the K2 Digester system. The stack is*

experiencing severe corrosion due to liquor and vapor releases from the K2 Digester system. The wall thickness of the stack is less than half of its original thickness. The top 10 feet of the stack was cut off due to extensive thinning in 2008. The replacement of this stack will mitigate the risk of a stack failure, which could result in significant safety, environmental and operational impacts."

Project 076910A368C, Number 1 Sand separator replacement.

"This capital project will modify the No. 1 Sand Separator that was installed in 1995 by changing the operation from a centrifugal force separator to a gravity separator. This will be accomplished by increasing the size of the inlet nozzle to slow the velocity of the incoming liquor to 3 feet per second. The new inlet nozzle will be constructed of 2205 duplex SS which matches the vessel metallurgy. The centrifugal action of the liquor and sand inside the Sand Separator is wearing it out. Weld overlay was installed inside the No. 1 Sand Separator to protect the shell from erosion. However this 2209 duplex weld overly is also wearing out very quickly. The modifications proposed in this project to the sand separator will reduce the velocity of the liquor to minimize this erosive condition.."

Project 076910A783C, No 2 digester outlet device Variable Freq drive.

"Project Objectives and Financials
This project is to replace the AC adjustable speed drive that controls the speed of the #2 digester outlet device. The current drive is an early 90's vintage drive that utilizes a mixture of analog and digital control cards. This drive has been obsolete for many years, parts are difficult to find and often have not been repaired properly. The drive is no longer supported by the manufacturer and technical assistance is nonexistent.
The #2 digester is a Kamyr 1450 tpd continuous feed digester. The outlet device breaks up the pulp plug as it leaves the digester so the pulp can be sent to the blow tank We cannot operate the digester without the outlet device and there is no spare drive or bypass available. This project will not increase production rates or result in any increased air emissions. This project will not result in increased capacity, rather it mitigates the risk of future failure."

Project 076910A792C, K1 & K2 Digester Spare Outlet Device Scraper Arms.

"Project Objectives and Financials
*This project will purchase capital spares for the **K1** and K2 Digester Outlet Device scraper arms.*
IP Technology and Andritz recommend having spare Digester scraper arms onsite due to their history of failure in our industry. There are no other IP mills that have the same size scraper arms as Eastover, and therefore utilizing a common spare is not an option."

Project 076910A988C, K2 Steaming Vessel Screw Replacement.

"Project Objectives and Financials
The K2 Digester Steaming Vessel screw must be replaced in 2010 due to repeat cracking in the journal to hub welds, and due to thinning of the flights on the screw..... This project will not increase production rates, or result in any increased air emissions. This project will not result in increased capacity, rather it mitigates the risk of future failure."

Project 076910A996C, K1 Low Solids Flow Meter Replacement.

"Project Objectives
This project will install a CiDRA SONARtrac flow monitoring system on the upper cooking extraction line to the #2 flash tank. The element in the existing magnetic flow meter becomes unreliable between 3-6

months after an outage. Scale builds up on the flow meter element making the readings unreliable. During outages the elements are acid cleaned. Three to six months after the outage the inaccurate readings of the magnetic flow meter are realized and the extraction of the upper cooking zone is operated manually. The unreliable flow measurements leads to improper extraction from the upper cooking zone leading to variability and inefficient washing.....This project will not increase production rates, or result in any increased air emissions. This project will not result in increased capacity, rather allows more reliable control of the process."

Eastover Mill – Evaporator

The evaporator area projects all fail the first test and the third test criteria. The evaporator is not fueled by 90% biomass resource and does not create energy. It is used to remove water added for the purpose of paper-making, an energy-consuming process. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 9 Evaporator based projects for the Eastover Mill

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 1 Evaporator second effect heater replacement	076908A386C	$3,280	Fail	N/A	Fail
Evaporator condensate Modifications 3rd, 4th & 5th effect	076910A002C	$481,992	Fail	N/A	Fail
No 1 evaporator Product Liquor Flash Tank Modification	076910H045C	$21,700	Fail	N/A	Fail
	Total	$$506,972.00~~506,972~~			

Project 076908A386C, No 1 Evaporator second effect heater replacement.

"The business purpose of this project is to replace the existing No. 1 Evaporators Second Effect Heating Elements during the Spring 2009 Outage with elements of similar capacity and materials of construction. The existing elements have reached the end of their useful life..... This project will not increase production rates, or result in any increased air emissions. The number of heating elements inside the evaporator will be increased from 102 to 108 due to the change from bottomsteam entry to top steam entry. This will not result in increased capacity."

Project 076910A002C Evaporator condensate Modifications 3rd, 4th & 5th effect.

"The objective of this project is to eliminate the potential for sudden heating element damage in the third fourth and fifth effects of the No. 1 Evaporator set at Eastover as a result of steam/condensate hammer. To achieve this objective the condensate system for the third, fourth and fifth effects will be modified to meet current OEM design standards."

Project 076910H045C, No 1 evaporator Product Liquor Flash Tank Modification.

"Proposed changes are to modify internal flash hood design to decrease upward vapor velocity and upgrade the product liquor flash tank with a new manway insert assembly to prevent product liquor outlet pluggage. These changes will provide $72,000 per year in steam savings through improved flash steam recovery"

Eastover Mill – Recovery Boiler

With the exception of the TRS Incinerator Reliability project, the recovery boiler projects meet test 1 as cited in the policy but fail test 3 as detailed below. The No 1&2 Recovery Boiler Shatter Jet upgrade fails test 2 and 3 and the TRS Incinerator Reliability project fails test 1 and test 3.

The increase in recovery boiler steam production from 2009 to 2010 was 4.0% as shown in Section 3. Compared to the average steam production data from 11 years of operation the increase in recovery boiler output was 5.7%. Both pieces of data support a net increase burning of black liquor (biomass) to produce energy in 2010. However, a direct correlation between the individual project and the increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, none of the $649,261 claimed in Table 10 as expenses qualify for the 25% South Carolina biomass to energy tax credit.

Table 10 Recovery boiler projects for the Eastover Mill

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 1&2 Rec Boiler Shatter jet upgrade	076908H729C	$14,229 $14,293	Pass	Fail	Fail
No 2 RB East Chamber Drag Scrapper drive system	076910A138C	$148,556 $33,064	Pass	N/A	Fail
No 2 RB West Chamber Drag Scrapper drive system	076910A134C	$163,426 $27,006	Pass	N/A	Fail
TRS incinerator Reliability	076910A998C	$25,351 $4,829 $24,747 $5,432	Fail	N/A	Fail
Green House Gas Monitoring	076910G001C	$87,484 $26,032	Pass	N/A	Fail

No 1 RB Fouling monitoring system and supervisory Sootblowing	076910H659C	$74,808	Pass	N/A	Fail
	Total	$649,261			

Project 076908H729C, No 1&2 Rec Boiler Shatter jet upgrade.

"Project Objectives and Financials
The objective of this project is to reduce 160 psig steam used on the Recovery Boiler shatter jets. This project will retrofit the existing duckbill style shatter jets on both recovery boilers with Metso shatter jets and reduce steam usage from 2000 lbs/hr to 800 lbs/hr. There are four shatter jets on the No. 1 Recovery Boiler and four on the No. 2 Recovery Boiler. Total steam consumption will be reduced by 9600 lbs/hr for an annual energy savings of $220,100. The existing shatter jets have large 9/64" x 2- 1/16" nozzles and consume about 2000 lbs/hr each. The new shatter jets are Metso conical spray design with a 6 mm (0.236") diameter and will use 800 lbs/hr steam supply. These nozzles are venture style nozzles that provide a greater penetration into the smelt for better atomization. A smaller smelt particle size will improve dissolving tank operation in addition to reducing dissolving tank noise and vibration."

Projects 076910A138C and 076910A134C, No 2 RB (East and West) Chambers Drag Scrapper drive systems.

"Strategic Fit
The current Eastover mill operating strategy is for the Utilities area to support maximum digester production rates of 825 TPD pine on K1 and 1450 TPD hardwood on K2. This requires reliable operation of the No. 1 and No. 2 Recovery Boilers at maximum firing rates on a daily basis except for planned field days and annual outages. The primary objective of this project is to eliminate unplanned Drag Scraper system failures in the No. 2 Recovery Boiler Precipitator system to Support the mill strategy of operating the No. 2 Recovery Boiler at maximum firing rates on a daily basis except for planned field days and outages."

Project 076910A998C, TRS Incinerator Reliability.

"The following recommendations are made to improve the TRS Incinerator up time and reduce concentrated TRS gas venting....

1. *Additional Temperature Probe...*
2. *Louvered Combustion Air Damper...*
3. *Methanol Heat Exchanger...*
4. *CNCG Low Point Drain..."*

Project 076910G001C, Green House Gas Monitoring.

"Project Objectives and Financials
This project will modify existing mill equipment as practical and install new equipment as required to comply with regulatory requirements under the Greenhouse Gas Reporting Rule....
Production Impact: This project will not increase production rates or result in any increased air emissions....
Cost Estimate Summary

...Two of the planned replacements are expected to be done by re-using/relocating two existing mass flow meters previously used for green fuel credits"

Project 076910H659C, No 1 Recovery Boiler Fouling monitoring system and supervisory sootblowing.

"Project Objectives and Financials
The objective of this project is to reduce steam use for sootblower operation on the No. 1 Recovery Boiler from 25,900 lb/hr to 12,000 lb/hr. A 13,900 lb/hr reduction in steam use on the No. 1 Recovery Boiler is worth approximately $607,500 per year"

Eastover Mill – Causticizer, Lime Kiln, and Boiler feed water treatment.

This area of the mill has a total of 5 projects. The first three projects do not meet any of the test criteria. Two projects, the Sodium Analyzer and LCI Boiler water feed pump projects, partially meet the first test criteria. Boiler feed water goes to both recovery boilers and power boilers, but the epad document for sodium analyzer does not specify exactly how many of the 5 sodium analyzers are directly involved with the recovery boiler feed water. In a similar fashion the LCI boiler water feed pump drive is supporting both the No 1 RB and the No 1 Power Boiler. Steam output rates for these two boilers indicate approximately 55% of the feed water is sent to the recovery boiler; however, a direct correlation between the individual project and the increase in energy production could not be established (test 3). As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive.

Table 11 Causticizer, Lime Kiln and boiler water treatment projects.

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
WL Causticizer Stand Pipe	076910A993C	$114,529	Fail	Fail	Fail
Lime Kiln Safety Platforms	076910A806C	$47,222	Fail	Fail	Fail
Unclarified WL Pump VF Drive	076910A782C	$94,025	Fail	Fail	Fail
Sodium Analyzer	076910A746C	$52,788	Partial 55%	N/A	Fail
LCI Drive Boiler water feed pump	076910A780C	$394,608	Partial 55%	N/A	Fail
	Total	$703,172			

Project 076910A993C, White liquor Causticizer Stand Pipe.

"Project Objectives and Financials
The objective of this project is to replace the existing white liquor causticizer standpipe that has experienced significant thinning of the standpipe shell due to erosion by the white liquor process. The project will reduce the height of the existing standpipe to allow the process to enter at the top of the standpipe as opposed to the existing side entry. In addition, an external removable elbow will be used for the process inlet piping to provide easier replacement of the elbow as thinning occurs due to the erosion."

Project 076910A806C, Lime Kiln Safety Platforms.

"Project Objectives and Financials
Platforms are required around the 2-2 Lime Conveyor and the No.1 and No.2 Lime Crushers in the Utilities Areas. This equipment has been identified as a must do considering the operator access that is frequently required to maintain this equipment and the limited accessibility."

Project 076910A782C, Unclarified White Liquor Pump Variable Frequency Drive.

"Project Objectives and Financials
The #2-1 and 2-2 Unclarified White Liquor pumps supply white liquor through the pressure filters and into the white liquor storage tank, where it is pumped to the digesters. They are operated by variable speed AC drives that are no longer supported. Any production loss in this process cannot be recovered. The objective of this project is to replace the #2-1 and 2-2 Unclarified White Liquor Pump electric drives, which have reached the end of their useful life. These drives are late 80's vintage and have been obsoleted by the manufacturer. There are no new replacement parts available and the repaired circuit boards have proven to be unreliable. Technical support is nonexistent. These obsolete drives have the potential to limit pulp production. This project should have no significant impact to annual pulp production. The purpose of the project is to avoid future risk of failure."

Project 076910A746C, Sodium Analyzer.

"Project Objectives
This project will replace the Orion 1811EL sodium analyzers with Hach 9245 sodium analyzers. These analyzers have become obsolete and parts are no longer available. Sodium analyzers are required by policy to ensure the integrity of the steam path. Sodium analyzer are required to remain in compliance with the corporate steam path protection policies. The current analyzers have problems with stability and memory. The wet sections of these obsolete analyzers are failing. Parts are impossible to find. Four of the nine sodium analyzers have already been replaced."

Project 076910A780C, LCI Drive Boiler water feed pump.

"Project Objectives and Financials
The #1 Boiler Feedwater Pump supplies water to the #1 power boiler and the #1 recovery boiler. The pump is driven by a 3500 horsepower motor that is controlled by a GE LCI drive. The LCI drive on the #1 feedwater pump is a 1983 vintage drive, with the original control cards. The drive control cards have been obsolete for years. The majority of our spares are cards that have been removed from other mill's LCI drives that were updated. GE field support for this vintage drive is poor. There have been 4 incidents with this drive in 2009. The most recent card failure caused over 3 hours of mill downtime. The #2 Boiler Feedwater Pump supplies water to the #2 power boiler and the #2 recovery boiler. The pump is driven by a 5000 horsepower motor that is controlled by a GE LCI drive. The LCI drive on the #2 feedwater pump is a

1988 vintage drive, with the original control cards. The drive control cards are obsolete. We have a limited number of spares for this drive. GE field support for this vintage drive is poor."

Section 3 Energy from recovery boilers 2000 to 2010 for Georgetown and Eastover Mills

Table 12 summarizes the production of energy from the recovery boilers at the Georgetown mill. The Georgetown mill increased the amount of steam from the recovery boilers by 4.05% from 2009 to 2010. Over the 11 years of data the year 2010 was 2.7% higher than the 11 year average. The source of this data is from the PDF document "Georgetown fuel summary 2000-2010" table on page 4 (bates number IP_001148).

Table 12 Steam production from Georgetown recovery boilers by year.

Year	Decatherms	Percentage of deviation from 11 year average
2000	6,236,500	-0.7%
2001	6,354,600	1.2%
2002	6,172,700	-1.7%
2003	6,193,800	-1.4%
2004	6,251,300	-0.4%
2005	6,245,200	-0.5%
2006	6,329,400	0.8%
2007	6,489,500	3.4%
2008	6,150,400	-2.0%
2009	6,196,800	-1.3%
2010	6,448,000	2.7%
11 yr average	6,278,927	

Table 13 summarizes the production of energy from the recovery boilers at the Georgetown mill. The increase in steam production from 2009 to 2010 was 4.0%. The increase compared to the 11 year average was 5.7%. The source of this data is from the PDF document "Eastover fuel summary 2000-2010" table on page 7 (bates number IP_001129).

Table 13. Steam production from Eastover recovery boilers by year

Year	Decatherms	Percentage of deviation from 11 year average
2000	8,114,702	-7.2%
2001	7,981,723	-8.7%
2002	8,550,007	-2.2%
2003	8,600,682	-1.6%
2004	8,949,986	2.4%
2005	8,679,054	-0.7%
2006	9,041,634	3.4%
2007	9,087,683	3.9%
2008	9,039,844	3.4%
2009	8,894,904	1.7%
2010	9,243,234	5.7%
11 yr average	8,743,950	

Appendix 1

Energy office policy for expenses to be certified against the South Carolina tax credit **SECTION 12-6-3620.** Purchase and installation of equipment to produce energy from biomass resources.

SC Energy Office Policy

The statute's intent is to foster additional energy creation from biomass fuels. This does not include maintenance of currently existing systems or sources but is extended to cognizable improvements to the amount of energy produced and the need for capital investment to achieve such results.

For example: A farmer who owns 200,000 acres decides to plant switch grass for the sole purpose of harvesting it for fuel in a furnace for the sole purpose of creating energy (for sale or commercial use). The necessary equipment and machinery (tractors, harvesters, trucks and the boiler and related equipment) will be purchased as a capital investment and 100% of its use will be devoted to the production of energy from the planted switch grass, including its transportation from the farm to the energy facility.
Policy: Only the boilers, furnaces, turbines and transformers are eligible for the credit. The equipment must use "biomass resources as its primary fuel source" and none of the other equipment used by the farmer would do so.

For example: A paper company builds a mill that buys timber and timber products for the making of paper. As a part of its paper-making process, the mill mixes the wood chips it buys or grinds from purchased timber with chemicals and water. After extracting certain elements from the chips, the mill then re-constitutes and separates the added water, chemicals and wood chips by use of a process that also results in the production of energy. This is done by further treatment of the fluid remaining following the extraction of the elements needed for paper making and results in the fluid containing the remaining wood products being burned in a "recovery boiler". This "recovery boiler" burns the product (called black liquor) separating it into steam, ash and chemicals. The steam is used to produce energy and the chemicals are thereafter re-cycled for further re-uses in the paper-making process. The paper mill seeks tax credits for alterations and replacements to its woodyard, chippers, conveyors, digesters and all other parts of the process of extracting the added water and chemicals from the wood chips both before and after it has created the energy. This request also includes a request for the tax incentive to be applied to the chemical revitalization process.
Policy: Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. The equipment used for paper-making (such as the digester) or is powered by other than biomass resources is not eligible—nor is the equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes regardless how it is powered. None of the chemical recovery process is eligible.

For example: As in the preceding example except that the mill upgrades, maintains or expands its existing equipment.
Policy: The mill is entitled to credit for expenditures to the boiler and turbines which are reasonably necessary to an increased production of energy (assuming additional energy is produced) and according to the percentage of energy increase. If a new recovery boiler is purchased for $10,000,000 and it replaces another boiler and because of the new boiler 50% more energy is produced, the mill would be entitled to

-----Original Message-----
From: Lancaster, Ashlie [mailto:ALancaster@energy.sc.gov]
Sent: 03/01/2012 4:14 PM
To: Tracy L Bolger
Subject: RE: International Paper Company 2011 SC Biomass Credit Application

March 1, 2012

To: Tracy Bolger
International Paper Company
State Income Tax Analyst
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197

Thank you for submitting International Paper (IP) Company's application for a Biomass Resource Credit under S.C. Code Ann. § 12-6-3620. Please note that only equipment and installation costs for equipment that creates energy from a fuel consisting of 90% biomass resource are eligible for the requested credit. An analysis of the claimed expenses for which a credit was requested in comparison to the eligibility requirements detailed in the law was conducted using the following three test criteria to determine the amount of allowable credit, if any.

Three key tests stated in the policy were used in this assessment:
Test 1. Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. § 12-6-3620 (A), eligible equipment must "create" energy using a "fuel consisting of no less than ninety percent biomass resource."
Test 2. None of the chemical recovery process is eligible. (Green liquor processing to white liquor and the associated lime kiln processes). Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.
Test 3. Those expenditures that do not produce or demonstrably contribute to an increased output of energy do not qualify for the incentive. § 12-6-3620 (A), eligible equipment must "create heat, power, steam, electricity, or another form of energy for commercial use."

Based on these test criteria, only claimed expenses for the recovery boilers and turbines could be considered for the credit. However, a direct correlation between the individual projects and an increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, evaluation of the items submitted for certification by IP, using the criteria listed in the SC Energy Office policy result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00.

Sincerely,

Ashlie Lancaster
SC Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
803-737-9822

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	)	Docket No. 11-ALJ-30-0192-CC NOTICE OF MOTION & MOTION TO DISMISS

TO: Erik P. Doerring, Esquire and Jeffrey T. Allen, Esquire, Attorneys for Petitioner

You will please take notice that as soon as the matter may be heard, Respondent will move before this Honorable Court to dismiss the appeal of the International Paper Company. The grounds for the dismissal of this matter are that the available administrative remedies have not been exhausted in that the Respondent has not issued a final agency determination or decision with respect to the tax credit and the amount of credit, if any, to be allowed the International Paper Company pursuant to its January 28, 2011 request for the same under the S.C. Code Ann. § 12-6-3620 for the tax year 2010.

The South Carolina Energy Office previously did not receive sufficient information from the Petitioner to render a final agency determination as required by §12-6-3620 of the South Carolina Code. The majority of such information has now been received and the State Energy Office is now capable of making a final agency decision and determination concerning the statutory tax credit.

The South Carolina Energy Office therefore moves that this Honorable Court dismiss the appeal pending a final agency decision or provide such further relief as will accord with the statutory and decisional laws of the State of South Carolina.

This Motion is based upon the fact that the appeal of the International Paper Company seeking a determination of this Court is not ripe for review unless the State Energy Office has made a final agency decision and determination with respect to the tax credit requested and no such final decision or determination has been made.

Respectfully submitted,

Frank S. Potts, Office of General Counsel
State Budget and Control Board
1201 Main Street, Suite 410
Post Office Box 11608
Columbia, South Carolina 29211
Attorneys for Respondent

December 14, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. State Energy Office, Respondent.	Docket No. 11-ALJ-30-0192-CC PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

The State Energy Office has filed a motion to dismiss the pending case on December 14, 2011, alleging that the State Energy Office previously did not receive sufficient information from International Paper Company to render a final agency determination as required by §12-6-3620 of the South Carolina Code and further alleging that it now has received information in the case and desires to issue a new final agency determination.

Petitioner International Paper Company ("International Paper") hereby responds in opposition to Respondent State Energy Office's Motion to Dismiss. This opposition is supported by the Affidavit of Tracy Bolger and the exhibits referenced therein, which is filed in support of this opposition.

FACTUAL BACKGROUND

On January 31, 2011 International Paper filed an Application for Biomass Resource Credit under South Carolina Code § 12-6-3620 (the "Biomass Resource Credit") for the tax year 2010 with the State Energy Office related to costs incurred by International Paper for the purchase and installation of equipment necessary and integral to the process of creating heat and steam from a biomass resource (the "Application"). (Aff. of Bolger, §§ 5-6, Ex. A). The Application specifically related to costs incurred by International Paper in 2010 at its facilities in

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ADMIN. LAW COURT

Georgetown and Eastover, South Carolina. (Aff. of Bolger, § 5, Ex. A). The equipment costs listed in the Application for the Georgetown facility totaled $17,783,622.64, and the equipment costs listed in the Application for the Eastover facility totaled $4,280,391.52. (Aff. of Bolger, Ex. A). The Application listed equipment expenses for each facility based on project classifications. The Application listed 20 projects for the Georgetown facility and 25 projects for Eastover facility. (Aff. of Bolger, § 5, Ex. A).

The Application was prepared by Tracy Bolger, certified public accountant and Senior State Income Tax Analyst with International Paper. (Aff. of Bolger, §§ 2, 5). Prior to filing the Application, Mrs. Bolger researched and analyzed the Biomass Resource Credit and communicated with and received information from managers and engineers at International Paper's Georgetown and Eastover, South Carolina facilities concerning equipment that may qualify for the Biomass Resource Credit. (Aff. of Bolger, § 7). This was the first such application or claim for the Biomass Resource Credit filed by International Paper. (Aff. of Bolger, § 6).

Prior to filing the Application, Mrs. Bolger communicated regularly with State Energy Office staff and sought guidance on the availability of the Biomass Resource Credit for International Paper. (Aff. of Bolger, § 8). In November 2010, Mrs. Bolger contacted the State Energy Office and spoke with Erika Myers, employed by the State Energy office as Manager, Renewable Power Programs. (Aff. of Bolger, § 8). Mrs. Bolger notified Ms. Myers of International Paper's intent to file a 2010 application for Biomass Resource Credit related to equipment added to International Paper's Georgetown and Eastover South Carolina facilities. (Aff. of Bolger, § 9). Mrs. Bolger offered to arrange an inspection of International Paper's facilities to discuss the Biomass Resource Credit and provide State Energy Office representatives

with the opportunity to inspect equipment, ask questions, and receive any additional information they needed in order to evaluate the equipment for purposes of the Biomass Resource Credit. (Aff. of Bolger, § 9).

On December 3, 2010 Mrs. Bolger followed her conversation with Ms. Myers with an email to her, proposing dates to inspect International Paper's Georgetown facility. (Aff. of Bolger, § 10, Ex. B).

On December 8, 2010, Mrs. Bolger sent a follow-up email to Ms. Myers attempting to confirm a date for the State Energy Office to inspect the Georgetown facility. (Aff. of Bolger, § 11, Ex. C).

On December 9, 2010, Mrs. Bolger received a reply email from Ms. Myers stating that Ms. Myers wished to invite Ralph Jenkins, a staff engineer for State Energy, to the Georgetown facility inspection, and confirming dates of availability. (Aff. of Bolger, § 12, Ex. D).

On December 9, 2010, Mrs. Bolger replied to Erika Myers' email and inquired whether the South Carolina Department of Revenue could attend the Georgetown facility inspection, and discussed dates for inspection. (Aff. of Bolger, § 13, Ex. E).

On December 9, 2010, Mrs. Bolger again emailed Ms. Myers indicating that International Paper was unable to schedule the inspection in December, and proposing dates in January. Mrs. Bolger also requested that Ms. Myer call her to discuss how she (Ms. Myers) would like the plant inspection to be arranged, and how long she expected the tour to take so that plant engineering staff could be made available to help with showing improvement projects and the equipment used at the facility. (Aff. of Bolger, § 14, Ex. F). Mrs. Bolger also asked how Ms. Myers would wish to see information presented on International Paper's fixed asset additions

(the equipment subject to the claimed credit) or projects of a certain dollar amount. (Aff. of Bolger, § 14, Ex. F).

A series of emails between Mrs. Bolger and Ms. Myers on December 9, 2010 discussed whether the Department of Revenue would attend the Georgetown facility inspection and scheduled a call for December 11, 2010 to plan the Georgetown facility inspection. Mrs. Bolger offered to prepare reports for Ms. Myers to assist at the inspection tour. (Aff. of Bolger, § 15, Ex. G).

Mrs. Bolger and Ms. Myers were unable to speak on December 10, 2010, but did speak by phone on December 13, 2010 concerning what equipment listings and reports Ms. Myers needed for purposes of the Georgetown facility inspection. (Aff. of Bolger, § 16).

Mrs. Bolger had not received information from Erika Myers or the State Energy Office concerning whether representatives of the South Carolina Department of Revenue would be attending the Georgetown facility inspection, and called the South Carolina Department of Revenue, speaking with different representatives, including Ricky Taylor and Jerrylynn Van Story. (Aff. of Bolger, § 17).

On January 5, 2011 Mrs. Bolger emailed Ms. Myers, representing that January 26, 2011 was a good date for the Georgetown facility inspection, and stating the Department of Revenue had not yet decided whether to attend. (Aff. of Bolger, § 18, Ex. H).

Mrs. Bolger eventually spoke with Duncan Rogers at the Department of Revenue who advised her that he would be attending the Georgetown facility inspection on behalf of the Department of Revenue. (Aff. of Bolger, § 19). At his request, Mrs. Bolger sent Mr. Rogers information concerning the paper making process and the black liquor fuel process at the plant. (Aff. of Bolger, § 19).

On January 11, 2011 Mrs. Bolger emailed Ms. Myers offering to provide her with project cost summaries for the equipment at the Georgetown facility inspection, as well as a memo giving a description of the project and a listing of the equipment for each project and the equipment cost. (Aff. of Bolger, § 20, Ex. I).

On January 13, 2011 Ms. Myers emailed Mrs. Bolger in reply to her January 11, 2011 email, stating that the production of project memos should be sufficient for the Georgetown facility inspection, and if there are any components for which Ms. Myers had specific questions she would coordinate after the tour and get additional back-up material. (Aff. of Bolger, § 21, Ex. J). Ms. Myers also indicated that she was scheduling a similar plant tour of Domtar, another pulp paper producer in South Carolina who had submitted a credit application for $42 million and that she would be very busy the next several months. (Aff. of Bolger, § 21, Ex. J).

Following Ms. Myers' January 13, 2011 email, Mrs. Bolger sent her equipment improvement and upgrade lists including descriptions and project explanations for the Georgetown facility. (Aff. of Bolger, § 22).

Mrs. Bolger emailed Ms. Myers to confirm the Georgetown facility inspection tour for January 26, 2011, giving directions to the Georgetown facility, including safety instructions, and several emails between Mrs. Bolger and Ms. Myers followed concerning scheduling a conference call to discuss the inspection. (Aff. of Bolger, § 23, Ex. K).

The Georgetown facility inspection was held on January 26, 2011 as scheduled. Mrs. Bolger, International Paper engineers, and plant representatives attended on behalf of International Paper. Ms. Myers and Ralph Jenkins attended on behalf of the State Energy Office. A representative of the Department of Revenue attended. The representatives of the State Energy Office and Department of Revenue were given an extensive tour, were able to view and

ask questions about equipment, and were permitted to and did take pictures of the equipment at the facility. Asset/equipment and related cost information for equipment was provided to the State Energy Office. (Aff. of Bolger, § 24).

On January 31, 2011, Mrs. Bolger participated in a conference call with Roberts Shands and herself on behalf of International Paper, and Erika Myers and Ralph Jenkins on behalf of State Energy. During the call, Erika Myers requested additional information concerning steam production at International Paper's facilities in Georgetown and Eastover. (Aff. of Bolger, § 26).

After the Application was filed January 31, 2011, the State Energy Office continued to request information from International Paper concerning the equipment at the Georgetown and Eastover plants, and International Paper responded to these requests. On February 16, 2011, Mrs. Bolger provided additional information to the State Energy Office through email to Ms. Myers containing comparative steam production data for 2009 and 2010 at both the Georgetown and Eastover facilities, as well as information concerning the percentage yields of papers fibers to biomass energy from dry logs at both the Georgetown and Eastover facilities. Mrs. Bolger also responded to specific questions from Ms. Myers concerning certain equipment identified in the Application. (Aff. of Bolger, § 27, Ex. L).

On March 1, 2011 the State Energy Office issued its determination, responding to the Application (the "SEO Determination"), which provided "a detailed review by the South Carolina Energy Office (SCEO) in conjunction with the Budget and Control Board's Office of General Counsel of allowable credits requested by International Paper under SC Code 12-6-3620, known as the Biomass Resource Credit." (Aff. of Bolger, § 28, Ex. M). The SEO Determination set forth the State Energy Office's determination on the qualification of all equipment costs International Paper claimed in its Application. The SEO Determination stated

that the Biomass Resource Credit applied only to the creation of new energy and that allowable credits would be determined by reference to the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements. The SEO Determination further stated that certain equipment costs qualified for the Biomass Resource Credit, that certain equipment costs did not qualify, and that a percentage of certain equipment costs would be allowed which correlated to the percentage of feedstock that went to the black liquor recovery boiler.

Of the twenty projects included in the Application relating to International Paper's Georgetown facility, fourteen were denied entirely and six were allowed in part. Of the twenty-five projects included in the Application relating to the Eastover Mill, nine were denied, two were allowed in full, and fourteen were allowed in part.

The SEO Determination requested that International Paper provide substantiating documents to confirm its expenditures, the percentage of feedstock that went to the black liquor recovery boiler, and documentation to show the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.

On March 25, 2011 International Paper filed a request for a contested case hearing before the South Carolina Administrative Law Court seeking a determination that the State Energy Office failed to correctly certify that International Paper's equipment as claimed in its Application qualified for the Biomass Resource Credit.

Pursuant to this Court's order, the parties filed pre-hearing statements in this case. The State Energy Office did not claim that it had not made a final determination in its pre-hearing statement or indicate that it anticipated filing a motion to dismiss. After pre-hearing statements

in this case were filed, the State Energy Office and International Paper engaged in discovery and have exchanged extensive documentation in the course of discovery.

The State Energy Office has filed a motion to dismiss the pending case on December 14, 2011, alleging that the State Energy Office previously did not receive sufficient information from International Paper to render a final agency determination as required by §12-6-3620 of the South Carolina Code and further alleging that it now has apparently received information through discovery in the case and desires to issue what it considers to be a final agency determination.

DISCUSSION

South Carolina Code § 12-6-3620 allows a corporation a credit against income taxes imposed by South Carolina Code § 12-6-530 or corporate license fees imposed by South Carolina Code § 12-20-50, or both, for 25% of the costs incurred for the purchase and installation of equipment used to create power, heat, steam, electricity, or another form of energy for commercial use from a fuel consisting of 90% or more biomass resource ("Biomass Resource Credit"). S.C. Code § 12-6-3620(A). A taxpayer may use up to $650,000 of the Biomass Resource Credit for a single taxable year, and unused credits may be carried forward for 15 years. S.C. Code § 12-6-3620(B). Costs incurred by a taxpayer and qualifying for the Biomass Resource Credit must be certified by the State Energy Office. S.C. Code § 12-6-3620(A).

To obtain the maximum amount of credit available, a taxpayer must submit a request to State Energy Office by January 31st for all qualifying equipment placed in service in the previous calendar year and State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit by March 1st. S.C. Code § 12-6-3620(D)(1).

The statute requires that a request for the Biomass Resource Credit must be filed by January 31st and the State Energy Office must notify the taxpayer by March 1st that it qualifies for and the amount of the credit. The statute does not permit extensions of either date. S.C. Code § 12-6-3620(D)(1) also does not permit the State Energy Office to request additional information beyond March 1, 2011, or to otherwise delay or amend its statutorily-mandated notification to a taxpayer under the statute.

The statutory scheme contemplates a prompt filing of a request for the Biomass Resource Credit by January 31st, or within 31 days after the close of the calendar year. Most corporate taxpayers utilize a calendar year as their tax accounting year and the 31 day period provides a taxpayer with a limited window to determine all applicable and qualifying equipment placed in service in the ended calendar year. The State Energy Office is then required to notify a taxpayer within 29 days, or by March 1st, that the claimed equipment qualifies for the credit, and, applying a simple 25% multiplier to the equipment costs, the amount of the resulting credit. Corporations who seek to claim the Biomass Resource Credit must generally then file their annual South Carolina corporate income tax return 15 days later, or by March 15th. S.C. Code § 12-6-4970. Thus, the statutory scheme contemplates a relatively short period, from January 1st to March 15th of each year, or less than 75 days, within which a business must: ascertain which qualifying equipment has been placed in service during a prior tax year; prepare an application for the Biomass Resource Credit and file it with the State Energy Office; the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of the credit; and then the taxpayer must report this credit on its South Carolina corporate income tax return filed with the Department of Revenue.

While the State Energy Office is required by the statute to provide a taxpayer with an initial notification of the qualifying equipment (the 25% amount of the credit is self-evident once the equipment cost is determined), the statute contemplates that "[t]he Department of Revenue may require any documentation that it deems necessary to administer the credit." S.C. Code § 12-6-3620(D)(1)(last sentence). This provision, taken together with the limited time period within which the State Energy Office must make a determination, makes clear that the role of the State Energy Office under the statute is limited to determining whether equipment claimed in an application for the Biomass Resource Credit "creates ... energy for commercial use from a fuel consisting of no less than ninety percent biomass resource". The role of the Department of Revenue, on the other hand, is to verify or substantiate (if needed) the equipment costs claimed in an application and reported by a corporate taxpayer on its South Carolina income tax return. S.C. Code § 12-54-85 provides the Department of Revenue at least three years to audit and verify a claimed Biomass Resource Credit and the related equipment costs. The Department of Revenue is the agency of South Carolina state government with knowledge of state taxes, accounting principles, books and records, and audit procedures. The State Energy Office can hardly be expected to be able to verify tens of millions of dollars of equipment expenditures in a twenty-nine day period, with limited staff, while also simultaneously confirming the function of such equipment and its use of a biomass resource. In short, the Department of Revenue is the agency with expertise to handle tax and accounting matters while the State Energy Office is the agency with the expertise to determine what constitutes a biomass resource. The statutory scheme of the Biomass Resource Credit delegates responsibility based on each agencies' expertise.

I. International Paper has exhausted its administrative remedies.

International Paper timely submitted its application for Biomass Resource Credit on January 31, 2011. International Paper in fact provided extensive documents and information confirming its equipment upgrades and improvements at its South Carolina plants and also made other information available to the State Energy Office related to its claimed Biomass Resource Credit equipment for 2010. All this was provided in advance of the January 31st statutory due date for its application. International Paper responded to every request of the State Energy Office and continued to provide requested information to the State Energy Office concerning its equipment through March 1, 2011.

The State Energy Office was required to issue a certification to International Paper by March 1, 2011. S.C. Code § 12-6-3620. No administrative remedies were available to International Paper after March 1, 2011. International Paper, having provided all requested information to the State Energy Office (in advance and above beyond what is required by S.C. Code § 12-6-3620), has clearly exhausted all available administrative remedies.

II. The State Energy Office issued a final agency determination on March 1, 2011

On March 1, 2011 the State Energy Office issued its SEO Determination to International Paper. The SEO Determination stated it was a "detailed review by the South Carolina Energy Office (SCEO) in conjunction with the Budget and Control Board's Office of General Counsel of allowable credits requested by International Paper".

The SEO Determination separately addressed the forty-five projects set forth in the Application, providing a detailed response to each. The SEO Determination found that certain equipment costs qualified for the Biomass Resource Credit, that certain equipment costs did not

qualify, and that a percentage of certain equipment costs would be allowed which correlated to the percentage of feedstock that went to the black liquor recovery boiler.

South Carolina Code § 12-6-3620 required the State Energy Office to issue its determination on March 1, 2011 and that is precisely what the State Energy Office did by issuance of the SEO Determination. The SEO Determination's request for documents to substantiate that International Paper actually incurred the costs listed in the application, the percentage of feedstock used by the recovery boiler, and documents relating to the amount of new energy created by the equipment listed in the Application do not change the nature of the SEO Determination. The State Energy Office lacked the authority to alter or change its determination after March 1, 2011, and the State Energy Office's request to do so now, after it has received information in the course and scope of discovery in this case, must be denied.

The SEO Determination clearly sets forth the State Energy Office's determinations of the projects used to create energy for commercial use from a fuel consisting of no less than ninety percent biomass resource, the sole duty it is charged with under South Carolina Code § 12-6-3620. Of the twenty projects included in the Application relating to the Georgetown facility, fourteen were denied entirely and six were allowed in part. Of the twenty-five projects included in the Application relating to the Eastover facility, nine were denied, two were allowed in full, and fourteen were allowed in part.

The SEO Determination was a final agency determination by the State Energy Office. The State Energy Office did not contend otherwise in its pre-hearing statement filed with this Court. The dispute between the State Energy Office and International Paper concerning the Biomass Resource Credit is ripe for review without any additional information. The fact that the State Energy Office requested additional information to confirm International Paper's investment and

to apply a percentage to certain costs does not change the finality of the State Energy Office's determination.

Conclusion

The SEO Determination was a final agency determination and Respondent's Motion to Dismiss should be denied.

Respectfully submitted,

Erik P. Doerring
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Attorneys for Petitioner

December 28, 2011

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Appellant/Petitioner, vs. SC State Energy Office Respondent.	)	Docket No.: 11-ALJ-30-0192-CC **AFFIDAVIT OF TRACY BOLGER**

Personally appeared before me, Tracy Bolger, who, first being duly sworn, deposes and says that:

1. I am competent to testify in this matter, the statements made herein are based on my own personal knowledge, and if called to testify in this matter would testify to the statements that follow.

2. I am employed as a Senior State Income Tax Analyst in the Tax Department for International Paper Company ("International Paper"), and have been employed by International Paper as a state income tax analyst since May 2006.

3. I am a certified public accountant, with a Bachelors of Science Degree in Accounting, and possess over 10 years of experience consisting of tax preparation, planning, audit resolution, financial analysis, and auditing and accounting. Prior to my employment with International Paper, I was employed as a public accountant for Jackson, Howell & Associates and Deloitte & Touche, LLC.

4. In my position as Senior State Income Tax Analyst, my duties and responsibilities generally include state income tax compliance; state income tax audit, examination, and review;

state income tax accounting; and state income tax project management. I directly report to Robert Shands, the State Tax Manager for International Paper.

5. My duties as Senior State Income Tax Analyst included research, analysis and preparation of International Paper's 2010, Application for Biomass Resource Credit, Form SC SCH. ETC-50, filed with the South Carolina State Energy Office (the "Application"). A copy of this application with 18 pages of narrative explanation, attachments, and equipment listing and cost schedules is attached as **Exhibit A**. The Application lists equipment costs for International Paper's Georgetown and Eastover, South Carolina paper mill production facilities based on project classifications. The Application specifically identifies 20 capital upgrade and improvement projects for equipment at the Georgetown facility and 25 capital upgrade and improvement projects for the Eastover facility.

6. The Application was filed with the South Carolina State Energy Office ("State Energy") on January 31, 2011. To my knowledge, this was the first such application or claim for a credit filed by International Paper under South Carolina Code Section 12-6-3620 (the "Biomass Resource Credit").

7. Prior to the filing of the Application, I researched and analyzed the Biomass Resource Credit and communicated with and received information from managers and engineers at our Georgetown and Eastover, South Carolina paper mill facilities concerning equipment that may qualify for the Biomass Resource Credit.

8. In November 2010, I called the State Energy office and spoke with Erika Myers, Manager, Renewable Power Programs, to gain a better understanding of the Biomass Resource Credit, including State Energy Office's requirements for the credit, and whether equipment upgrades and improvements located at process areas at International Paper's South Carolina

plants would qualify. This was the first of several telephone conversations I had with Ms. Myers, where I called her, asked her questions about plant areas and equipment upgrades and improvements, and she responded with general guidance about whether equipment upgrades and improvements at International Paper's plants would qualify for the Biomass Resource Credit. In my conversations with Ms. Myers, she never made any comment or provided any guidance that the Biomass Resource Credit was limited to equipment that produced new or added energy, that the credit was limited to new or existing plants or facilities in South Carolina, or that for the credit to apply qualifying equipment must be in physical contact with a biomass resource. I prepared the Application relying, in part, on the guidance provided by Ms. Myers.

9. During one of my calls with Erika Myers, I notified her of the intent of International Paper to file a 2010 application for equipment upgrades and improvements at the Georgetown and Eastover, South Carolina facilities. I offered to arrange an inspection of International Paper's Georgetown facility so that we could meet with State Energy representatives to discuss the Biomass Resource Credit; and so State Energy representatives could inspect the equipment, ask questions, and receive any additional information they needed in order to evaluate the equipment for purposes of the Biomass Resources Credit.

10. On December 3, 2010, I followed up my call to Erika Myers with an email to her, proposing dates for the Georgetown facility inspection visit. A copy of this email is attached as **Exhibit B**.

11. On December 8, 2010, I sent a follow-up email to Erika Myers attempting to confirm a date for State Energy's inspection of the Georgetown facility. A copy of this email is attached as **Exhibit C**.

12. On December 9, 2010, I received a reply email from Erika Myers stating she wished to invite Ralph Jenkins, a staff engineer for State Energy, to the Georgetown facility inspection, and confirming dates of availability. A copy of this email is attached as **Exhibit D**.

13. On December 9, 2010, I replied to Erika Myers' email and inquired whether the South Carolina Department of Revenue could attend the Georgetown facility inspection, and discussed dates for the inspection. A copy of this email is attached as **Exhibit E**.

14. Later in the day on December 9, 2010, I emailed Erika Myers again, advised her there that we would be unable to schedule the inspection in December, and proposed dates in January. In the same email, I asked for her to call me to discuss how she would like the plant inspection to be arranged, and how long she expected the tour to take so I could schedule with the plant engineering staff to show the improvement projects and the equipment used in the papermaking process. I also asked her how she may wish to see listings of the fixed asset additions (the equipment subject to the claimed credit) or projects of a certain dollar amount to help with her review. A copy of this email is attached as **Exhibit F**.

15. Attached are a series of emails between Erika Myers and me later on December 9, 2010, where we discussed whether the Department of Revenue would attend the Georgetown facility inspection, and scheduled a call between us for the next day, December 10, 2010, to plan for the Georgetown facility inspection. I offered to prepare reports for her to assist at the inspection tour. A copy of this email chain is attached collectively as **Exhibit G**.

16. We were unable to speak on December 10, 2010, but I did speak with Erika Myers by phone on December 13, 2010 concerning what equipment listings and reports she needed for purposes of the Georgetown facility inspection.

17. Because I had not received information from Erika Myers or the State Energy Office concerning whether representatives of the South Carolina Department of Revenue would be attending the Georgetown facility inspection, I called the South Carolina Department of Revenue, speaking with different representatives, including Ricky Taylor and Jerrylynn Van Story.

18. On January 5, 2011, I emailed Erika Myers, representing that January 26, 2011 was a good date for the Georgetown facility inspection, and stating that the Department of Revenue had not yet decided whether to attend. A copy of this email and Erika Myer's January 6, 2011 email response are collectively attached is attached as **Exhibit H.**

19. I eventually spoke with Duncan Rogers at the Department of Revenue who advised me that he would be attending the Georgetown facility inspection on behalf of the Department of Revenue. At his request, I sent Mr. Rogers information concerning the paper making process and the black liquor fuel process at the plant.

20. On January 11, 2011, I emailed Erika Myers offering to provide her with project cost summaries for the equipment at the Georgetown facility inspection, as well as a description memo giving a description of the project and a listing of the equipment for each project and equipment cost. I reminded her that the project cost summaries can be lengthy and run between 50-150 pages each, and offered to provide her with these summaries at the end of the month. A copy of this email is attached as **Exhibit I.**

21. Erika Myers replied by email dated January 13, 2011, stating that providing our project memo should be sufficient for the Georgetown facility inspection, and if there are any components for which she had specific questions she would coordinate after the tour and get additional back-up material. She also represented that she was scheduling a similar plant tour of

Domtar, another pulp paper producer in South Carolina who had submitted a credit application for $42 million and that she would be very busy the next several months. A copy of this email is attached as **Exhibit J.**

22. Following Erika Myers' January 13, 2011 email, I sent to her equipment improvement and upgrade lists including descriptions and project explanations for the Georgetown facility.

23. Attached is an email from me to Erika Myers confirming the Georgetown facility inspection tour for January 26, 2011, giving directions to the Georgetown facility, including safety instructions, and follow-up emails between us scheduling a conference call to discuss the upcoming inspection tour. Copies of these emails are attached collectively as **Exhibit K.**

24. The Georgetown facility inspection was held on January 26, 2011 as scheduled, and was attended my me, Robert Shands, and International Paper engineers and plant representatives; Erika Myers and Ralph Jenkins on behalf of State Energy; and Duncan Rogers from the South Carolina Department of Revenue. State Energy and Department of Revenue representatives were given an extensive tour of the Georgetown facility, were able to view and asked questions about the equipment for which International Paper was seeking the Biomass Resource Equipment Credit; asset/equipment and related cost information were provided to State Energy; and State Energy representatives were allowed and did take pictures of the equipment at the facility.

25. International Paper filed the Application with State Energy on January 31, 2011.

26. Also on January 31, 2011, I participated in a conference call with Roberts Shands and me on behalf of International Paper, and Erika Myers and Ralph Jenkins on behalf of State

Energy. During the call, Erika Myers requested additional information concerning steam production at International Paper's facilities in Georgetown and Eastover.

27. I followed up with International Paper's Georgetown and Eastover plant representatives to obtain the information requested by Erika Myers and on February 16, 2011, I provided additional information to State Energy through an email to Erika Myers containing comparative steam production data for 2009 and 2010 at both the Georgetown and Eastover facilities, as well as information concerning the percentage yields of paper fibers to biomass energy from dry logs at both the Georgetown and Eastover facilities. I also responded to certain specific follow-up questions from Erika Myers concerning certain equipment identified in the Application. A copy of this email is attached as **Exhibit L.**

28. On March 1, 2011 I received the State Energy response to the Application by email. A copy of this email is attached as **Exhibit M.**

FURTHER AFFIANT SAITH NOT.

Tracy Bolger

SWORN to and subscribed before me

this 28th day of December, 2011.

Carolyn L Carpenter

Notary Public for State of Tennessee

My Commission Expires: 3/1/2014

CAROLYN L. CARPENTER STATE OF TENNESSEE NOTARY PUBLIC SHELBY COUNTY

Exhibit A

STATE ENERGY OFFICE

APPLICATION FOR BIOMASS RESOURCE CREDIT

Under Code Section 12-6-3620

SC SCH. ETC-50
(UPDATED 10/09)
2010

Name as Shown on Tax Return
International Paper Company

Fed EI No.
13-0872805

Mailing Address
6400 Poplar Ave., c/o Tax Dept.
STREET

Contact Person
Robert Shands

Contact Person's Title
State Tax Manager

Memphis | Shelby | TN | 38197
CITY | COUNTY | STATE | ZIP

Telephone Number
(901) 419-4508

Physical Address
(1) 700 S Kaminski Street
(2) 4001 Mecords Ferry Road
STREET

Fax Number
(901) 419-4539

(1) Georgetown | Georgetown | SC | 29442
(2) Eastover | Richland | SC | 29044
CITY | COUNTY | STATE | ZIP

Email

1. Has the taxpayer applied for and/or received the biomass resource credit under S.C. Code 12-6-3620 in prior tax years? If yes, please list the tax years and the amount of the credit received.

NO

2. Give a description of the project including:
   - what the energy will be used for;
   - duration the equipment is expected to be used at the facility;
   - name and location of company installing the equipment;
   - name and location(s) where the equipment will be installed; and
   - type of biomass feedstock
   - did the facility maintain an average of 90 percent biomass feedstock over the tax year?

   Be as specific as possible and attach additional pages if necessary.

The energy will be used primarily by the mills for their own use. Excess energy generation may be sold to 3rd parties or other offsite International Paper facilities. The primary Biomass feed stock is logs, wood chips and bark from Hard and Soft wood trees. The improvements requested were used to produce energy, heat, or steam from 90% Biomass. See attached.

3. List purchase price of equipment and installation costs needed to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of at least 90% biomass resource. Include:
   - name, type, and cost of the equipment;
   - manufacturer of equipment;
   - length of warranty for equipment (if applicable);
   - what state or country the equipment will be purchased from;
   - for electricity production how many MW capacity the system will produce and on average how many kWh will produce per year. For thermal energy how many therms the system will produce

RP 819-3-3

and on average how many decatherms the system will produce per year. For any equipment that is displacing electricity or thermal energy, how many units of energy is it displacing;
- cost for labor and installation charges;
- cost for shipping; and
- other relevant costs (if applicable).

Be as specific as possible and attach additional pages if necessary.

See attached equipment listing

For assistance with this form, contact the State Energy Office at (803) 737-8030.

1/28/11
Date

Melissa Lovorn
Signature of Officer (or other appropriate official)

Melissa Lovorn
Print Officer's Name

Asst. TAX OFFICER
Title

Mail To: State Energy Office
ATTN: Renewable Energy
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

NOTE: All claims generated between July 1, 2008 and December 31, 2009 must be received by January 31, 2010. The State Energy Office will send the Department of Revenue the maximum amount the taxpayer may claim. The State Energy Office will then notify each taxpayer of the maximum amount of credit allowed. Any unused part of the actual credit amount can be carried forward for up to 15 years.

General Information

Section 12-6-3620. For taxable years beginning after 2007, and ending before taxable year 2020, there is allowed a credit against the income tax imposed pursuant to Section 12-6-530 or license fees imposed pursuant to Section 12-20-50, or both, for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. The credit may be claimed in the year in which the equipment is placed in service and may be claimed for all expenditures incurred for the purchase and installation of the equipment. A taxpayer may use up to six hundred fifty thousand dollars of credit for a single taxable year. The tax credit is nonrefundable but unused credits may be carried forward for fifteen years.

To obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the

credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

The period from July 1, 2008 through December 31, 2009

For the state's fiscal year beginning July 1, 2008, the maximum amount of the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by **January 31, 2010**, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009. Attach the State Energy Office letter of certification or keep with your tax records if filing electronically.

NOTE: If a facility stops using biomass resources as at least 90% of its primary fuel source, any unused credit is suspended until the facility resumes using biomass resources as at least 90% of its fuel source. A suspension of unused credit does not extend the 15-year carryforward period.

Definitions:

A "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

A "commercial use" is a use intended to generate profit.

The State Energy Office reserves the right to request more information from the taxpayer if deemed necessary.

International Paper
Georgetown, South Carolina
EIN 13-0872805
2010 SC Biomass Credit Site Summary Memo

Organizational Information

Legal Entity: International Paper
Division(s): Converting, Specialty & Pulp

Introduction

This memo is divided into the following sections:

I. Site Overview and Biomass Energy Making Process
II. Qualified Projects

I. Site Overview

A. Corporate Overview

In 1937, the Georgetown Mill began operations in Georgetown, SC, on over 900 acres of land. The mill produces paper for the following products: Envelopes, Bristols (white and manila heavyweight paper for tags, file folders, and index), and Fluff Pulp (often used for the absorbent material in baby diapers and personal care products).

B. Biomass Energy Making Process

Logs are first tumbled in a debarking drum to remove the bark. Next, the logs are sent through the chipper. Wood chips from de-barked logs are cooked in a chemical solution. This is done in pressure vessels called digesters. The wood chips are fed into the digester where they are cooked at high pressure and temperature in a solution of sodium hydroxide and sodium sulphide. The wood chips are broken down by the temperature and chemicals into a slurry of cellulose fibers and other wood components.

During the chemical recovery process, the original cooking chemicals, wood resins, and wood lignin (sort of natural glue in the wood) are removed. The result is a solution called weak black liquor. The separated cellulose fibers are cleaned and screened many times to get them ready to be made into paper. The pulp is sent to the paper machines to produce a final product.

The chemical recovery process takes the weak black liquor made up of chemicals and wood lignin from the digestion area to the evaporators and concentrators which remove excess water to enable incineration of the black liquor. The concentrated black liquor is then pumped to the recovery boiler plant where fly ash from the electrostatic precipitators is mixed with the concentrated black liquor, further concentrated to approximately 67% solids and then burned in the combustion chamber of the recovery boiler. Feed water is pumped first to the economizers where it is preheated by flue gas. The water then enters the water circulation system of the

boiler. During combustion of the black liquor high pressure steam is generated in the boiler. The superheated steam flows from the boiler to a turbine generator plant where electricity is generated for the mill. The excess steam is recovered and is sent as heat to the dryers in the paper making process.

Hot smelt flow of the regenerated chemicals is drained from the furnace floor to the dissolving tank. The chemicals are dissolved into weak white liquor and returned to a recausticizing plant for further processing for pulping liquor generation.

II. Qualified Projects

A. **025908C695C GT Wood Yard Reconfiguration**
The objective of this project is to install a tree-length handling system. The new system would not require the wood to be slashed before debarking and chipping. GT woodyard will be able to increase the capacity to process more longwood. The mill will generate more bark and reduce the amount of purchased chips. Redesign of woodyard to change to a dry woodyard.

B. **025908H624C EEI 6 Warm Water Supply to DI Units**
This project will supply higher temperature water to the DI water units in order to increase the overall temperature of DI water going to the Power Boiler and Recovery Boiler. This project will provide a variable speed pump to draw water off of the No. 1 Evaporator Surface Condenser Cooling Tower Return line located near the large Cooling Towers. This water will be pumped to the header of the Demineralized Water Units (D. I. Units) located in the Water Treatment Building next to the Recovery and Power Boilers.

C. **025909A423C KAMYR / Pine DRC Conversion**
This project will replace the supervisory controls, which manages the digester level, the IV level, chip bin level, and brown stock diffuser washing on the digester from an existing obsolete distributed control system (DCS) to an Emerson Delta V DCS.

D. **025909A580C KAMYR Wash Heater Replacement**
The objective of this project is to maintain original design performance of the KAMYR Digester wash liquor heater by replacing the wash heater, exchanger tubes and shell. The wash liquor heater is a crucial piece of equipment to the Kamyr digester. The wash liquor heater takes weak wash out of the Kamyr digester that is cold and useless and heats it up to a temperature that is useful to process the wood lignin and fibers in the Kamyr digester.

E. **025909A687C No. 1 Lime Kiln Trunion & Drive Gear Upgrade**
The object of this project is increase the reliability of lime kiln portion of our chemical recovery process. This project would replace a 26 ft section of the kiln and drive gear. This includes: replacing 34 ft of brick and mechanical repairs to the kiln, replacing the drive system with a VFD, and replacing the base plate and trunions for the drive pier.

F. **025909H758C EEI7-Lime Kiln Multi Fuel Burner Replacement**

The objective of this project is to install multi-fuel burners in both No. 1 and No. 2 lime kilns so that reburned lime can be produced in the most cost effective manner based on the price of fuels. Permission has been granted by the South Carolina Department of Health and Environmental Control (SCDHEC) to replace the existing burners with new burners during the March 2010 outage.

G. **025910A050C #3 Causticizer Replacement**
This project will maintain the production capabilities of the existing caustic area that existed prior to this tanks foundation failure. The causticizers are used to give the lime mixture time to react and become the white liquor used in the cooking process. The causticizers do not have adequate retention time and the clarifiers do not have adequate retention time.

H. **025910G008C Greenhouse Gas Monitoring**
The EPA has finalized rules requiring sites with more than 25,000 tons of greenhouse gas emissions to begin tracking those emissions in January 2010 and report them annually starting in March 2011. In order to comply with this rule, the Georgetown mill will install more accurate fuel measurements for the recovery boilers, lime kilns, power boilers and RTO to be used in the reporting of GHG emissions. A stack flowrate monitor will also be installed as part of the power boiler continuous emission monitoring system for determining CO2 emissions

I. **025910G035C Excess Emission Reduction**
The US Court of Appeals issued a mandate on October 15, 2009 which vacated the Startup, Shutdown and Malfunction (SSM) provisions of 40 CFR 63.6(f)(1) and 40 CFR 63.(h)()1). Emissions that occur during periods of SSM will no longer be "exempt" from the hazardous air pollutant emission standard. Facilities are required to comply with the air standard at all times (even during periods of SSM) and failure to comply will be a violation of the emission standard. The change in the regulations has required a detailed assessment of the Georgetown Mill's historical excess emissions to improve past venting and to identify capital projects required to comply with the new requirements resulting from the SSM vacatur. The following is a list of changes applicable to the Biomass Energy process:

1. <u>New RTO Dome</u>
Solution: Install new combustion chamber dome with a higher grade alloy.

2. <u>Clad Outlet/Exterior of RTO</u>
Solution: Clad the outlet chamber of the RTO. Clad the exterior of the RTO with a higher grade alloy such as MA253.

3. <u>Online Rotor Wash System for RTO</u>
Solution: Install on line rotor wash system.

4. <u>Upgrade Motor / Gearbox of RTO Rotor</u>

Solution: Install upgraded motor and gearbox.

5. Ceramics Modification for RTO
Solution: Remove ceramics and allow the outlet temperature to increase causing more of the salts to pass directly to the scrubber.

6. Natural Gas Controls for RTO
Solution: Remove the mechanical linkage and put in a control valve that modulates.

7. Middle Section / Double Wall Modification - RTO
Solution: Modify middle section and double to improve metallurgy and eliminate corrosion/contamination.

8. Nozzle Modification - Dissolving Tank Scrubber System #1
Solution: Modify nozzles and auxiliary equipment to allow for cleaning or unpluggage on the run.

9. Nozzle Modification - Dissolving Tank Scrubber System #2
Solution: Modify nozzles and auxiliary equipment to allow for cleaning or unpluggage on the run.

10. Duplex Strainer - #2 Recovery Boiler Particulate Scrubber
Solution: Install a strainer system on the nozzle circulation flow

11. Automatic Voltage Controls - #1 & #2 Recovery Precipitator Units
Solution: Install automatic voltage controls to optimize the TR sets.

J. **025910G915C CEMS Upgrade for No. 2 Recovery Boiler**
This project will upgrade the Continuous Emission Monitoring System for the No. 2 Recovery Boiler by installing a carbon monoxide analyzer and stack flow meter to the existing TRS CEMS. Implementing this project at this time is required to ensure continued compliance with existing permit limits on No. 2 Recovery Boiler. Operations will be able to track emissions compared to permit limits more accurately and be able to react accordingly to maintain compliance.

K. **025910H786C EEI7 - GT Kamyr Wash Transition Screen**
The objective of this project is to install a diagonal slotted screen plate to increase the surface area of the wash zone extraction. By using this filtrate in the digester and extracting it to the flash liquor system, this solids filtrate will instead be sent to the evaporators having a lower volume of water requiring evaporation.

L. **025909G319C Bulk Fuel Oil Reconfiguration**
Replace the bulk fuel oil tank to provide high sulfur fuel oil to the Lime Kiln daily usage and to the Recovery Boiler during startup after a shut-down.

M. **025910H340C EEI7 - RB Advanced Sootblower Controls**
The objective of this project is to reduce sootblowing steam consumption on the Georgetown No. 1 & No. 2 Recovery Boilers by installing an Intelligent Sootblowing (ISB) control system.

N. **025910A059C Infastructure Improvements**
The objective of this project to modify or upgrade infrastructure in the Digester and Recovery Boiler areas such as Guarding, Walking Surfaces, Electrical, Housekeeping, Insulation, Personnel Alarms, etc.

O. **025910A048C #3 BC Heater Replacement**
The objective of this project is to install a heat exchanger to improve the GT KAMYR Digester Bottom Circulation liquor heat exchangers.

P. **025910A678C RB Flooring Phase IV**
The RB Flooring Project includes replacement of 2,338 square feet of concrete floor slabs.

Q. **025910G112C Infastructure Improvements Phase II**
The objective of this project to modify or upgrade infrastructure in the Digester and Recovery Boiler areas such as Guarding, Walking Surfaces, Electrical, Housekeeping, Insulation, Personnel Alarms, etc.

R. **025910A062C RB2/PB Scrubber Cuct Structural Steel Repair**
The objective of this project to upgrade the infrastructure for the RB2 Precipitator / Scrubber Ductwork.

S. **025910A776C RB Flooring Phase V**
The RB Flooring Project includes replacement of 1,380 square feet of concrete floor slabs.

T. **025910A108C GT Infastructure Improvements Phase I**
The objective of this project to modify or upgrade infrastructure in the Digester and Recovery Boiler areas such as Guarding, Walking Surfaces, Electrical, Housekeeping, Insulation, Personnel Alarms, etc.

International Paper Company 13-0872805
SC Biomass Energy Credit Assets
Georgetown, SC Mill
12/8/2010 Qualifing Assets

Sum of Net Acq Val								
Project Number	Project Name	Process Description	Asset	Sub-number	Qualifying Status	Capitalized on	Description	Total
025908C695C	GT Wood Yard Reconfiguration	Component of the wood chip system	624045	1	Y	01/01/10	Electric Ctr-Chipper, Common Woody	100,363.10
				2	Y	01/01/10	Electric Ctr-Chipper, Common Woody	1,555.75
			624046	1	Y	01/01/10	Knuckle Boom Chipper Crane, Metso	103,889.73
				2	Y	01/01/10	Knuckle Boom Chipper Crane, Metso	369.60
			625479	0	Y	01/01/10	CI Electric Ctr-Chipper, Common Woody	20,835.00
				1	Y	01/01/10	CI Electric Ctr-Chipper, Common Woody	1,004.06
			625483	0	Y	01/01/10	CI Knuckle Boom Chipper Crane, Metso	43,594.55
				1	Y	01/01/10	CI Knuckle Boom Chipper Crane, Metso	1,072.24
			633366	0	Y	06/01/10	Split Chipper Feed Conveyor, Metso	10,716.27
				1	Y	06/01/10	Split Chipper Feed Conveyor, Metso	171.87
			633367	0	Y	06/01/10	Chipper, Carthage 130 Metso, Chipping	10,716.27
				1	Y	06/01/10	Chipper, Carthage 130 Metso, Chipping	171.87
			633368	0	Y	06/01/10	Chipper Surge Hopper, Chipper, Metso	10,716.27
				1	Y	06/01/10	Chipper Surge Hopper, Chipper, Metso	171.87
			633369	0	Y	06/01/10	Surge Hopper Conv, Chipper, Met	10,716.27
				1	Y	06/01/10	Surge Hopper Conv, Chipper, Met	171.87
			633372	0	Y	06/01/10	Chipper Control Station, Chipper, Metso	12,859.51
				1	Y	06/01/10	Chipper Control Station, Chipper, Metso	206.24
			636198	0	Y	06/01/10	CI Split Chipper Feed Conveyor, Metso	89.44
			636199	0	Y	06/01/10	CI Chipper, Carthage 130 Metso, Chipping	89.44
			636200	0	Y	06/01/10	CI Chipper Surge Hopper, Chipper, Metso	89.44
			636202	0	Y	06/01/10	CI Surge Hopper Conv, Chipper, Met	89.44
			636208	0	Y	06/01/10	CI Chipper Control Station, Chipper, Metso	107.48
		Wood Chipper outter covering	624041	1	Y	01/01/10	Chipper Bldg Carthage, Common Woodyard	222,775.03
				2	Y	12/31/10	Chipper Bldg Carthage, Common Woodyard	1,016.55
			625472	0	Y	01/01/10	CI Chipper Bldg Carthage, Common Woodyard	204,835.68
				1	Y	01/01/10	CI Chipper Bldg Carthage, Common Woodyard	2,642.03
		Process monitoring cameras to control the woodyard operation	624042	1	Y	01/01/10	Surveillance Cameras, Common Woodyard	98,472.41
				2	Y	01/01/10	Surveillance Cameras, Common Woodyard	206.24
			625474	0	Y	01/01/10	CI Surveillance Cameras, Common Woodyard	21,639.10
				1	Y	01/01/10	CI Surveillance Cameras, Common Woodyard	1,002.40
		Controls Woodyard Processes	624043	1	Y	01/01/10	DCS/PLC Ctrls/IO/OperStat. Fiber	104,849.64
				2	Y	12/31/10	DCS/PLC Ctrls/IO/OperStat. Fiber	206.24
			624044	1	Y	01/01/10	Woodyard Comm/Galtronx Sys, Common Wood	99,656.05
				2	Y	01/01/10	Woodyard Comm/Galtronx Sys, Common Wood	403.93
			625475	0	Y	01/01/10	CI DCS/PLC Ctrls/IO/OperStat. Fiber	41,837.35
				1	Y	01/01/10	CI DCS/PLC Ctrls/IO/OperStat. Fiber	1,079.59
			625477	0	Y	01/01/10	CI Woodyard Comm/Galtronx Sys, Common Wood	23,596.26
				1	Y	01/01/10	CI Woodyard Comm/Galtronx Sys, Common Wood	1,013.33
		Debarker	624047	1	Y	01/01/10	Debarking Drums(14'6x110),Metso Bark Sys	167,406.41
				2	Y	01/01/10	Debarking Drums(14'6x110),Metso Bark Sys	389.08
			624048	1	Y	01/01/10	Bark Drum Collection Belt, Barking Metso	108,258.62

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SC Biomass Energy Credit Assets
Georgetown, SC Mill
12/6/2010 Qualifing Assets

Sum of Net Acq Val								
Project Number	Project Name	Process Description	Asset	Sub-number	Qualifying Status	Capitalized on	Description	Total
025906C685C	GT Wood Yard	Debarker	624048	2	Y	01/01/10	Bark Drum Collection Belt, Barking Metso	369.56
			624049	1	Y	01/01/10	Bark Hog Discharge Conv, Bark Sys	108,258.60
				2	Y	01/01/10	Bark Hog Discharge Conv, Bark Sys	369.56
			624050	1	Y	01/01/10	Bark Hog, Jeffery 66, Bark Sys	127,966.53
				2	Y	01/01/10	Bark Hog, Jeffery 66, Bark Sys	585.79
			624051	1	Y	01/01/10	Drum Infeed Conv, Debark, Metso Bark Sys	122,414.51
				2	Y	01/01/10	Drum Infeed Conv, Debark, Metso Bark Sys	389.08
			624052	1	Y	01/01/10	Drum Discharge Conv, Debark, Metso Bark	108,258.62
				2	Y	01/01/10	Drum Discharge Conv, Debark, Metso Bark	369.56
			625482	0	Y	01/01/10	CI Debarking Drums(14'6x110),Metso Bark Sys	180,938.59
				1	Y	01/01/10	CI Debarking Drums(14'6x110),Metso Bark Sys	1,885.35
			625484	0	Y	01/01/10	CI Bark Drum Collection Belt, Barking Metso	44,682.30
				1	Y	01/01/10	CI Bark Drum Collection Belt, Barking Metso	1,130.89
			625486	0	Y	01/01/10	CI Bark Hog Discharge Conv, Bark Sys	44,682.30
				1	Y	01/01/10	CI Bark Hog Discharge Conv, Bark Sys	1,130.89
			625488	0	Y	01/01/10	CI Bark Hog, Jeffery 66, Bark Sys	80,829.75
				1	Y	01/01/10	CI Bark Hog, Jeffery 66, Bark Sys	1,392.38
			625490	0	Y	01/01/10	CI Drum Infeed Conv, Debark, Metso Bark Sys	77,984.84
				1	Y	01/01/10	CI Drum Infeed Conv, Debark, Metso Bark Sys	1,323.62
			625491	0	Y	01/01/10	CI Drum Discharge Conv, Debark, Metso Bark	44,682.30
				1	Y	01/01/10	CI Drum Discharge Conv, Debark, Metso Bark	1,130.59
025906C685C Total								2,387,080.03
025908H624C	EEI 6 Warm Water Supply to DI	Warm water to the PB & RB	545499	2	Y	01/01/10	EEI6 Warm Water Supply to DI Units	18,006.87
025908H624C Total								18,006.87
025909AA21C	KAMYR / Pine DRC Conversion	Digstor Pine Cooking Controllers	630774	0	Y	03/31/10	DCS/PLC Ctrls/IO/OperStat. Pulp/B	815,480.73
				1	Y	12/01/10	DCS/PLC Ctrls/IO/OperStat. Pulp/B	148,335.19
			632065	0	Y	03/31/10	CI DCS/PLC Ctrls/IO/OperStat. Pulp/B	16,715.20
				1	Y	12/01/10	CI DCS/PLC Ctrls/IO/OperStat. Pulp/B	9,507.00
025909AA21C Total								990,038.12
025909AS50C	KAMYR Wash Heater Replacement	Part of the Liquor Recovery System	621905	1	Y	01/01/10	Liquor Sys, Continuous Digs, Wood Co	394,360.57
025909AS50C Total								394,360.57
025909AS87C	No.1 Lime Kiln Trunion & Driv	Part of the Liquor Recovery System	631568	0	Y	04/09/10	PULP-#1 Lime Kiln GearDriveShell-09AS87	2,224,649.66
				1	Y	12/01/10	PULP-#1 Lime Kiln GearDriveShell-09AS87	35,617.95
			633202	0	Y	04/09/10	CI PULP-#1 Lime Kiln GearDriveShell-09AS87	24,821.00
				1	Y	12/01/10	CI PULP-#1 Lime Kiln GearDriveShell-09AS87	338.00
025909AS87C Total								2,285,326.61
025909HT58C	EEI7-Lime Kiln Multi-Fuel Bur	Part of the Liquor Recovery System	639648	0	Y	09/30/10	Lime Kiln 1 Multi-Fuel Burner	722,251.34
			639656	0	Y	09/30/10	Lime Kiln 2 Multi-Fuel Burner	722,250.63

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SC Biomass Energy Credit Assets
Georgetown, SC Mill
12/6/2010 Qualifing Assets

Sum of Net Acq Val								
Project Number	Project Name	Process Description	Asset	Sub-number	Qualifying Status	Capitalized on	Description	Total
025909H758C Total								1,444,501.97
025910A050C	#3 Causticizer Replacement	Part of the Liquor Recovery System	639665	0	Y	09/01/10	#3 Causticizer Tank	436,030.08
025910A050C Total								436,030.08
025910G008C	Greenhouse Gas Monitoring	Component of the Liquor Recovery Boiler System	630781	0	Y	03/31/10	POWER - #1&2RB Fuel Flow Meters 10G008C	184,342.33
		Liquor Recovery System	630779	0	Y	03/31/10	PULP - #1&2LK Fuel Flow Meters 10G008C	87,320.09
025910G008C Total								271,662.42
025910G035C	Excess Emission Reduction	Component of the Liquor Recovery Boiler System	632415	0	Y	05/31/10	POWER-RB1 Precipitator Controls-10G035	116,632.41
			632416	0	Y	05/31/10	POWER-RB2 Precipitator Controls-10G035	144,419.19
			632422	0	Y	05/31/10	POWER-RB1 Ducon Scrbr Nozzle Sys-10G035	268,857.25
			632423	0	Y	05/31/10	POWER-RB2 Ducon Scrbr Nozzle Sys-10G035	275,545.90
			632424	0	Y	05/31/10	POWER-RB2 MoDo Scrubber Strainer-10G035	643,515.50
			634979	0	Y	05/31/10	CI POWER-RB1 Precipitator Controls-10G035	950.88
			634982	0	Y	05/31/10	CI POWER-RB2 Precipitator Controls-10G035	1,257.56
			634995	0	Y	05/31/10	CI POWER-RB1 Ducon Scrbr Nozzle Sys-10G035	2,939.17
			634998	0	Y	05/31/10	CI POWER-RB2 Ducon Scrbr Nozzle Sys-10G035	3,014.97
			641234	0	Y	05/31/10	CI POWER-RB2 MoDo Scrubber Strainer-10G035	6,001.13
		Incinerates gases from woodcooking & black liquor evaporation	632417	0	Y	05/31/10	POWER - RTO Rebuild - 10G035	2,151,096.41
			634989	0	Y	05/31/10	CI POWER - RTO Rebuild - 10G035	23,310.71
025910G035C Total								3,637,540.89
025910G915C	CEMS Upgrade for No. 2 Recove	Component of the Liquor Recovery Boiler System	639670	0	Y	09/01/10	No.2 RB carbon monoxide analyzer, stack flow meter	93,427.74
025910G915C Total								93,427.74
025909G319C	Bulk Fuel Oil Reconfiguration	Part of the Liquor Recovery System	647930	0	Y	12/06/10	Bulk Fuel Oil Tank	3,063,330.97
025909G319C Total								3,063,330.97
025910H786C	EEI7 - GT Kamyr Wash Transition Screen	Digester	647934	0	Y	12/01/10	Kamyr Wash Transition Screen	202,632.12
025910H786C Total								202,632.12
025910H340C	EEI7 - RB Advanced Sootblower Controls	Recovery Boiler	647935	0	Y	12/31/10	RB1 Sootblower Controls	403,606.12
			647936	0	Y	12/31/10	RB2 Sootblower Controls	403,605.67

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SC Biomass Energy Credit Assets
Georgetown, SC Mill
12/6/2010 Qualifing Assets

Sum of Net Acq Val								
Project Number	Project Name	Process Description	Asset	Sub-number	Qualifying Status	Capitalized on	Description	Total
0259[illegible]								[illegible]
0259[illegible]	Infastructure Improvements	Digester	647946	0	Y	12/01/10	PULP-KES #8 - Relief Viv Platform-10A059	9,225.00
			647947	0	Y	12/01/10	PULP-KES #9-KemyPiping Insulation-10A059	32,242.35
			647948	0	Y	12/01/10	PULP - KES #10-Kamyr Electrical - 10A059	17,612.75
		Recovery Boiler	647952	0	Y	12/01/10	POWER-KES #5-Rec Blr Floor Drains-10A059	148,669.56
		Woodyard	647937	0	Y	12/01/10	KES #7 Chip Silo Platforms	16,310.00
0259[illegible]								[illegible]
0259[illegible]	#3 BC Heater Replacement	Digester	647953	0	Y	12/31/10	PULP - #3 BC Heater - 10A048	214,968.09
0259[illegible]								[illegible]
0259[illegible]	RB Flooring Phase IV	Recovery Boiler	647954	0	Y	12/01/10	POWER-Rec Boiler Floor 6,8,10,5-10A576	419,370.27
0259[illegible]								[illegible]
0259[illegible]	Infastructure Improvements Phase II	Recovery Boiler	647961	0	Y	12/01/10	POWER - RB KES ITEMS - 10A112	46,759.68
0259[illegible]								[illegible]
0259[illegible]	RB2/PB Scrubber Duct Structural Steel Repair	Recovery Boiler	647965	0	Y	12/01/10	POWER-RB2-PB Struct Steel Repair-10A062	541,982.78
0259[illegible]								[illegible]
0259[illegible]	RB Flooring Phase V	Recovery Boiler	647966	0	Y	12/01/10	POWER-Rec Boiler 5th Floor -10A776	224,441.40
0259[illegible]								[illegible]
0259[illegible]	GT Infastructure Improvements Phase I	Woodyard	647968	0	Y	12/01/10	WOODYARD-INFRASTRUC IMPVMNTS I-10G103	85,890.33
0259[illegible]								[illegible]
Grand Total								17,783,622.64

International Paper Company
Eastover, South Carolina
EIN 13-0872805
2010 SC Biomass Credit Site Summary Memo

Organizational Information

Legal Entity: International Paper
Division(s): Printing & Communication Papers

Introduction

This memo is divided into the following sections:

I. Site Overview
II. Biomass Energy Making Process

I. Site Overview

A. Corporate Overview

International Paper acquired the Eastover mill in 1999, as part of the Union Camp acquisition. The Eastover mill is one of the uncoated free sheet mills within International Paper. The Eastover mill produces more than 690,000 tons of uncoated free sheet and fine white paper per year. The mill also manufactures 100,000 tons of bleached market pulp per year to sell on the open market. Slightly more than half of the paper sold goes directly to manufacturers for conversion into such paper products as envelopes, computer paper and business forms. The remaining output, primarily printing and business papers, is sold to distributors and consumers through retail outlets.

At Eastover, 73% of the Mill's total energy production is from biomass resources. 60% is from processes using 90% biomass and 13% is from mixed processes. The Mill has two Recovery Boilers and two Power Boilers. Greater than 90% of the time, the Recovery Boilers burn Black Liquor (created as described below) to produce heat, steam and electricity. On average, 86% of the time Power Boiler #2 produces heat, steam and electricity from bark and other residual biomass matter from the debarking process noted below. The remaining 14% is generated mainly from tire derived fuels. Power Boiler #1 produces heat, steam and electricity from coal.

The current Eastover Mill operating strategy is for the Utilities area to support maximum digester production rates of 825 TPD pine on K1 and 1450 TPD hardwood on K2. This requires reliable operation of the No. 1 and No. 2 Recovery Boilers at maximum firing rates on a daily basis except for planned field days and annual outages. This operating strategy increases the amount of Biomass Energy produced and used throughout the Mill since all of the energy produced by the Recovery Boilers is derived from Biomass resources. Since 2008, Eastover has increased its

production of heat, steam and electricity from biomass resources by at least 1%. Eastover, on occasion, sells its excess electricity to the local power utility.

During 2010, the Mill used a new methodology to increase the amount of bark consumed in Power Boiler #2 and thus displacing the amount of tire derived fuels used to generate heat, steam and electricity from that Power Boiler. In 2011, Eastover will be embarking on a project to increase the amount of Black Liquor sent to the Recovery Boilers and thus make more heat, steam and electricity. The increased output from the Recovery Boilers will reduce the usage of the Power Boilers and thus reduce the amount of non-biomass fuels used to create heat, steam and electricity for the Mill.

B. Biomass Energy Making Process

Logs are first tumbled in a debarking drum to remove the bark. Next, the logs are sent through the chipper. Wood chips from de-barked logs are cooked in a chemical solution. This is done in pressure vessels called digesters. The wood chips are fed into the digester where they are cooked at high pressure and temperature in a solution of sodium hydroxide and sodium sulphide. The wood chips are broken down by the temperature and chemicals into a slurry of cellulose fibers and other wood components.

During the chemical recovery process, the original cooking chemicals, wood resins, and wood lignin (sort of natural glue in the wood) are removed. The result is a solution called weak black liquor. The separated cellulose fibers are cleaned and screened many times to get them ready to be made into paper. The pulp is sent to the paper machines to produce a final product.

The chemical recovery process takes the weak black liquor made up of chemicals and wood lignin from the digestion area to the evaporators and concentrators which remove excess water to enable incineration of the black liquor. The concentrated black liquor is then pumped to the recovery boiler plant where fly ash from the electrostatic precipitators is mixed with the concentrated black liquor, further concentrated to approximately 67% solids and then burned in the combustion chamber of the recovery boiler. Feed water is pumped first to the economizers where it is preheated by flue gas. The water then enters the water circulation system of the boiler. During combustion of the black liquor high pressure steam is generated in the boiler. The superheated steam flows from the boiler to a turbine generator plant where electricity is generated for the mill. The excess steam is recovered and is sent as heat to the dryers in the paper making process.

Hot smelt flow of the regenerated chemicals is drained from the furnace floor to the dissolving tank. The chemicals are dissolved into weak white liquor and returned to a recausticizing plant for further processing for pulping liquor generation.

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SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
07890BA384C	No.1 Evaporator 2nd Effect Heater Replacement	This project will increase the evaporator efficiency by reducing the frequency that the plates rupture suddenly thereby causing significant loss of evaporator capacity.	Evaporator Area	Evaporate weak black liquor to make solids % high enough to burn in the recovery boilers	Y	613343	1	01/01/10	#1Evap 2nd Effect Heating Element(108 E12 Element)	9,260.82
07890BA384C Total										9,260.82
07890H729C	EEI4 - No. 1 and No. 2 Recovery Boiler Shatter Jet Upgrade	This project will retrofit the existing ducktail style shatter jets on both recovery boilers with Metso shatter jets and reduce steam usage from 2000 lbs/hr to 600 lbs/hr.These nozzles are venturi style nozzles that provide a greater penetration into the smelt for better atomization. A smaller smelt particle size will improve dissolving tank operation in addition to reducing dissolving tank noise and vibration.	Recovery Boiler	Replace existing shatter jets on recovery boiler for better atomization of smelt particles to improve dissolving tank operation and steam use.	Y	624947	1	01/01/10	No. 1 RB Shatter Jet 0769-05-02-010-050-000	14,229.58
						624946	1	01/01/10	No. 2 RB Shatter Jet 0769-05-02-020-050-000	14,293.10
07890H729C Total										28,522.68
07890A427C	K2 IV Arms and Digester Cone	The objective of this project is to increase the efficiency of the K2 impregnation Vessel outlet device scraper arms and the K2 Digester outlet device cone.	Digester	Pressure vessel used to cook wood chips and white liquor, by-product is black liquor. Cone is a part of outlet device that moves cooked pulp out of the digester.	Y	619380	1	01/01/10	K2 Digester Outlet Device Cone	14.40
07890A427C Total										14.40
07891BA002C	Evap Condensate Modifications 3rd, 4th, 5th Effect	The objective of this project is to eliminate the potential for sudden heating element damage in the third, fourth and fifth effects of the No. 1 Evaporator set at Eastover as a result of steam/condensate hammer. To achieve this objective the condensate system for the third, fourth and fifth effects will be modified. The No. 1 Evaporator set is a 7-Body-5-Effect Falling Film Evaporator. It is designed to remove 568,750 lbs/hr of water from Kraft pulping liquor in order to concentrate 743,750 lbs/hr of 15% liquor to 70% product.	Evaporator Area	Condensate removal system for proper operation of evaporator process to convert black liquor to higher solids for recovery boiler fuel	Y	633151	0	05/07/10	#1 Evap, 3,4,5 Effects Clean Condensate Piping	481,992.39
07891BA002C Total										481,992.39

International Paper Company 13-0672805
SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
07891GA029C	No.2 Chipper Disc Replacement	This project will purchase and install a new Chipper Disc for the No. 2 log line. The current disc has experienced numerous cracks. The No. 2 Chipper is essential to provide high quality owd make chips to the mill. The No. 2 Chipper is in operation 164 hours a week. It processes 70% of the pine round wood and 100% of the hardwood round wood.	Woodyard	Chips logs into optimum sized chips for best cooking properties in digester vessels	Y	632000	0	05/14/10	NO.2 CHIPPER DISC, SHAFT, AND BEARING ASSEMBLIES	317,874.71
07891GA029C Total										317,874.71
07891GA034C	K2 Chip Chute Vent Stack	The safe and reliable operation of the K2 Digester system is contingent on the Chip Chute Dump Tank Vent Stack being in service. A failure of the vent stack would result in significant operational downtime.	Digester	Provides emergency vent relief of oil gases from wood cooking process	Y	640950	0	10/20/10	K2 Digester 48" Diameter Vent Stack 304L SS	375,919.53
07891GA034C Total										375,919.53
07891GA134C	#2 RB PPT Drag Scraper Drive System (East Chamber)	The Eastover Mill has experienced multiple unplanned failures of the No. 2 Recovery Boiler (RB) Precipitator (PPT) Drag Scraper Drive system in the East & West PPT chambers. As a result, less biomass energy was produced. The primary objective of this project is to eliminate unplanned Drag Scraper system failures in the No. 2 Recovery Boiler Precipitator system to support the Mill strategy of operating the No. 2 Recovery Boiler at maximum firing rates on a daily basis except for planned field days and outages.	Recovery Boiler	Assists in removal of fly ash from the recovery boiler.	Y	645098	0	10/31/10	RB2 PPT East Drags Drive Shafts & Shaft Components	163,425.00
						646100	0	10/31/10	RB2 PPT East Drags Inlet Plenum Chain & Flights	27,006.50
07891GA134C Total										190,431.50
07891GA136C	#2 Debarking Drum	This project will replace the chime rings, drive gearbox, and discharge gate actuator.	Woodyard	Removes bark from logs	Y	645179	0	11/23/10	No.2 Debarking Drum Chime Rings	178,602.28
						645180	0	11/23/10	No.2 Debarking Drum Drive Gearbox	56,400.72
07891GA136C Total										235,003.00
07891GA137C	Portal Crane Wheel Installation	These very large structure cranes move on bridge wheels that ride on rails to unload wood for processing. However, newer technology includes a set of guide wheels mounted next to the bridge wheels that will improve the availability of the cranes.	Woodyard	The logwood unloading and storage cranes in the woodyard	Y	646876	0	12/31/10	PORTAL CRANE GUIDE WHEELS	80,140.50

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SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
07681										
076810A118C	#2 RB PPT Drag Scraper Drive System (West Chamber)	The Eastover Mill has experienced multiple unplanned failures of the No. 2 Recovery Boiler (RB) Precipitator (PPT) Drag Scraper Drive system in the East & West PPT chambers. As a result, less biomass energy was produced. The primary objective of this project is to eliminate unplanned Drag Scraper system failures in the No. 2 Recovery Boiler Precipitator system to support the Mill strategy of operating the No. 2 Recovery Boiler at maximum firing rates on a daily basis except for planned field days and outages.	Recovery Boiler	Assists in removal of fly ash from the recovery boiler.	Y	646101	0	10/31/10	RB2 PPT West Drags Drive Shafts & Shaft Components	148,556.55
						646103			RB2 PPT West Drags Tail Shafts & Shaft Components	33,064.26
076810A118C Total							0	10/31/10		181,620.81
076810A316C	No.1 Sand Separator	This project will modify the Sand Separator in No.1 Pulp Mill to extend it's service life and improve sand removal from the liquor. This capital project will change the operation from a centrifugal force separator to a gravity separator. This will be accomplished by increasing the size of the inlet nozzle to slow the velocity of the incoming liquor to 3 feet per second. The new inlet nozzle will be constructed of 2205 duplex SS which matches the vessel metallurgy.	Digester	Removes sand from liquor to minimize erosion of digester equipment	Y	632583	0	09/07/10	K1 SAND SEPARATOR - MODIFY TO GRAVITY SEPARATOR.	95,209.80
076810A316C Total										95,209.80
076810A740C	West Portal Crane Gantry Drive Controls	The objective of this project is to replace four DC drives (Hoist, and Gantry motions) and the controls on the West Crane. The existing drives will be replaced with Rockwell Powerflex DC drives. The newer drives are digital technology which are more reliable and therefore will provide increased up-time and availability.	Woodyard	Drives used to control the longwood unloading and storage cranes in the woodyard	Y	634951	0	06/01/10	West Portal Crane Hoist, Bridge Drives and PLC	261,850.91
						634952			West Portal Crane SW Leg Wiring, Internal Wiring	357,596.43
076810A740C Total							0	06/01/10		619,447.34

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International Paper Company 13-0872805
SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
[redacted]	Sodium Analyzer	Sodium levels are required be at a minimum. The build up of contaminants in the steam path can cause loss of heat transfer in the boilers, stress corrosion cracking, or pitting in the turbines leading to failures. The more contaminants in the steam path, more acid cleaning will be required during outages, leading to more cost in chemicals and longer shut downs.	Water Treatment	Provides reduced sodium boiler feed water to the recovery boilers.	Y	645113	0	11/15/10	SODIUM ANALYZERS (5) - STEAM PATH	52,788.10
[redacted]										52,788.10
[redacted]	LCI Drive Phases 1 & 2 Boiler Feedwater Pump	Replace boiler feedwater pump drives. The #1 Boiler Feedwater Pump supplies water to the #1 power boiler and the #1 recovery boiler. The pump is driven by a 2500 horsepower motor that is controlled by a GE LCI drive.	Recovery and Power Boilers	Drive for pump that provides boiler feed water to both the recovery and power boilers.	Y	639236	0	09/01/10	#1 PB/RB LCI FEED WATER PUMP DRIVE	394,608.31
[redacted]										394,608.31
[redacted]	#2-1 Unclarified White Liquor Pump VF Drive	The #2-1 and 2-2 Unclarified White Liquor pumps supply white liquor through the pressure filters and into the white liquor storage tank, where it is pumped to the digesters. They are operated by variable speed AC drives. Any production loss in this process cannot be recovered. The objective of this project is to replace the #2-1 and 2-2 Unclarified White Liquor Pump electric drives.	Chemical Prep	Delivers white liquor to the digester area for chip cooking	Y	640993	0	10/20/10	#2-1 White Liquor Pump Variable Frequency Drive	63,430.81
[redacted]						640994	0	10/20/10	#2-1 White Liquor Pump Variable Frequency Drive	30,594.30
[redacted]										94,025.11
[redacted]	#2 Digester Outlet Device VF Drive	This project is to improve the reliability of the AC adjustable speed drive that controls the speed of the #2 digester outlet device. The #2 digester is a Kamyr 1450 tpd continuous feed digester. The outlet device breaks up the pulp plug as it leaves the digester so the pulp can be sent to the blow tank.	Digester	Drive for the digester outlet device that moves cooked pulp out of the digester vessel	Y	640598	0	10/20/10	No.2 Digester Outlet Device Variable Freq. Drive	112,383.05
[redacted]										112,383.05

International Paper Company 13-0872805
SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
07681AA794C	K1 & K2 Digester Outlet Device Scraper Arms	The objective of this project is to replace the K2 Impregnation Vessel outlet device scraper arms and the K2 Digester outlet device cone. Failure of these components would result in significant production losses on the K2 hardwood digester.	Digester	Pressure vessel used to cook wood chips and white liquor, byproduct is black liquor. Scraper arms are a part of outlet device that moves cooked pulp out of the digester.	Y	632584	0	05/01/10	K1 DIGESTER, SPARE OUTLET DEVICE SCRAPER ARMS	93,100.48
						634914	0	06/15/10	K2 DIGESTER, SPARE OUTLET DEVICE SCRAPER ARMS	217,600.48
07681AA794C Total										310,700.96
07681AA795C	Lime Kiln Safety Platforms for 2-2 Conveyor and #1, #2 Lime Crushers	The platforms are brand new installations. This project provides safe access to the equipment for operators and maintenance to help mitigate the risk of future failure.	Chemical Prep	Lime Kiln Area White Liquor generation for wood cooking process	Y	646539	0	12/31/10	2-2 Lime Conveyor Platform	19,360.99
						646541	0	12/31/10	#1 Lime Crusher Platform	14,638.79
						646542	0	12/31/10	#2 Lime Crusher Platform	13,222.11
07681AA795C Total										47,221.89
07681AA796C	K2 Steaming Vessel Screw	The goal of the project is to increase the reliablity of the K2 Digester Steaming Vessel screw. The steaming vessel is used to pre-steam the wood chips to be cooked in the digester.	Digester	Presteams chips before entering the digester vessel for cooking.	Y	640992	0	10/20/10	K2 Steaming Vessel Screw Replacement	201,184.19
07681AA796C Total										201,184.19
07681AA799C	#2 WL Causticizer Standpipe	The objective of this project is to replace the existing white liquor causticizer standpipe. This project will reduce unplanned downtime due to white liquor causticizer standpipe leaks and/or structural integrity concerns.	Chemical Prep	Lime Kiln Area White Liquor generation for wood cooking process	Y	640590	0	10/20/10	#2 WL Causticizer Standpipe	114,528.61
07681AA799C Total										114,528.61
07681AA804C	K1 Low Solids Flow Meter	This project will install a new CiDRA SONARtrac flow monitoring system technology on the upper cooking extraction line to the #2 flash tank. The unreliable flow measurements leads to improper extraction from the upper cooking zone leading to variability and inefficient washing.	Digester	Monitors digester upper cooking liquids extraction.	Y	646677	0	12/15/10	K1 LO SOLIDS FLOW METER	27,455.09
07681AA804C Total										27,455.09

International Paper Company 13-0872805
SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
[illegible]	TRS Incinerator Reliability	This project is to improve the TRS incinerator up time and reduce concentrated TRS gas venting.	Recovery Boiler	The TRS incinerator is an integral part of the odor collection system at Eastover. High incinerator uptime is critical to meeting the environmental limits on vent time of the concentrated TRS gases.	Y	646594	0	12/31/10	Heat Exchanger for Rect. Methanol Pumps	25,351.15
						646595	0	12/31/10	TRS Incinerator Louvered Comb Air Damper	4,828.78
						646596	0	12/31/10	TRS Incinerator Outlet Gas Temperature	24,747.54
						646597	0	12/31/10	CNGG Low Point Drain Piping for Incinerator	5,412.43
[illegible]										[illegible]
[illegible]	Woodyard Portal Crane Barriers	This project objective is to install barriers to protect personnel from heavy equipment hazards around the portal cranes in the Eastover Woodyard. The scope is to install concrete barriers along the North and South sides of the two portal cranes.	Woodyard	Provide barriers for personnel protection around the longwood moving portal cranes	Y	640592	0	10/28/10	Portal Crane Concrete Jersey Barriers	79,928.50
				Used to clear wood and bark debris from underneath longwood cranes	Y	640591	0	10/28/10	Woodyard Bobcat Skeer Loader	19,389.35
[illegible]										[illegible]
[illegible]	EE97 - #1 Evap Product Liquor Flash Tank Modification	The existing product liquor flash tank is undersized to prevent frequent plugging. The vapor valve on the tank is operated closed most of the time to prevent carryover to the second effect. This reduces steam economy of the evaporators. Also, this causes product liquor flashing to occur in the heavy liquor (65%) tank and overloads the dilute gas condensers causing inefficient operation. Proposed changes are to modify internal flash hood design to decrease upward vapor velocity and upgrade the product liquor flash tank with a new manway insert assembly to prevent product liquor outlet pluggage.	Evaporator Area	Flash steam recovery from the evaporator process to improve efficiency of making higher liquor solids.	Y	639602	0	09/01/10	#1EVAP PROD LIQ FLASH TANK 2010 MODIFICATIONS	21,700.00
[illegible]										[illegible]

International Paper Company 13-0872805
SC Biomass Energy Credit Assets
Eastover, SC Paper Mill
12/31/2010 Qualifying Assets

Sum of Net Acq Val Project #	Project Name	Project Description	Process Area	Process Description	Qualifying Status	Asset	Sub-number	Capitalized on	Equipment Description	Total
[redacted]	EEI7 - No. 1 RB Fouling Monitoring System and Supervisory Sootblowing	The objective of this project is to install strain gauges and controls (IntelliSpect Sootblowing) to monitor superheater deposit loading in the No. 1 Recovery Boiler. This project will allow optimization of existing sootblower operation and reduce steam use from 25,900 lb/hr to 12,000 lb/hr.	Recovery Boiler	Controls to optimize sootblowing and prevent pluggage in No.1 Recovery Boiler	Y	638177	0	06/01/10	RB1 ISB / Sootblower CLX PLC Panel	74,808.50
[redacted]										[redacted]
[redacted]	EEI7 - #1 Chipper #1 Transfer Conveyor Spillage Improvement Project	The #1 Chipper (Pine) #1 Transfer is a belt conveyor that is fed by the chipper discharge (chain conveyor) which is under the # 1 Chipper. Some of the challenges the mill faces is pluggage at the head end where it feeds onto the Transfer conveyor. The base of the chute is a bottle neck and creates jams that will plug and back up chips all the way to the chipper. This results in shutdown of the feed due to hi-hi's level indications. This project will install a new style shroud around the #1 Transfer conveyor feed end that will reduce the spillage.	Woodyard	Chipper discharge belt improvements made to prevent loss of usable wood chips to the ground	Y	640991	0	10/19/10	#1 Chipper #1 Transfer Conveyor LittTube	56,671.48
[redacted]										[redacted]
Grand Total										4,280,391.52

091

RP 819-3-23

Exhibit B

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Friday, December 03, 2010 5:38 PM
To: Myers, Erika
Cc: Robert E Shands
Subject: International Paper Georgetown Mill visit for biomass credit

Erin,

Will either of the following dates work for the Georgetown Mill visit? These dates still need confirmation from the Mill but wanted to start the coordination process.

December 16
January 4 or 5

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

Exhibit C

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Wednesday, December 08, 2010 6:20 PM
To: Myers, Erika
Subject: FW: International Paper Georgetown Mill visit for biomass credit

Erin,

Do either of those dates work for your schedule? I'm trying to get everything coordinated for the trip.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

Exhibit D

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 12/09/2010 9:04 AM
To: Tracy L Bolger
Cc: Jenkins, Ralph
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Tracy,
I apologize for the delayed response. We have had a hectic couple of days here at the office. I am inviting our staff engineer, Ralph Jenkins, to attend the trip with me. We are both available on any of those three days, but would prefer Dec. 16th if that is an option.
Thank you so much for all of your help!
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

Exhibit E

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Thursday, December 09, 2010 10:15 AM
To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Erika,
Will the Department of Revenue be able to attend as well? We would like that to be the case so that everyone is in agreement while we are out there. I'm still waiting to hear from my boss and the mill if we can do the December meeting. If not, I'm pretty sure we can work out the January date.

I apologize for getting your name wrong, I must have misunderstood when I called the first time.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

Exhibit F

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Thursday, December 09, 2010 11:03 AM

To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Erika,

I just got word from my boss that December date is no longer available. They decided that it is too close to year-end for everyone. We will make every effort to make either or both of the two January dates available. We won't be able to go much further out in January after the 4th or 5th, if either of those two dates don't work. The next time we would be available would be sometime during the week of January 24th.

Can you call me today or tomorrow so that we can discuss how you would like the site visit to go? How you might want to see the fixed asset additions listing or look a projects of a certain $ amount? I will have to let the mill know in advance so that they can make sure you see everything that you need to see since the mill is so large. Also, it will give them a sense on how long the visit might take so they can allow enough time in their engineering staffing schedule because we will need their help in showing us the improvement projects and what various pieces of equipment do for the papermaking process.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

Exhibit G

From: Myers, Erika
Sent: Friday, December 10, 2010 2:40 PM
To: 'Tracy L Bolger'
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Got it on my calendar but if something changes just send me an email or call.
Thanks and I completely understand!
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Friday, December 10, 2010 2:33 PM
To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Why don't we try for Monday at 9:30 am CST (10:30 am) your time. If that ends up not working out (I'll at least be able to call you and let you know) we can reschedule later. Sorry that this is such a crazy time for our department.

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 12/10/2010 1:21 PM
To: Tracy L Bolger
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Just about any time will work for me on Monday, but Tuesday I will be out of the office all day for a meeting in Summerville.

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Friday, December 10, 2010 11:20 AM
To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Would 9:30 am on Monday work? It would have to be tentative for me because we are in the middle of calculating the 4th quarter income taxes and I'm still waiting to get taxable income. They say that the numbers will be ready by Friday afternoon; however, they have been known to be behind schedule. If I get the numbers on Monday morning, then I won't be able to meet.

Is Tuesday a possibility if Monday ends up not working out?

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
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(901) 419-4539 Fax

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 12/10/2010 8:29 AM
To: Tracy L Bolger
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Anytime on Monday would work for me.
Thanks! Erika

Erika H. Myers
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South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
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emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Thursday, December 09, 2010 7:17 PM
To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit

I'm in Memphis, TN (central time). Would there be a time on Monday we can talk after 9am CST. I have meetings every morning from 8 – 9 am.

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 12/09/2010 5:15 PM
To: Tracy L Bolger
Subject: RE: International Paper Georgetown Mill visit for biomass credit

How about tomorrow morning around 9:30am? I have a meeting at 10:30 and not sure how long it will go.
Thanks so much!
Erika

Erika H. Myers
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South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax

emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Thursday, December 09, 2010 5:14 PM
To: Myers, Erika
Subject: RE: International Paper Georgetown Mill visit for biomass credit .

Erika,

Thanks! Can you call me either today or tomorrow so that we can discuss a plan for the meeting? I think there are reports I can prepare to assist us in the tour.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 12/09/2010 4:12 PM
To: Tracy L Bolger
Subject: RE: International Paper Georgetown Mill visit for biomass credit

Tracy,
I just got off the phone with the SC Department of Revenue. They will be evaluating whether or not to send a staff person and we should have confirmation about the date by Monday.
Thank you for your patience and assistance!
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
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Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

Exhibit H

From: Myers, Erika [mailto:emyers@energy.sc.gov]
Sent: 01/06/2011 10:08 AM
To: Tracy L Bolger
Subject: RE: International Paper Georgetown, SC onsite visit

Tracy,
Ralph Jenkins (staff engineer) and I will both plan to be there at 1pm on Jan. 26th. Is there a particular location that we should park and/or meet the group?
Thank you for organizing this tour – we really appreciate all of your help in accommodating our needs.
Erika

Erika H. Myers
Manager, Renewable Energy Programs
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emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Wednesday, January 05, 2011 6:17 PM
To: Myers, Erika
Subject: International Paper Georgetown, SC onsite visit

Erika,

Everyone is in agreement that January, 26th at 1:00 pm is a good day to have our onsite visit. The Department of Revenue is still deciding if they are going to come but if they end up wanting to come, they are ok with the January 26th date.

Is your engineer still going to the site visit as well? I'm just trying to get a full headcount for the visit.

When it is closer to the meeting time I will e-mail you directions to the Mill and any necessary dress code requirements.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
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(901) 419-4539 Fax

Exhibit I

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Tuesday, January 11, 2011 11:56 AM
To: Myers, Erika
Subject: RE: International Paper Georgetown, SC onsite visit

Erika,

Do you want the Project cost detail summaries when we are on the mill tour? I have a project description memo that gives a description of the project and a listing of the equipment generated from each project and each piece's total cost.

Remember the project cost detail summaries can be lengthy and run between 30 – 150 pages each. I can send those reports with the application at the end of the month if you prefer.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

Exhibit J

From: Myers, Erika
Sent: Thursday, January 13, 2011 12:07 PM
To: 'Tracy L Bolger'
Subject: RE: International Paper Georgetown, SC onsite visit

Hi Tracy,
The project description memo should be sufficient for the purposes of the tour. If there are any components that I have specific questions about then we can coordinate afterwards to get the extra back-up material.
I am scheduling a similar tour for Domtar which also submitted a tax credit application this year for $42 million. Looks like I will be very busy for the next several months.
Thanks for all of your follow-up – it is greatly appreciated!
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct

Exhibit K

From: Myers, Erika
Sent: Tuesday, January 25, 2011 11:19 AM
To: Tracy L Bolger; rogersd@sctax.org
Subject: RE: IP Georgetown Mill onsite visit instructions

Thank you Tracy! I look forward to meeting you in person system. Erika

Sent from my HTC smartphone

From: Tracy L Bolger <Tracy.Bolger@ipaper.com>
Sent: Monday, January 24, 2011 5:52 PM
To: Myers, Erika <emyers@energy.sc.gov>; rogersd@sctax.org <rogersd@sctax.org>
Subject: IP Georgetown Mill onsite visit instructions

Erika and Duncan,

The following is the information I have for the 1:00 pm site visit, January 26th, at International Paper Georgetown, SC Mill:

The mill address is:
700 S Kaminski St.
Georgetown, SC 29440

Directions from Columbia: Take 17 South; you will veer off the Highway just before you get to the Sand Pit bridge; there will be a sign that says "paper mill"; go straight on that road and take the 2nd Right; you will see a small highway department sign that says "International Paper"; turn Right – this street dead-ends into the Mill; you will see a series of yellow buildings out front; there will also be two brick buildings with a parking lot; the one in front is the Woodlands office; you will go to the brick building behind that for the main Mill Administration building and park in that parking lot anywhere that is convenient for you. You will not have to drive in the entrance with a gate.

Once you get there, call Joe Johnson (controller) at 843-833-9306 and he will come and get you.

Safety:
All visitors are required to complete the Visitor Safety Orientation Program.
Upon completion of the program the visitor will receive an Escorted Visitor Orientation Certification Pass.

All visitors will be supplied with a Hard Hat and Safety Glasses.

Dress Code:
Visitors must have safety shoes or closed toe and heel flat leather shoes. *Note: High heeled shoes or tennis shoes are not permitted inside the mill.* No skirts are allowed and shirts must have sleeves. If you wear rings, you must either take them off or be wrapped in tape. Also, hoop earrings are not allowed, stud earrings are ok.

Cameras:

Cameras are allowed. Any pictures taken must be cleared by Georgetown Mill management before departure.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax
From: Myers, Erika
Sent: Sunday, January 30, 2011 12:34 PM
To: Tracy L Bolger
Cc: Robert E Shands; Jenkins, Ralph
Subject: RE: International Paper Conference Call

Hi Tracy,
3 pm est should work for me and I will check with Ralph.
Thank you!
Erika

Sent from my HTC smartphone

From: Tracy L Bolger <Tracy.Bolger@ipaper.com>
Sent: Thursday, January 27, 2011 6:48 PM
To: Myers, Erika <emyers@energy.sc.gov>
Cc: Robert E Shands <Robert.Shands@ipaper.com>
Subject: International Paper Conference Call

Erika,

Would you be able to have a 1 hour conference call at 3 pm EST (2 pm CST) on Monday, January 31, 2011?

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Monday, January 31, 2011 12:24 PM
To: Myers, Erika; Jenkins, Ralph
Cc: Robert E Shands
Subject: International Paper 2010 SC Biomass Credit Application

Erika and Ralph,

Attached is our SC Biomass Credit application. We are also sending a hard copy via Certified Mail Return Receipt today. I'm looking forward to our conference call at 2 pm CST.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

From: Myers, Erika
Sent: Monday, January 31, 2011 1:09 PM
To: 'Tracy L Bolger'; Jenkins, Ralph
Cc: Robert E Shands
Subject: RE: International Paper 2010 SC Biomass Credit Application

Thank you for the information and we look forward to our call at 3pm EST. Do you have a number we can call or did you want to call my office line?
Thanks so much!
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

From: Myers, Erika
Sent: Monday, January 31, 2011 1:30 PM
To: 'Tracy L Bolger'; Jenkins, Ralph
Cc: Robert E Shands
Subject: RE: International Paper 2010 SC Biomass Credit Application

Oops! Just saw the calendar invite so need to resend the call-in number. Sorry! Catching up from the few days out of the office.
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

Exhibit L

From: Tracy L Bolger [mailto:Tracy.Bolger@Ipaper.com]
Sent: Wednesday, February 16, 2011 4:21 PM
To: Myers, Erika; Jenkins, Ralph
Cc: Robert E Shands
Subject: International Paper Biomass Energy Credit application questions from Conference call

Erika & Ralph,

Below is information you requested in our previous conference call.

1. Steam Production in Decatherms (Dth):

Eastover

	2009	2010
Recovery Boiler #1	2,890,800 Dth	3,022,200 Dth
Recovery Boiler #2	6,132,000 Dth	6,280,900 Dth
Power Boiler #1	2,540,400 Dth	2,505,400 Dth
Power Boiler #2	2,330,200 Dth	2,461,600 Dth
Total Steam Production	13,893,400 Dth	14,270,100 Dth

Georgetown

	2009	2010
Recovery Boiler #1	2,718,100 Dth	2,761,300 Dth
Recovery Boiler #2	2,659,300 Dth	2,667,800 Dth
Power Boiler #1	2,676,300 Dth	2,878,600 Dth
Power Boiler #2	3,520,500 Dth	3,609,400 Dth
Total Steam Production	11,574,200 Dth	11,877,100 Dth

2. The percentage yields of paper fibers to biomass energy in a bone dry log are: 55% biomass energy and 45% paper fiber. These yields are consistent at both Eastover and Georgetown.

3. Eastover questions about certain fixed assets in the application:

    a. Project # 076910A746C – Sodium Analyzer (asset # 645113) – The equipment is treating the water before it is sent to both of the recovery and power boilers.

b. Project # 076910A780C – LCI Drive Phases 1&2 -- Boiler Feed Water Pump Drive (asset # 639236) – The mill installed two drives. One feeds the #1 Recovery Boiler and #1 Power Boiler. The other one feeds the #2 Recovery Boiler and #2 Power Boiler.

If you have any questions about this information please let me know. Also, I was wondering if you have a status update on the credit.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 214-0856 Fax

Exhibit M

From: Lancaster, Ashlie [mailto:ALancaster@energy.sc.gov]
Sent: Tuesday, March 01, 2011 8:07 AM
To: Robert E Shands; Tracy L Bolger
Cc: Myers, Erika
Subject: International Paper - Biomass Resource Credit

March 1, 2011

Mr. Robert Shands
State Tax Manager
International Paper Company
6400 Poplar Avenue
c/o Tax Department
Memphis, TN 38197

Dear Mr. Shands,

Please find attached a detailed review by the South Carolina Energy Office (SCEO) in conjunction with the Budget and Control Board's Office of General Counsel of allowable credits requested by International Paper under SC Code 12-6-3620, known as the Biomass Resource Credit. Also attached are letters of concurrence from the South Carolina Department of Agriculture and the South Carolina Institute for Energy Studies with whom the law allows consultation regarding applicable credits.

Please review this information and provide the SCEO with the requested documentation as soon as possible so that we may move forward with processing your application. In addition, we have notified the South Carolina Department of Revenue of your pending application.

If you have any questions, please call me at 803-737-9822.

Sincerely,

Ashlie Lancaster
Director

Ashlie Lancaster
SC Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
803-737-9822

RE: Application for Biomass Resource Credit for International Paper Company, Fed EI No. 13-0872805

Upon review of the application, the South Carolina Energy Office (SCEO) has determined the following allowable credits included in the request submitted by International Paper for tax credits for ***biomass equipment*** that is used to create heat, power, steam, electricity or some other form of energy for commercial use. . As -a "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels, credits are only allowable for equipment that is directly in contact with biomass energy production equipment.

Additionally, allowable credits are for the ***creation of*** new biomass generation, and therefore the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements as noted below will be applied to calculate allowable credits. ***International Paper must provide documentation that shows the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.***

The following details by project number which portions of the tax credit application are allowable. Please-note the follow-up documentation required prior to tax credit approval.

GEORGETOWN MILL

A. 025908C695C GT Wood Yard Reconfiguration
Understanding that the reconfiguration of the wood yard was essential to take in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

B. 025908H624C EEI 6 Warm Water Supply to DI Units
As the demineralized water is essential to steam production, the percentage of costs that correlates to the percentage of DI water used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

C. 025909A423C KAMYR/Pine DRC Conversion
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 025909A580C KAMYR Wash Heater Replacement
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the

percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 025909A687C No. 1 Lime Kiln Trunion & Drive Gear Upgrade
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

F. 025909H758C EE17-Lime Kiln Multi Fuel Burner Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

G. 025910A050C #3 Causticizer Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

H. 025910G008C Greenhouse Gas Monitoring
Based on the information provided, the EPA requirement for monitoring greenhouse gas emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the EPA. These expenses will therefore not be included in the tax credit assessment.

I. 025910G035C Excess Emission Reduction
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the US Court of Appeals. These expenses will therefore not be included in the tax credit assessment.

J. 025910G915C CEMS Upgrade for No. 2 Recovery Boiler
Based on the information provided, the regulatory requirement for monitoring emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the International Paper permit. These expenses will therefore not be included in the tax credit assessment.

K. 025910H786C EE17 – GT Kamyr Wash Transition Screen
As the continuous digester and wash transition screen are important components of the pulping process and provide feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 025909G319C Bulk Fuel Oil Reconfiguration
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

M. 025910H340C EE17-RB Advanced Sootblower Controls
This technology is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

N. 025910A059C Infrastructure Improvements
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

O. 025910A048C #3 BC Heater Replacement
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 025910A678C RB Flooring Phase IV
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

Q. 025910G112C Infrastructure Improvements Phase II
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

R. 025910A062C RB2/PB Scrubber Structural Steel Repair
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

S. 025910A776C RB Flooring Phase V
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

T. 025910A108C GT Infrastructure Improvements Phase I
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

EASTOVER MILL
A.076908A386C No. 1 Evaporator 2nd Effect Heater Replacement
This project is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces energy consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

B. 076908H729C EE16 – No. 1 and No. 2 Recovery Boiler Shatter Jet Upgrade
This project is not directly related to the increased production of power from biomass energy, and is a maintenance procedure and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

C. 076909A678C K2 IV Arms and Digester Cone
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 076910A002C Evap Condensate Modifications 3rd, 4th, 5th Effect
As the evaporator is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 076910A028C No. 2 Chipper Disk Replacement
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

F. 076910A039C #2 RB PPT Drag Scraper Drive System (East Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide***

invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.

G. 076910A136C #2 Debarking Drum
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

H. 076910A137C Portal Crane Wheel Installation
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

I. 076910A138C #2 RB PPT Drag Scraper (West Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

J. 076910A368C No. 1 Sand Separator
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

K. 076910A740C West Portal Crane Gentry Drive Controls
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 076910A746C Sodium Analyzer
As the reduction of sodium levels in water is essential to steam production, the percentage of costs that correlates to the percentage of water impacted by this analyzer used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

M. 076910A780C LCI Drive Phases 1 & 2 Boiler Feedwater Pump
As water is essential to steam production, the percentage of costs that correlates to the feedwater pump is allowable, ONLY for the #1 recovery boiler. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

N. 076910A782C #2-1 Unclarified White Liquor Pump VF Drive
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

O. 076910A783C #2 Digester Outlet Device VF Drive
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 076910A792C K1 & K2 Digester Outlet Device Scraper Arms

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

Q. 076910A806C Lime Kiln Safety Platforms for 2-2 Conveyor and #1, #2 Lime Crushers
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

R. 076910A988C K2 Steaming Vessel Screw
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

S. 076910A993C #2 WL Causticizer Standpipe
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

T. 076910A996C K1 Low Solids Flow Meter
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is

allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

U. 076910A998C TRS Incinerator Reliability
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the permit. These expenses will therefore not be included in the tax credit assessment.

V. 076910G999C Woodyard Portal Crane Barriers
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

W. 076910H045C EE17 - #1 Evap Product Liquor Flash Tank Modification
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

X. 076910H659C EE17 – No. 1 RB Fouling Monitoring System and Supervisory Sootblowing
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

Y. 076910H992C EE17 - #1 Chipper #1 Transfer Conveyor Spillage Improvement Project
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

State of South Carolina
Department of Agriculture

Hugh E. Weathers
Commissioner

Wade Hampton Office Building
P.O. Box 11280
Columbia, S.C. 29211

Telephone: (803) 734-2180
Fax: (803) 734-2192
E-Mail: hweathe@scda.sc.gov

February 25, 2011

Ms. Ashlie Lancaster
Director
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Lancaster:

We have reviewed the International Paper application for biomass resource credits and the opinion of the Energy Office relative to the qualifications for those credits. While the Department's technical expertise is limited in this area, we find no substantive reason to object to the Energy Office's conclusion on this matter.

If we can provide additional information or assistance, please contact us.

Sincerely,

Larry J. Boyleston
Deputy Commissioner

CLEMSON
SOUTH CAROLINA INSTITUTE
FOR ENERGY STUDIES

200 Dillard Building • 400 Klugh Avenue • Clemson, SC 29634
Telephone: 864-656-2267 • Fax: 864-656-0142
http://www.clemson.edu/scies

February 25, 2011

Ms. Erika Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Myers:

This letter is to inform you that I have reviewed the application for biomass resource credit submitted by International Paper (Fed EI No. 13-0872805) and the opinion of your General Counsel regarding that application. I concur with the opinion as written.

Should you require additional information, please contact me.

Sincerely,

Robert Leitner

Robert Leitner
Director

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office, Respondent.	)	Docket No. 11-ALJ-30-0192-CC NOTICE OF MOTION AND MOTION TO REMAND FOR THE PURPOSE OF CORRECTING ERROR, MISTAKE OR OMISSION

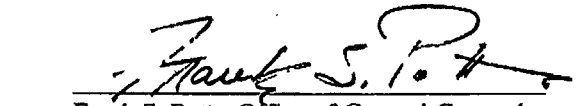
TO: Erik P. Doerring, Esquire and Jeffrey T. Allen, Esquire, Attorneys for Petitioner

YOU WILL PLEASE TAKE NOTICE that the State Energy Office, by and through its undersigned attorney, will, as soon as the matter may be heard, move that this Honorable Court vacate and remand the March 1, 2011 response of the State Energy Office to the tax credit application dated January 31, 2011 of the International Paper Company for the purpose of correcting errors, omissions and mistakes contained therein, including any purported decisions or determinations with regard to any tax credits to which the International Paper Company may be or is entitled pursuant to *S.C. Code Ann.* § 12-6-3620. The State Energy Office would show that the March 1, 2011 transmittal was erroneous and based upon a mistakes of fact and that justice requires that the tax credit to which the International Paper Company is entitled, if any, should be re-determined and a final decision made by the State Energy Office.

This motion is made for the purpose of correcting errors, omissions or mistakes made by the State Energy Office which resulted in the March 1, 2011 communication transmitted to the International Paper Company which was not in accordance with the statute passed by the South Carolina General Assembly, to wit: S.C. Code Ann. § 12-6-3620 and for the issuance by the State Energy Office of a final determination in accordance with said statute.

This motion is based upon the affidavit of Ashlie Lancaster, attached hereto, and the statutory and decisional laws of the State of South Carolina.

Respectfully submitted,



Frank S. Potts, Office of General Counsel
State Budget and Control Board
1201 Main Street, Suite 410
Post Office Box 11608
Columbia, South Carolina 29211
Attorneys for Respondent

FILED
FEB 21 2012
SC ADMIN. LAW COURT

February 21, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	)	Docket No. 11-ALJ-30-0192-CC AFFIDAVIT OF ASHLIE LANCASTER

Ashlie Lancaster, first being duly sworn, deposes and says as follows:

1. She is the Director of the State Energy Office.
2. On or about March 1, 2011 when she transmitted a response to the International Paper Company's request for a tax refund pursuant to the *S.C. Code Ann.* § 12-6-3620 she relied upon the analysis and review performed by Erica Myers, an employee of the State Energy Office.
3. At the time of the transmittal of the email on March 1, 2011, she had not conducted an independent review of the factual basis of the determinations made by the State Energy Office staff in their interpretation of the controlling statute (section 12-6-3620) but had relied upon their determinations and recommendations.
4. Upon receipt of the notice of appeal filed by the International Paper Company she reviewed the activities and evaluation of the State Energy Office and its interpretations of the law and the limited facts supplied by the International Paper Company.
5. In addition to a further review of the applicable statute, additional facts which had not previously been provided by International Paper were subsequently supplied pursuant to discovery conducted by counsel.

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FEB 21 2012
SC ADMIN. LAW COURT

6. After further review of both the statute and the facts as supplied by International Paper, she states as follows:

    a) It was not her intention that the March 1, 2011 communication to the International Paper Company ever be considered as a final agency decision or determination of the eligibility of the International Paper Company for the tax credits under Section 12-6-3620;

    b) To the extent her March 1, 2011 communication to International Paper purported to transmit any final determination to that company, it was not her intent that it do so;

    c) The information and beliefs upon which preliminary decisions were made about International Paper's application were the results of mistakes and errors in the understanding of the information provided by the International Paper Company;

    d) Any tax credit or credits purported to have been approved by the State Energy Office on March 1, 2011 to the application of International Paper Company was the result of mistake, error and omission and was based upon a lack of understanding both by the staff of the State Energy Office and herself.

7. The mistake, errors and omissions made in the March 1, 2011 communication are sufficiently substantial and egregious and prejudicial to the State that it is necessary that the subject communication be withdrawn, revoked or declared void and that a new determination be made.

8. If the State Energy Office is not permitted to issue a final determination in this matter to correct the errors and mistakes made in the previous transmission of March 1, 2011, the State of South Carolina will suffer irreparable and permanent injury in the expenditure of public funds which were not intended or approved by the General Assembly.

9. The errors, omissions and mistakes can be cured by a correction or revocation of the March 1, 2011 communication and a final determination made by the State Energy Office with respect to the application of January 31, 2011 by International Paper for a tax credit pursuant to the S.C. Code Ann. § 12-6-3620.

FURTHER AFFIANT SAYETH NOT.

ASHLIE LANCASTER

February 21, 2012
Columbia, South Carolina

SWORN TO AND subscribed before me
this 21st day of February 2012.

Notary Public of South Carolina

My Commission Expires: 2-11-2020

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	)	Docket No. 12-ALJ-30-0086-CC RESPONDENT'S MOTION TO DISMISS

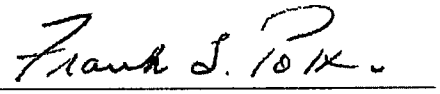
TO: Erik P. Doerring, Esquire and Jeffrey T. Allen, Esquire, Attorneys for Petitioner International Paper Company

YOU WILL PLEASE TAKE NOTICE that the Respondent, South Carolina Budget and Control Board, State Energy Office, will and does hereby move that, as soon as the matter may be heard, this Honorable Court dismiss the pending action for a want of authority to adjudicate the matters involved.

This action purports to be a request for a contested case pursuant to the laws of the State of South Carolina. Respondent hereby moves to dismiss the above referenced action for the reason that Title 1, Chapter 23 does not provide this Honorable Court with jurisdiction.to provide the relief requested by Petitioner.

The Respondent would show that the Budget and Control Board, State Energy Office, is not an executive agency nor is otherwise subject to the jurisdiction of the South Carolina Administrative Law Court pursuant to its duties of certification or otherwise.

Respectfully submitted,



Frank S. Potts, Office of General Counsel
State Budget and Control Board
1201 Main Street, Suite 410
Post Office Box 11608
Columbia, South Carolina 29211
Attorneys for Respondent

October 3, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	Docket No. 12-ALJ-30-0086-CC MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The South Carolina Energy Efficiency Act is found at the S.C. Code Ann. §48-52-10 (2008). The Act establishes the State Energy Office (SEO) within the State Budget and Control Board to serve as the principal energy planning entity for the State. The statute provides that the primary purpose of the SEO is "to develop and implement a well-balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy." § 48-52-410. Further, the Act provides what the SEO is mandated to do and lists some eleven general tasks. A review of the listed tasks establishes that none of the requirements involve supervision, licensing or control of the actions of others. Rather, the language used relates to promoting, cooperating, working, evaluating and certifying. § 48-52-420(1)-(11). Consistent with this statutory scheme, the statute specifically provides that the State Energy Office "must not function as a regulatory body." § 48-52-410[1]. In authorizing SEO's functions as an agency certifying products and processes for the purpose of

[1] The South Carolina Energy Office was established by statute in 1992. S.C. Act No. 449, Part II, § 1. The statutes establishing the Office not only set forth its mission in language clearly making it advisory, cooperative and promotional. *See* S.C. Code Ann. §48-52-420. The SEO provides various *reports* to the executive branch and the Legislature with regard to its activities and recommendations for the future. It does not regulate and is specifically prohibited by its enabling legislation from doing so. Id. at § 48-52-410.

energy efficiency (or lack thereof), the Legislature did not render its determinations subject to any statutory review procedure. It's function, with respect to §12-6-3620, is to exercise the broad grant of discretion delegated to the agency by the Legislature.

In this case the Petitioner, International Paper Corporation (IPC) has initiated an action before this Court seeking a contested case hearing. The reason for the requested hearing is because IPC disagrees with what the SEO did or did not do in response to a request for certification of costs for the purchase and installation of equipment alleged to have been incurred by IPC pursuant to the S.C. Code Ann. § 12-6-3620(A) (Supp. 2011).

As noted by this Court (*sua sponte*) in *Liberty Investments, Inc., v. South Carolina State Housing Finance and Development Authority*, 1998 WL 954800, Docket No. 98-ALJ-XX-0385-CC (S.C.A.L.C. 1998), this Honorable Court only has such powers as have been conferred on it by law and the general grant of jurisdiction to the Division is contained in S.C. Code Ann. § 1-23-600 (Supp. 2011) which currently provides (in pertinent part) as follows:

> (A) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except. ...

Id.

The foregoing provision grants jurisdiction only over hearings of contested cases; accordingly, the forgoing provision does not grant this Court jurisdiction over the certification process administered by the State Energy Office because that process does not meet the definition of a contested case.

> "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of

> South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

S.C. Code Ann. § 1-23-505(3). To meet this definition, some law must mandate a hearing regarding the matter. Cf. Garris v. Governing Board, 333 S.C. 432, 440, 511 S.E.2d 42, 44 (S.C. 1998) ("No statute explicitly requires Facility to hold a hearing before revoking an agent's status as a designated agent; therefore, Garris's case is not a 'contested case' as defined in the APA.") (applying section 1-23-310(2)).[2] Neither statute, regulation, nor Article I, Section 22[3] mandate a hearing with regard to the certification process applicable to IPC's application for a tax credit.

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[2] See also South Carolina Ambulatory Surgery Center Assoc. v. South Carolina Workers' Compensation Comm'n, 389 S.C. 380, 699 S.E.2d 146 (2010) ("Although they reference the term in their brief, Surgery Centers do not identify the necessary South Carolina or Federal law that would warrant their entitlement to a "contested case" hearing. See Triska v. Dep't of Health & Envtl. Control, 292 S.C. 190, 355 S.E.2d 531 (1987) (recognizing that a "contested case" does not exist where there is no requirement deriving from South Carolina or Federal law that there be an opportunity for a hearing).").

[3] To the extent IPC argues that the state constitution mandates such a hearing, Art. I, § 22 only applies if the party has a constitutionally protected interest. South Carolina Ambulatory Surgery Center Assoc. v. South Carolina Workers' Compensation Comm'n, 389 S.C. 380, 699 S.E.2d 146 (2010) (requiring that the due process rights of the plaintiff be affected before Article I, Section 22 can be invoked) ("Applying this analysis, we hold Surgery Centers have not established the requisite liberty or property interest to invoke the due process protections of Article I, Section 22."). IPC's petition regards an application for tax credits, which have been held to be insufficient to provide a judicially enforceable right under the Due Process Clause. See, e.g., DeHarder Investment Corp. v. Indiana Housing Finance Authority, 909 F. Supp. 606, 613 (S.D. Ind. 1995) (Low-Income Housing Tax Credits are not property interests protected by the Due Process Clause); Enterprise Leasing Company of Phoenix v. Arizona Department of Revenue, 221 Ariz. 123, 125, 211 P.3d 1, 4 (Ct. App. 2008) (Retroactive amendment to legislation disallowing tax credit for equipment did not violate taxpayer's right to due process); Baker v. Arizona Department of Revenue, 209 Ariz. 561, 105 P.3d 1180 (Ct. App. 2005) (Retroactive reduction of tax credit did not violate due process clause). Even if IPC has a property interest protected by Art. I, § 22, the process due may not trigger the requirement for a contested case. Not every deprivation of a property interest requires a trial-type hearing. Kurschner v. City of Camden Planning Com'n, 376 S.C. 165, 656 S.E.2d 346 (S.C. 2008) ("Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest.") (differentiating between an exercise of discretionary authority, as opposed to adjudicatory power.), Ogburn-Matthews v. Loblolly Partners, 505 S.E.2d 598, 602-07 (Ct. App. 1998) (holding that due process did not require trial-like hearing for issuance of permit or affirmative response from appellate decision maker in agency), overruled in part on other grounds, Brown v. S.C. Dep't of Health & Envtl. Control, 560 S.E.2d 410, 418 n.14 (2002). See generally State v. Binnarr, 2012 WL 1609071 (S.C. 2012) ("Accordingly, a claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as 'liberty' or 'property' within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances."). A "hearing" is "required by law" for purposes of § 1-23-505(3) only if a trial-type proceeding is the type of process mandated by Art. I, § 22. David E. Shipley, South Carolina Administrative Law 5-22 (S.C. Bar-CLE Div. 2d Ed. 1989) ("In short, the hearing required by due process in a particular case is not necessarily the trial-type hearing contemplated by the APA's contested case provisions."). Accordingly, even if this Court concludes that IPC has a protected property, there is no contested case unless the process due is a trial-type hearing.

Even if some law[4] mandates a hearing, the foregoing provision does not grant this Court jurisdiction because the State Energy Office is not a department of the executive branch of government as "defined in Section 1-30-10 ...".

Conclusion

For both the foregoing reasons, this Honorable Court lacks the ability to review the delegation of the broad discretion granted by the Legislature to the State Energy Office in its refusal to certify the Petitioner's maintenance expenditures as qualifying for a tax credit and the matter should be dismissed for want of subject matter jurisdiction.

Respectfully submitted,

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October 17, 2012
Columbia, South Carolina

[4] Although several statutes which rely upon the certification of the SEO were previously subject to the jurisdiction of the Department of Revenue, some have since been amended as is the case of Section 12-6-3620. However, once the legislature reposed the decision to certify certain expenditures to the discretion of the State Energy Office, any such decisions ceased to result in "a dispute with the Department of Revenue..." as is required to invoke the South Carolina Revenues Procedures Act. See e.g. S.C. Code Ann. § 12-60-20 (setting forth the legislative intent and Section 12-60-30(9) and (10) which specifically provides the Act applies to a "final determination within the ...[South Carolina Department of Revenue] from which a person may request a contested case hearing before the Administrative Law Court." The South Carolina Revenue Procedures Act does not apply to the State Energy Office and only to the Department of Revenue. Id. at § 12-60-30(2), (4), (9) (10). See also B&A Development, Inc. v. Georgetown County, 372 S.C. 261, 641 S.E.2d 888 (2007).

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	Docket No. 12-ALJ-30-0086-CC **PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

Respondent State Energy Office ("State Energy Office") filed a Motion to Dismiss on October 3, 2012 alleging that the "Budget and Control Board, State Energy Office," is not an executive agency subject to the jurisdiction of the South Carolina Administrative Law Court under Title 1, Chapter 23.[1] Petitioner International Paper Company ("International Paper") responds in opposition through this Memorandum and requests that the motion be denied.

S.C. CODE § 12-6-3620

S.C. Code § 12-6-3620 was enacted in 2006 as a tax credit for 25% of the costs incurred by a taxpayer for use of methane gas taken from a landfill to provide power for a manufacturing facility. 2006 Act No. 386, § 38. The State Energy Office had no role under S.C. Code § 12-6-3620 as originally enacted, and indeed had no role under any of our other state taxing statutes.

In 2007, S.C. Code § 12-6-3620 was amended and expanded to provide a 25% tax credit for the purchase and installation of equipment used to create energy for commercial use from a fuel consisting of no less than 90% biomass resource. 2007 Act No. 83, § 16. The amendment

[1] The State Energy Office filed a prior Motion to Dismiss on December 14, 2011, arguing that the March 1, 2011 determination issued to International Paper was not a final agency determination and that International Paper had not exhausted its administrative remedies prior to filing its contested case proceeding with this Court. The Court denied this Motion to Dismiss on the grounds that the March 1, 2011 was a final determination "on its face" and that the matter was ripe for judicial review. Order Denying Motion to Dismiss (March 5, 2011, pg. 2). The Court did grant the State Energy Office leave to file an amended tax credit certification, which the State Energy Office subsequently issued.

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also imposed a $650,000 cap on credits for all eligible claimants (to be divided proportionately if exceeded) and inserted the following provision:

> Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office, in consultation with the Department of Agriculture and the South Carolina Institute for Energy Studies.

There is no reference to the Department of Revenue in the version of S.C. Code § 12-6-3620 enacted by 2007 Act No. 83.

In 2008, the Energy Freedom and Rural Development Act, 2008 Act No. 261, rewrote S.C. Code § 12-6-3620 and eliminated the $650,000 cap on all eligible claimants, and instead imposed a $650,000 annual cap on each taxpayer. 2008 Act No. 261, § 3.C. Additionally, the following provision was inserted:

> The Department of Revenue may require any documentation that it deems necessary to administer the credit.

In its present form, and applicable to the 2010 and 2011 tax years at issue in this case, S.C. Code § 12-6-3620 ("Biomass Resource Credit") requires a taxpayer to submit a request to the State Energy Office by January 31st for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must then notify the taxpayer that it qualifies for the credit and the amount of credit by March 1st. S.C. Code § 12-6-3620(D)(1). The request is submitted by a taxpayer to the State Energy Office on Form SC SCH. ETC-50, Application for Biomass Resource Credit. (Exhibit A, 2010 and 2011 Application Forms).[2]

The statutory scheme contemplates a prompt filing of a request for the Biomass Resource Credit by January 31st, or within 31 days after the close of the calendar year. Most corporate taxpayers utilize a calendar year as their tax accounting year and the 31-day period provides a taxpayer with a limited window to determine all applicable and qualifying equipment placed in

[2] The 2011 application form incorrectly lists the year as 2012.

service in the ended calendar year. The State Energy Office is then required to notify a taxpayer within 29 days, or by March 1st, that the claimed equipment qualifies for the credit, and, applying a simple 25% multiplier to the equipment costs, the amount of the resulting credit. Corporations who seek to claim the Biomass Resource Credit must generally then file their annual South Carolina corporate income tax return 15 days later, or by March 15th. S.C. Code § 12-6-4970. Thus, the statutory scheme contemplates a relatively short period, from January 1st to March 15th of each year, or less than 75 days, within which a corporate taxpayer must ascertain which qualifying equipment has been placed in service during a prior tax year; the corporate taxpayer must prepare an application for the Biomass Resource Credit and file it with the State Energy Office; the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of the credit; and then the taxpayer must report this credit on its South Carolina corporate income tax return filed with the Department of Revenue.

While the State Energy Office is required by the statute to provide a taxpayer with a notification of the qualifying equipment (the 25% amount of the credit is self-evident once the equipment cost is determined), the statute contemplates that "[t]he Department of Revenue may require any documentation that it deems necessary to administer the credit." S.C. Code § 12-6-3620(D)(1)(last sentence).[3] This provision, taken together with the limited time period within which the State Energy Office must make a determination, makes clear that the role of the State Energy Office under the statute is limited to determining whether equipment claimed in an application for the Biomass Resource Credit "creates ... energy for commercial use from a fuel

[3] The General Assembly has prescribed different duties on the State Energy Office in S.C. Code § 12-6-3600(F) (Supp. 2011), which provides that "[f]or purposes of ascertaining the correctness of the credit allowed pursuant to this section, the State Energy Office or the department may examine or cause to have examined, by an agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon these matters." Unlike S.C. Code § 12-6-3600, S.C. Code § 12-6-3620 does not authorize the State Energy Office to ascertain the correctness of the Biomass Resource Credit. The present form of S.C. Code § 12-6-3600 was added to the Code by the Energy Freedom and Rural Development Act, 2008 Act No. 261, along with the amendment to S.C. Code § 12-6-3620 which authorized the Department of Revenue to administer S.C. Code § 12-6-3620.

consisting of no less than ninety percent biomass resource". The role of the Department of Revenue, on the other hand, is to verify and substantiate (if needed) the equipment costs claimed in an application and reported by a corporate taxpayer on its South Carolina income tax return, and to otherwise "administer" all other aspects of this income tax credit statute. S.C. Code § 12-54-85 provides the Department of Revenue at least three years to audit and verify a claimed Biomass Resource Credit and the related equipment costs. The Department of Revenue is the agency of South Carolina state government with knowledge of state taxes, accounting principles, books and records, and audit procedures. The State Energy Office can hardly be expected to be able to verify what can be tens of millions of dollars of equipment expenditures reported by taxpayers in a brief twenty-nine day period from February 1st to March 1st of each year, with limited staff, and while also simultaneously confirming the function of such equipment and its use of a biomass resource.

The statute requires the State Energy Office to "notify" a taxpayer of the credit certification once made. S.C. Code § 12-6-3620(D)(1). The "certification" role of the State Energy Office under the statute is designed to provide applying taxpayers with guidance of what to report on their corporate income tax returns. In notifying taxpayers of a credit certification under the statute, the State Energy Office notifies taxpayers that "[in] order to claim the credit, the taxpayer must submit SC SCH. TC-50 and keep this letter with tax records." Exhibit B, March 1, 2011 email from E. Myers to J. Causey and 2010 certifications. The SC SCH.TC-50 is a Department of Revenue form used when a taxpayer claims the biomass resource credit on the taxpayer's tax return. Exhibit C, SC SCH.TC-50. SC SCH.TC-50 includes the following statement:

> Each taxpayer must submit a request for credit to the State Energy Office by January 31st for all qualifying equipment placed in

> service in the previous calendar year. The Office's form for requesting credit is available at www.energy.sc.gov or by calling 803-737-8030. The Office will notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March 1st of that year. The taxpayer may claim the allocated amount of credit for its tax year that includes December 31st of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

When the State Energy Office notifies a taxpayer of a credit certification, the State Energy Office also provides notice of these certifications to the South Carolina Department of Revenue. Exhibit B, March 1, 2011 email from E. Myers to J. Causey and 2010 certifications; Exhibit D, April 13, 2012 email from C. Vanden Houten to B. Thomas and 2011 certifications. From an administration standpoint, notice of the credit certification by the State Energy Office to the Department of Revenue is necessary as the taxpayer will be claiming the credit on its corporate income tax return and the Department of Revenue must receive confirmation by the State Energy Office of the certification made to the taxpayer.

Nothing in the statute, or elsewhere in Title 12 of the South Carolina Code, indicates that the Department of Revenue does not have authority to administer this tax credit statute, as it does with all our tax statutes under Title 12. Perhaps to emphasize this point, the General Assembly added the explicit provision in the statute that "[t]he Department of Revenue may require any documentation that it deems necessary to administer the credit."

In short, the statutory scheme of the Biomass Resource Credit contemplates that the State Energy Office functions in a limited certification role to assist the Department of Revenue in administering the tax credit statute.

STATE ENERGY OFFICE

The State Budget and Control Board is an executive body created by the South Carolina General Assembly. *State ex rel. McLeod v. Edwards*, 269 S.C. 75, 236 S.E.2d 406 (1977); S.C.

Code § 1-11-10. The State Budget and Control Board was created to handle the state's "fiscal affairs" and perform its functions through three divisions: the Finance Division, the Purchasing and Property Division, and the Division of Personnel Administration. *Id.* at 76, 236 S.E.2d at 407; S.C. Code § 1-11-20. The State Energy Office was statutorily established within the State Budget and Control Board to serve as the principal energy planning entity for the State. S.C. Code § 48-52-410. The primary purpose of the State Energy Office is to develop and implement a well-balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy. *Id.* The duties of the State Energy Office are enumerated in S.C. Code § 48-52-420. They include providing 'informational and technical assistance programs to assist with residential, commercial, governmental, industrial and transportation conservation and efficiency and to encourage the use of renewable indigenous energy resources", and to otherwise seek to develop and promote energy efficiency and conservation in South Carolina. S.C. Code § 48-52-420(1). The statute prohibits the State Energy Office from functioning as a regulatory body. S.C. Code § 48-52-410. The statute does not specify who governs matters relating to the State Energy Office. *Id.*

SOUTH CAROLINA DEPARTMENT OF REVENUE

The South Carolina Department of Revenue was created to administer and enforce the revenue laws of the State of South Carolina. S.C. Code § 12-4-10. The Department of Revenue is governed by a director appointed by the Governor with the advice and consent of the Senate. S.C. Code § 12-4-10. The Department of Revenue has extensive mandated statutory responsibilities concerning the administration and enforcement of the State's tax laws, and also has broad regulatory powers, including the power to make rules, promulgate regulations, publish

rulings, and also to issue written guidance to the public interpreting and construing our tax laws. S.C. Code §§ 12-4-310, 320. The Department of Revenue is also mandated to "conduct audits involving all taxes to promote voluntary compliance and to collect revenues for the general fund of the State and designated accounts." S.C. Code § 12-4-387.

ARGUMENTS

The State Energy Office has issued determinations and amended determinations in response to International Paper's credit applications for the tax years 2010 and 2011 where the State Energy Office has failed to certify that any of the equipment costs incurred by International Paper qualify for the tax credit under S.C. Code § 12-6-3620. International Paper has filed contested case proceedings applicable to each tax year, now consolidated before the Court in this case,[4] where International Paper seeks a judicial determination from the Court that its equipment costs qualify for the credit and that the State Energy Office erroneously failed to certify these costs as claimed in International Paper's tax credit applications. While this case began in March 2011, the State Energy Office now argues for the first time that this Court lacks jurisdiction over it and that this case should therefore be dismissed.

The Administrative Law Court has jurisdiction in this case under S.C. Code § 1-23-600. The only question is whether the Court's jurisdiction is *de novo* or appellate.

The Court's *de novo* jurisdiction is set forth in S.C. Code § 1-23-600(A). While the *de novo* jurisdiction of this Court does not specifically include appeals from a decision of the State Energy Office, the statute should be construed to grant jurisdiction to this Court over decisions of the State Energy Office made under S.C. Code § 12-6-3620 to give effect to the General Assembly's intent that all state tax disputes be heard by the Administrative Law Court.

[4] Order Consolidating Cases (May 1, 2012).

The Court's appellate jurisdiction is set forth in S.C. Code § 1-23-600(D). Decisions of the State Energy Office under S.C. Code § 12-6-3620 are clearly subject to review by this Court in its appellate capacity.

ALC *De Novo* Jurisdiction

The Court's *de novo* jurisdiction is set forth in S.C. Code § 1-23-600(A):

> An administrative law judge shall preside over all hearings over contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases...

The Department of Revenue is the administrative agency charged with administering and enforcing our State's revenue laws. While the Department of Revenue is identified as an executive branch of state government in S.C. Code § 1-30-10, the State Energy Office is not. No statute specifically authorizes a single hearing officer to hear cases involving decisions of the State Energy Office. Article I, Section 22 also does not authorize a single hearing officer, or an administrative law judge, to hear cases.[5] S.C. Code § 1-23-600(A) should apply even in the absence of express statutory language, however, as the State Energy Office is performing an administrative function in the tax credit certification process under S.C. Code § 12-6-3620, and is assisting and acting on behalf of the South Carolina Department of Revenue in this capacity. The General Assembly intends disputes involving the actions of an administrative agency in

[5] The reference to Article I, Section 22 in S.C. Code § 1-23-600(A) (formerly § 1-23-600(B)) was inserted by 2006 Act. No. 387, § 4. The title of the act stated that the amendments were "to provide that judicial review of an administrative decision must be made by an administrative law judge." The expansion of the Court's jurisdiction to include Article I, Section 22 matters could be construed to apply independently of the existing language regarding decisions "involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases..." If the statute is construed to grant jurisdiction under Article I, Section 22 without limitation, then this Court would have jurisdiction under S.C. Code § 1-23-600(A) because the decisions of the State Energy Office in this case are subject to Article I, Section 22, as explained in the ALC Appellate Jurisdiction discussion herein.

performing its duties under the tax statute – and with all state tax cases – to be heard *de novo* by the Administrative Law Court.

The General Assembly enacted the South Carolina Revenue Procedures Act, S.C. Code §§ 12-60-10 *et seq.*, with the intent "to provide the people of this State with a straightforward procedure to determine any disputed revenue liability." S.C. Code § 12-60-20. "The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent." *Id.* The Revenue Procedures Act specifically authorizes a taxpayer to request a contested case hearing before the Administrative Law Court after exhausting administrative remedies. *See, e.g.*, S.C. Code §§ 12-60-460 and 12-60-470(E).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). As this Court observed in *Providence Hospital v. South Carolina Department of Health and Environmental Control*, Docket No. 02-ALJ-07-0155-CC:

> Another cardinal rule of statutory construction is that the statutory provisions do not stand alone but must be read in the context of the Code as a whole. "A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." Sutherland Statutory Construction, 5th Ed., § 46.05, p. 103 (1992). *See also Keonig v. S.C. Dep't of Public Safety*, 325 S.C. 400, 480 S.E.2d 98 (Ct. App. 1996). Furthermore, the statutory language in question must also "be read in a sense which harmonizes with its subject matter and accords with its general purposes." *Hitachi Data Systems Corp. v. Leatherman*, 309 S.C. 174, 420 S.E.2d 843, 846 (citing *Multi-Cinema, Ltd. v. S.C. Tax Comm'n*, 292 S.C. 411, 357 S.E.2d 6 (1987)).

This case unquestionably involves a disputed revenue liability under a Title 12 tax credit statute, and the functions and actions of an executive state body performing its duties under the statute. The General Assembly has prohibited the State Energy Office from functioning as a

regulatory agency, and has not provided specific procedures to appeal decisions of the State Energy Office. The General Assembly has statutorily expressed its intention, however, that tax matters such as those at issue in this case be governed by the Revenue Procedures Act. The conflict between the General Assembly's intent to have state tax cases governed by the Revenue Procedures Act, to not have the State Energy Office function as a regulatory agency, and potentially uncertain appeal procedures involving decisions of this state executive body require this Court to harmonize the General Assembly's intent.

There is a great degree of coordination between the State Energy Office and the Department of Revenue concerning the interpretation and administration of S.C. Code § 12-6-3620. Without even having completed its discovery in this case, Petitioner has learned that:

1. The State Energy Office regularly requests the assistance of Department of Revenue personnel on matters related to the administration of S.C. Code § 12-6-3620, specifically including the development and preparation of the tax credit form itself, SC SCH. ETC-50, Application for Biomass Resource Credit. Exhibit E, October 2009 emails between E. Myers and Bob Thomas; Exhibit F, (Myers, p. 176, ln. 12-24; p. 177, ln. 18-23).

2. Erika Myers (State Energy Office) and Jerilynn Van Story (Department of Revenue) have consulted regarding the statutory requirements of S.C. Code § 12-6-3620. Exhibit G, (Myers, p. 232, ln. 15-21; p. 233, ln. 8-25).

3. A Department of Revenue employee actually toured International Paper's Georgetown facility with Erika Myers and Ralph Jenkins (State Energy Office) in connection

with the process for International Paper's tax credit application. Exhibit H, Aff. of Bolger, §§ 22 and 24.[6]

4. Jerilynn Van Story emailed Erika Myers on April 7, 2011 regarding this contested case hearing. Exhibit I, April 7, 2011 email from J. VanStory to E. Myers.

5. Ashlie Lancaster, the Director of the State Energy Office has communicated with representatives of the Department of Revenue this year concerning the legal requirements for qualification of certain costs under S.C. Code § 12-6-3620. Exhibit J.

6. The Department of Revenue has issued the only public guidance interpreting and construing S.C. Code § 12-6-3620 in S.C. Private Letter Ruling #11-6.

This information establishes not only that the Department of Revenue is administering S.C. Code § 12-6-3620, as specifically required by the statute, but also that the State Energy Office is acting with and for the Department of Revenue to interpret and administer the statute, in developing the tax application form, developing interpretive positions related to the requirements of the tax credit statute, and even in coordinating joint site inspections to verify equipment cost information for applicants. Petitioner is confident that through further discovery proceedings in these cases, additional corroborative evidence will be developed showing the common interaction of the State Energy Office and the Department of Revenue in the administration of this tax statute.

While the General Assembly has not specifically addressed procedures applicable to disputes with a decision of the State Energy Office where it is exercising its tax credit certification responsibilities under S.C. Code § 12-6-3620, the procedures governing disputes involving state taxes are clearly delineated in the Revenue Procedures Act. A party exhausts his

[6] The affidavit of Tracy Bolger was previously filed with this Court on December 28, 2011 in support of the Petitioner's Response in Opposition to Respondent's Motion to Dismiss. The attachments to the affidavit have not been included with Exhibit H.

administrative remedies with the Department of Revenue and then may request a contested case hearing. *See, e.g.*, S.C. Code §§ 12-60-460 and 12-60-470(E). Notably, the State Energy Office itself apparently believes that the Revenue Procedures Act gives this Court jurisdiction, as it has represented to the Court in its original and more recently amended prehearing statements that "[j]urisdiction of the court is pursuant to the State Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10 *et seq.* and the South Carolina Administrative Procedures Act, S.C. Code Ann. §§ 1-23-380."[7] Further, this Court's March 5, 2011 Order Denying Motion to Dismiss states that this case is to be heard *de novo* after citing to S.C. Code § 12-60-510 in the Revenue Procedures Act. Order Denying Motion to Dismiss (March 5, 2011), p. 3.

To harmonize the General Assembly's expressed intent to have all South Carolina tax disputes resolved through the Revenue Procedures Act, and the Administrative Law Court if necessary, requires a recognition that the State Energy Office is performing a limited certification function under S.C. Code § 12-6-3620 and that this function is being performed for, and on behalf of, the Department of Revenue in order to effectively administer the statute. In this certification role, the State Energy Office should be treated in the same manner as the Department of Revenue for purposes of invoking this Court's jurisdiction under S.C. Code § 1-23-600(A). This Court has already determined that International Paper has exhausted its administrative remedies with the State Energy Office. Order Denying Motion to Dismiss (March 5, 2011). Thus, the jurisdiction of this Court is properly invoked under S.C. Code § 1-23-600(A).

ALC Appellate Jurisdiction

The Court's appellate jurisdiction is set forth in S.C. Code § 1-23-600(D):

[7] The reference to S.C. Code § 1-23-380 is erroneous. The Administrative Law Court's jurisdiction to hear contested cases through the Revenue Procedures Act is pursuant to S.C. Code § 1-23-600(A). *See, e.g., Travelscape, LLC v. South Carolina Department of Revenue*, 08-ALJ-17-0076-CC.

> An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law...

In order to understand this Court's appellate jurisdiction, an understanding of the rights provided by Article I, Section 22 is necessary. Article I, Section 22 provides:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

In *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48 (S.C. 1998), the Supreme Court analyzed the application of Article I, Section 22 to the South Carolina Reinsurance Facility ("Facility"), an unincorporated, nonprofit entity created by statute. The primary issue in *Garris* was whether the proper procedures were followed to revoke an insurance agent's status as a designated agent. The Facility argued that it was not an "administrative agency" for purposes of Article I, Section 22. The Court disagreed.

The Facility received no state funding and was subject to regulation by a state agency. Nonetheless, the Facility was considered an agency because it possessed rule-making authority and had the authority to assign the status of designated agent to individual, as well as the authority to revoke that designation. The Court in *Garris* determined that Article I, Section 22 applied to the Facility, observing that:

> Article I, Section 22 requires an administrative agency to give procedural due process to parties that come before it even though a matter may not be a "contested case" as defined in the APA. *See League of Women Voters of Georgetown County*, supra (finding that certification process as outlined in then prevailing statutes and regulations was not a "contested case" as defined in APA, which meant League was not entitled to a hearing under APA; but concluding League was entitled to notice, a hearing, and

> judicial review under Article I, Section 22); *Stono River Envtl. Protection Ass'n v. South Carolina Dep't of Health and Envtl. Control*, 305 S.C. 90, 93, 406 S.E.2d 340, 342 (1991) (stating same principle).

Garris, 333 S.C. at 440, 511 S.E.2d at 52.

Like the Facility in *Garris*, the State Energy Office is also an agency for purposes of Article I, Section 22. The State Energy Office certifies the legal right of International Paper to receive a state tax credit under S.C. Code § 12-6-3620 and has sought to create rules and policies interpreting the requirements of S.C. Code § 12-6-3620.

Unlike the law existing at the time of the *Garris* decision, Title 1, Chapter 23, Article 5 as amended now specifically includes agency decisions that are subject to Article I, Section 22 within the definition of "contested case."[8] S.C. Code § 1-23-505(3) provides that:

> "Contested case" means a proceeding including, but not restricted to, rate-making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

The dispute between International Paper and the State Energy Office is a "contested case" as the State Energy Office was required to determine International Paper's legal rights under S.C. Code § 12-6-3620 and to provide an opportunity for hearing by Article I, Section 22. This Court has previously ruled that the State Energy Office issued a final decision on March 1, 2011 applicable to International Paper's 2010 tax credit application.[9] International Paper has appealed that decision to this Court and S.C. Code § 1-23-600(D) gives this Court jurisdiction

[8] In *Garris*, the Court found that the Administrative Procedure Act did not apply to the Facility because it did not hear "contested cases." At the time of the decision, no definition of a contested case contained a reference to Article I, Section 22 and no statute explicitly required the Facility to hold a hearing. Importantly, the definition of a "contested case" for purposes of this Court's jurisdiction, however, has expanded since the Supreme Court's decision in *Garris* to include not only proceedings required by statute, but also proceedings required by Article I, Section 22, Constitution of the State of South Carolina, 1985. *See* S.C. Code § 1-23-505(3) (Supp. 2011).

[9] Order Denying Motion to Dismiss (March 5, 2011, pg 1-2).

over the matter, and which is equally applicable to the 2011 State Energy Office determination and related contested case.

In its capacity as an administrative agency, the State Energy Office should have provided International Paper with procedural due process, including notice, administrative hearing, and an opportunity for judicial review. Article I, Section 22 requires notice, an opportunity to be heard, an impartial adjudicator, and judicial review. *Garris*, 333 S.C. at 444, 511 S.E.2d at 54. The Supreme Court has stated that:

> We have recognized that Section 22 is an additional guarantee of important due process rights, enacted in 1970 as legislators and judges noticed the increasing prevalence and influence of administrative agencies in daily life. See *Ross v. Medical Univ. of South Carolina*, 328 S.C. 51, 492 S.E.2d 62 (1997).
>
> In Ross, we found the purpose of Section 22 "is to ensure adjudications are conducted by impartial administrative bodies. Partiality exists where, among others, an adjudicator has ex parte information as a result of prior investigation or has developed, by prior involvement in the case, a 'will to win.' " Id. at 69, 492 S.E.2d at 72.

Garris, 333 S.C. at 444, 511 S.E.2d at 54.

The State Energy Office failed to provide International Paper with any notice, much less a hearing, prior to issuing the final determinations to International Paper at issue in this case. The procedures employed by the State Energy Office have violated International Paper's important due process rights guaranteed by Article I, Section 22 and an appropriate remedy must be fashioned by this Court if this matter will be heard in the Court's appellate jurisdiction.

CONCLUSION

For the reasons stated herein, Respondent's Motion to Dismiss for Lack of Jurisdiction should be denied, and Petitioner requests the Court to issue an order that it has *de novo* and/or appellate jurisdiction over the State Energy Office in these proceedings. In the event the Court

determines that it only has appellate jurisdiction, Petitioner observes that its fundamental rights to due process under Article I, Section 22 have been violated by the State Energy Office as no notice, hearing, or other rights were provided to International Paper prior to the issuance of the final determinations in this case. To remedy the violation of Petitioner's due process rights in this instance, the Petitioner requests that the Court hear this matter *de novo* as the State Energy Office has already reviewed Petitioner's tax credit applications, made its determinations, and Petitioner is concerned that the "will-to-win" has been institutionalized in the State Energy Office and that there may be no impartial adjudicator within this state office who could provide Petitioner with an administrative hearing that meets the requirements of Article I, Section 22.

Respectfully submitted,

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October 15, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	Docket No. 12-ALJ-30-0086-CC **PETITIONER'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

Respondent State Energy Office ("State Energy Office") filed a Motion to Dismiss on October 3, 2012 alleging that the "Budget and Control Board, State Energy Office," is not an executive agency subject to the jurisdiction of the South Carolina Administrative Law Court under Title 1, Chapter 23. On October 15, 2012, Petitioner International Paper Company ("International Paper") filed a responsive Memorandum in Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction. The Court held a hearing on the Motion to Dismiss on October 17, 2012. The State Energy Office filed a Memorandum in Support of Motion of Dismiss at the October 17, 2012 hearing. The Court has allowed International Paper until October 29, 2012 to file a supplemental response to the State Energy Office's Motion to Dismiss. The Court, *sua sponte,* subsequently requested both parties to also address specific issues related to the Court's jurisdiction in these proceedings.

I. Introduction

International Paper contends that the Administrative Law Court has jurisdiction over the State Energy Office in these proceedings under S.C. Code § 1-23-600. The only question is whether the Court's jurisdiction is *de novo* or appellate. The basis of the Court's *de novo* jurisdiction is set forth in International Paper's Memorandum in Opposition filed on October 15, 2012. This Supplemental Memorandum responds to the State Energy Office's Memorandum in

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Support of Motion of Dismiss, and addresses specific issues relating to the Court's appellate jurisdiction should the Court determine that it does not have *de novo* jurisdiction.

II. Administrative Law Court Appellate Jurisdiction

This Court's appellate jurisdiction is found in Title 1, Chapter 23, Article 5. S.C. Code § 1-23-600(D) describes the appellate jurisdiction as follows:

> An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law...

The Administrative Procedures Act ("APA") is set forth in Title 1, Chapter 23, Article 3.[1] In order to have a "contested case" under the APA, a "law" must require an agency to determine the legal rights of a party after an opportunity for hearing. *See* S.C. Code § 1-23-310(3). A "law" for this purpose has been interpreted to mean a specific state statute. *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 333 S.C. 432, 440, 511 S.E.2d 48, 52 (1998) ("No statute explicitly requires Facility to hold a hearing before revoking agent's status as a designated agent; therefore Garris' case is not a 'contested case' as defined in the APA"). The APA does not apply in this case as no statute specifically requires the State Energy Office to hold a hearing before certifying, or not, that a taxpayer's equipment costs qualify for the credit under S.C. Code § 12-6-3620.

S.C. Code § 1-23-505 provides definitions for purposes of Title 1, Chapter 23, Article 5, including a specific definition for a contested case which differs from the APA contested case definition.[2] S.C. Code § 1-23-505(3) states that:

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[1] The term Administrative Procedures Act is not defined in Title I, Chapter 23. For purposes of this supplemental memorandum, the term Administrative Procedures Act is presumed to refer to Article 3 only as it governs hearing procedures. *See also* S.C. Code § 1-13-90(c)(15) ("Proceedings under this section shall be subject to the Administrative Procedures Act, §§ 1-23-310 through 1-23-400 of the Code of Laws of South Carolina...").

[2] S.C. Code § 1-23-505 was added to Code in 2008. 2008 Act No. 334, § 1.

> "Contested case" means a proceeding including, but not restricted to, rate-making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing. (emphasis added).

The Article 5 definition of a contested case expanded this Court's jurisdiction to cover not only hearings required by "law," but also hearings required by Article I, Section 22.[3] The Court's appellate jurisdiction in this case depends on a conclusion that Article I, Section 22 applies to State Energy Office certifications made under S.C. Code § 12-6-3620.

III. Article I, Section 22

Article I, Section 22 provides:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

The State Energy Office is an administrative agency which makes a quasi-judicial decision under S.C. Code § 12-6-3620 that affects International Paper's constitutionally protected rights.

A. Administrative Agency

Respondent is an "administrative agency" under the Constitution, and it has not argued otherwise in these proceedings. The State Budget and Control Board is an executive body created by the South Carolina General Assembly. *State ex rel. McLeod v. Edwards*, 269 S.C. 75,

[3] While Respondent argues in its Memorandum in Support of Motion to Dismiss that a trial-type hearing is required in order to have a contested case hearing, no support is provided for this stated proposition aside from a reference to CLE materials apparently prepared in 1989 but which state that "the hearing required by due process in a particular case is not necessarily the trial-type hearing contemplated by the APA's contested case provisions." The APA is not the source of the definition of a contested case under Title 1, Chapter 23, Article 5. The contested case definition in S.C. Code § 1-23-505 did not exist in 1989, and did not reference Article I, Section 22. The plain language of S.C. Code § 1-23-505(3) requires only a hearing, not necessarily a "trial-type" hearing.

236 S.E.2d 406 (1977); S.C. Code § 1-11-10. The State Energy Office was statutorily established within the State Budget and Control Board to serve as the principal energy planning entity for the State. S.C. Code § 48-52-410. The primary purpose of the State Energy Office is to develop and implement a well-balanced energy strategy and to increase the efficiency of use of all energy sources throughout South Carolina through the implementation of the Plan for State Energy Policy. *Id.* While S.C. Code § 48-52-410 prohibits the State Energy Office from functioning as a regulatory body, the General Assembly has given the State Energy Office duties and responsibilities over the administration of state tax credit certifications in the statute at issue here, and other state tax credit statutes. S.C. Code § 12-6-3620; *see e.g.* §§ 12-6-3600, 12-6-3610, *and* 12-6-3631.

The South Carolina Supreme Court's decision in *Garris* strongly supports the conclusion that the State Energy Office is an administrative agency.[4] The State Energy Office is also an "agency" under S.C. Code § 1-23-505(2) as it hears contested cases because it is a state agency, and office within the State Budget and Control Board, whose certification actions are the subject of an appellate proceeding heard by an administrative law judge. S.C. Code § 1-23-505(2) provides:

> "Agency" means a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.

B. Quasi-judicial decision

Respondent does not argue that it does not make a quasi-judicial decision in its tax credit certification function. The term "quasi-judicial decision" is not defined in the Constitution or by

[4] International Paper's Memorandum in Opposition filed on October 15, 2012 analyzes the *Garris* decision in detail and explains why it supports the conclusion that the State Energy Office is an administrative agency.

statute. When a term is not defined, however, it is appropriate to review secondary sources. *Sonoco Products Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 662 S.E.2d 599 (2008).

When construing tax statutes, the dictionary definition of a term is often considered. *See Berkeley County School Dist. v. South Carolina Dept. of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) ("Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." *citing Lee v. Thermal Eng'g Corp.*, 352 S.C. 81, 91–92, 572 S.E.2d 298, 303 (Ct. App. 2002)). The term "quasi-judicial" has been defined as: "[o]f, relating to, or involving an executive or administrative official's adjudicative act." *Black's Law Dictionary* 1364 (9th ed. 2009). Here we have an adjudicative act by an administrative agency. The State Energy Office ascertained the existence of certain facts upon which a decision was to be made and the rights of International Paper were then determined. The State Energy Office determinations were not merely an administrative act concerned with the internal functioning of the agency itself, but were instead a judicial or quasi-judicial function of this state agency.

Jurisprudence in other jurisdictions supports the conclusion that the State Energy Office acts in a quasi-judicial function under S.C. Code § 12-6-3620. The Minnesota Supreme Court has outlined three considerations to determine whether a decision is quasi-judicial: "(1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim." *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999).

The disputed claim in this case is whether International Paper's costs for the purchase and installation of equipment qualify for the credit under S.C. Code § 12-6-3620. The State Energy

Office was required to investigate the facts relating to International Paper's purchase and installation of equipment listed in the application.

After investigating the facts relating to International Paper's purchase and installation of equipment, the State Energy Office was then required to apply the criteria of S.C. Code § 12-6-3620 to determine whether to certify the claimed costs.

S.C. Code § 12-6-3620 required the State Energy Office to issue a certification by March 1st. The certification is binding as no further administrative procedures with the State Energy Office were authorized or prescribed.

C. Constitutionally Protected Rights

There are several ways to interpret the protections provided by Article I, Section 22 and decisions have not clearly articulated the scope of Article I, Section 22. Relevant decisions speak in terms of "private rights," "liberty," "property," and "due process." While the meaning of such terms in an isolated context is not always clear, under the facts of this case, it is clear that Article I, Section 22 applies to State Energy Office decisions made under S.C. Code § 12-6-3620.

A case relied upon by the State Energy Office in its Memorandum in Support of Motion to Dismiss is instructive. The majority and dissenting opinions in *S.C. Ambulatory Surgery Center v. S.C. Workers' Compensation Comm'n*, 389 S.C. 380, 699 S.E.2d 146 (2010) highlight the continuing judicial interpretation of rights protected by Article I, Section 22. In a 3-2 decision, the South Carolina Supreme Court ruled that several ambulatory surgery centers did not have a right under Article I, Section 22 to notice and hearing before the South Carolina Workers' Compensation Commission ("Commission"). The right at issue in the case involved the revision of a schedule for maximum allowable payments to out-patient medical providers. The

Commission was specifically authorized by regulation to develop a prospective payment system, and the surgery centers did not argue that the promulgation of the regulation violated their due process rights.

The majority opinion stated that the protections provided under Article I, Section 22 are the equivalent of those afforded by the Due Process Clause of the South Carolina and federal Constitutions. 389 S.C. at 391, 699 S.E.2d at 152. The majority opinion concluded that a traditional due process analysis was required to determine whether the Commission's actions deprived the surgery centers of constitutionally-protected interests. 389 S.C. at 391, 699 S.E.2d at 153. Writing for the majority, Justice Beatty wrote:

> Applying this analysis, we hold Surgery Centers have not established the requisite liberty or property interest to invoke the due process protections of Article I, Section 22. Initially, we agree with the circuit court's conclusion that Surgery Centers have no property interest that was implicated by the Commission's revision of the maximum allowable payment schedules. Furthermore, Surgery Centers have not set forth any argument that the result of the Commission's actions implicated a liberty interest. Instead, as we interpret Surgery Centers' argument, they are primarily concerned with receiving future income based on desired future work. **The mere desire for future work, however, is not sufficient to constitute a private right. Moreover, we emphasize that Surgery Centers' decision to provide medical care to workers' compensation claimants is entirely voluntary.**
>
> Accordingly, **we conclude Surgery Centers have failed to establish any private right that warrants the protections provided by Article I, Section 22.** *See* 16C C.J.S. *Constitutional Law* § 1516 (2010) ("[A]n interest in property which is protected by due process arises only **when there is a legitimate claim of entitlement, as created and defined by independent sources,** and a person clearly must have more than an abstract need or desire for it, and the person must have more than a unilateral expectation of it."); *see also Am. Soc'y of Cataract & Refractive Surgery v. Thompson*, 279 F.3d 447 (7th Cir. 2002) (holding physicians providing Medicare services had no protected property interest in statutory transition formula used to determine the practice expense relative value units as a component of Medicare physician fee schedule); *Painter v. Shalala*, 97 F.3d 1351 (10th

> Cir. 1996) (concluding physicians, who voluntarily participated in Medicare program, failed to demonstrate a legitimate property interest in having reimbursement payments calculated in a specific manner).
>
> 389 S.C. at 392, 699 S.E.2d at 153 (emphasis added).

The dissenting opinion, written by Justice Hearn, in which Justice Kittredge joined, provided the following analysis:

> I agree with the majority that the circuit court correctly found Surgery Centers had no "property" interest that was implicated by the Commission's revision of the maximum allowable payment schedules, in the sense that Surgery Centers had no right to a guaranteed payment schedule at the discount rate of 12.1 percent. In order to determine the effect of Surgery Centers' lack of a cognizable property interest on their entitlement to notice and an opportunity to be heard, it is imperative that this Court examine the source of these private rights. **While the circuit court, the parties, and the majority by acquiescence, have denominated the rights sought by Surgery Center as "due process rights," I believe a closer examination reveals the label to be incorrect.** In previous cases, this Court has been inconsistent in the manner which it has labeled rights flowing from article 1, section 22 of our State Constitution. In some cases, we have referred to the guarantees of notice and the right to be heard emanating from article 1, section 22 as "due process rights." *See League of Women Voters of Georgetown County v. Litchfield-by-the-Sea*, 305 S.C. 424, 426-27, 409 S.E.2d 378, 380 (1991) (*overruled on specific grounds by Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002); *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998)). **In other cases, the Court has, without calling them "due process rights," simply stated article 1, section 22 guarantees "persons the right to notice and an opportunity to be heard by an administrative agency...."** *Ross v. Medical Univ. of S.C.*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997).
>
> I do not think the rights guaranteed under article 1, section 22 are the same as those classically protected under the Due Process Clause of our State and National Constitutions. *See* U.S. Const. amend. XIV § 1; S.C. Const. art. V, § 5 (stating no person shall deprived of life, liberty, or property without due process of law). **Even if the Court has referred to the rights under article 1, section 22 as "due process rights," for claims under section**

> 22, we have neither focused on, nor required the existence of a liberty or property interest, in the sense of a prerequisite to the Court's analysis of claims under the Due Process Clause. *Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991); *League of Women Voters of Georgetown County*, 305 S.C. at 426,27, 409 S.E.2d at 380; *Ross*, 328 S.C. at 68, 492 S.E.2d at 71; *Garris*, 333 S.C. at 444, 511 S.E.2d at 54.
>
> 389 S.C. at 397-98, 699 S.E.2d at 155-56 (emphasis added).

Based on the analysis of the Supreme Court in *S.C. Ambulatory Surgery Center*, Article I, Section 22 should be construed to provide at least the same protections as those provided by the Due Process Clause of the South Carolina and United States Constitutions.[5] Additionally, the protections of Article I, Section 22 may arguably provide broader protections than the Due Process Clauses given the shifting focus of the majority opinion from "property rights" to "private rights," the failure to overrule prior and arguably conflicting decisions, the clear distinction between "private rights" and "property rights" made by the minority, and the plain language of Article I, Section 22 which references "private rights" and "property rights" independently.[6] In this case, however, the Court should not need to determine the full extent of the protections of Article I, Section 22 because the facts and statute at hand are subject to the protections of the Due Process Clauses and correspondingly Article I, Section 22.

Due process is a flexible concept. As stated in *State v. Binnar*, --- S.E.2d ---, 2012 WL 1609071 (S.C. 2012):

> "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002) (*quoting Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). The requirements in a particular case

[5] S.C. Const. Art. I, § 3; U.S. Const. Amend. XIV, § 1.
[6] *See also* Professor Richard H. Seamon and Hon. Paige J. Gossett, *Administrative Agencies: General Concepts & Principles, in South Carolina Administrative Practice and Procedure 2nd*, 45-52 (Randolph R. Lowell ed. 2008) (discussing the uncertain scope and meaning of Article I, Section 22).

> depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Accordingly, a claim of denial of due process must be analyzed with a two-part inquiry: (1) whether the interest involved can be defined as "liberty" or "property" within the meaning of the Due Process Clause; and, if so (2) what process is due in the circumstances. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571–73, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

The types of interests that constitute "liberty" or "property" for due process purposes are not unlimited. *Board of Regents of State Colls.*, 408 U.S. at 570 ("[T]he range of interests protected by procedural due process is not infinite."). "[T]he concept of 'property' for due process purposes [is], like 'liberty,' an evolving open-ended concept." Professor Richard H. Seamon and Hon. Paige J. Gossett, *Administrative Agencies: General Concepts & Principles, in South Carolina Administrative Practice and Procedure 2nd*, 41 (Randolph R. Lowell ed. 2008). The United States Supreme Court has described "property" as follows:

> Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understanding that secure certain benefits and that support claims of entitlement to those benefits.
>
> 408 U.S. at 577.

A protected "property" interest for due process purposes includes state-created benefits to which a person has become entitled. *See, e.g.*, 16C C.J.S. *Constitutional Law* § 1516 (2005) ("An interest in property which is protected by due process arises only when there is a legitimate claim of entitlement to a state-created benefit."); Professor Richard H. Seamon and Hon. Paige J. Gossett, *Administrative Agencies: General Concepts & Principles, in South Carolina Administrative Practice and Procedure 2nd*, 39 (Randolph R. Lowell ed. 2008) ("[P]roperty covers a range of 'benefits' and 'claims of entitlement.'').

A statute creates an entitlement to a government benefit, and a property interest for due process purposes, if the statute sets out conditions under which the benefit must be granted. 16C C.J.S. *Constitutional Law* § 1516 (2005). Conversely, a statute which gives a decision maker discretion to award a benefit may not create a property interest for due process purposes. *See, e.g., Cleveland Constr. Inc. v. Cincinnati,* 888 N.E.2d 1068 (Oh. 2008), *cert. denied,* 129 S. Ct. 921 (2009) and 129 S. Ct. 925 (2009) ("benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *citing Town of Castle Rock, Colorado v. Gonzales,* 545 U.S. 748, 756 (2005)); *DeHarder Investment Corp. v. Indiana Housing Finance Authority,* 909 F. Supp. 606, 615 (S.D. Ind. 1995) (recognizing that "[t]he existence of the type of property interest that is protected by the Federal Constitution depends upon explicitly mandatory language, in connection with the establishment of specified substantive predicates to limit discretion" and finding that a discretionary low-income housing tax credit scheme did not create a protected property interest).[7]

S.C. Code § 12-6-3620 creates an entitlement to a government benefit and sets forth the conditions under which the benefit must be granted. The statute does not provide the State

[7] *DeHarder* is one of three cases cited by Respondent in its Memorandum in Support of Motion to Dismiss for the proposition that this case does not involve any property interest for purposes of due process. Respondent has misinterpreted *DeHarder* to generally stand for the proposition that tax credits are not protected property interests. No property interest was found to exist in *DeHarder* because it involved a discretionary tax credit award, whereas the statute at issue in this case does not provide any discretion to the State Energy Office in certifying a tax credit. The other two cases relied upon by Respondent in its Memorandum in Support of Motion to Dismiss, to support the proposition that this case does not involve any property interest for purposes of due process, involved the retroactive reduction of a tax credit and are also not relevant to this case. Changes in law generally do not implicate due process rights. *See* 16C C.J.S. *Constitutional Law* § 1525 (2005); *cf. Rivers v. State,* 327 S.C. 271, 490 S.E.2d 261 (1997) (retroactive elimination of the right to a tax refund violated the Due Process Clauses of the South Carolina and United States Constitutions). This case involves International Paper's entitlement to a specific benefit provided by an existing statute and an agency performing a specific statutory duty – not the retroactive reduction of a tax credit by the legislature. Under Respondent's analogous reasoning, however, a taxpayer would never have a due process right in tax matters. Taxpayers do of course have due process rights and Respondent's interpretation must be rejected. *See, e.g., Delhaize America, Inc. v. Lay,* 731 S.E.2d 486, 491 (N.C. App. 2012) ([A] State's "exaction of a tax constitutes a deprivation of property subject to the safeguards of the Due Process Clause." *citing McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco,* 496 U.S. 18, 36, 110 S.Ct. 2238, 2250, 110 L.Ed.2d 17, 35–36 (1990)).

Energy Office with discretion; if the conditions of the statute are met, the State Energy Office must certify the taxpayer's costs. International Paper has a legitimate claim of entitlement to the benefits offered under S.C. Code § 12-6-3620. Consequently, International Paper has a protected property interest for due process purposes in the credit provided by S.C. Code § 12-6-3620, and Article I, Section 22 requires the State Energy Office to provide due process rights, including a hearing, prior to rendering a final decision concerning International Paper's credit applications.

D. Article I, Section 22 Procedural Requirements

Article I, Section 22 required the State Energy Office to comply with the requirements of procedural due process prior to making a final decision on certifying International Paper's costs claimed in its 2010 and 2011 credit applications. The core requirements of due process of law are notice, opportunity for hearing in a meaningful way, and judicial review. *Ogburn-Matthews v. Loblolly Partners*, 332 S.C. 551, 505 S.E.2d 598 (Ct. App. 1998) *overruled on other grounds by Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002); S.C. Constitution, Article I, Section 22; *Stono River Envtl Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C. 90, 406 S.E.2d 340 (1991).

1. Hearing Requirements

Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171-72, 656 S.E.2d 346, 350 (2008) (*citing First Fed. Sav. Loan Ass'n of Walterboro v. Bd. of Bank Control*, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974); *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002)) (finding that a trial-type hearing was not required where a commission exercised discretionary authority, as opposed to

adjudicatory power). An administrative hearing must, however be consistent with the essentials of a fair trial. 73A C.J.S. *Public Administrative Law and Procedure*, § 267 (2004).

In *Ogburn-Matthews v. Loblolly Partners*, the South Carolina Court of Appeals endorsed a three factor inquiry to assess when due process will require a trial-type, adversarial hearing to allow a taxpayer the opportunity to confront and cross-examine witnesses. These factors are:

> First, the private interest that will be affected by the official action;
>
> Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
>
> Finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.
>
> 332 S.C. at 564, 505 S.E.2d at 604 (*citing Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

International Paper has a substantial private interest in receiving the tax credit for which it has applied under S.C. Code § 12-6-3620. Denial of the tax credit will result in a substantial economic loss. *Cf. Ogburn-Matthews, 332 S.C. at 566, 505 S.E.2d at 605* (the contestant was not the owner of the wetland, she did not have an economic interest in whether the certification was granted, and her individual interest in protesting the certification was her enjoyment of the wildlife and habitat). *See also* Pamela Baker, Note, *Ogburn-Matthews v. Loblolly Partners: Procedural Due Process and an Individual's Right to an Adjudicatory Hearing*, 51 S.C. L. Rev. 699 (2000).

There is a substantial risk that the State Energy Office will erroneously deprive International Paper of its right to a credit under S.C. Code § 12-6-3620 if a trial-type hearing is not provided (as it has already done here). The determination of qualifying costs for the purchase and installation of equipment that uses biomass fuel under S.C. Code § 12-6-3620

involves a detailed and technical understanding of the specialized equipment and processes used by International Paper at its Georgetown and Eastover facilities to create energy from a biomass resource, as well as knowledge of financial, accounting and tax principles related to the claimed costs. An adjudicator must review and comprehend potentially thousands of pages of equipment descriptions, functional and technical design specifications, process flow diagrams and descriptions, and engineering and cost detail to simply understand the basic energy production process at the paper mills before applying the law to the facts to reach a decision. The inquiry in this case focuses on a specialized industry, the paper mill industry, which can hardly be expected to present evidence limited to written form that effectively addresses all relevant questions an adjudicator may have regarding its equipment, processes, and entitlement to a credit. *Ogburn-Matthews*, 332 S.C. at 566, 505 S.E.2d at 606 (*citing Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)). The State Energy Office is also not a taxing agency and its institutional knowledge in tax, accounting, and financial matters is questionable. International Paper cannot determine the tax and accounting principles applied by the State Energy Office, relevant to the costs associated with the installation of the equipment, without cross-examining witnesses. Finally, the ever-changing "policies" of the State Energy Office applicable to the credit, apparently developed after the filing of International Paper's 2010 application, must be brought to light in these proceedings. International Paper must be able to question the State Energy Office on the development and application of these alleged policies on the record, as applied not only to International Paper but to other tax credit applicants seeking certification of the same credit for the same tax periods from the State Energy Office. In sum, International Paper will suffer grave deprivation and relevant facts would go undiscovered without the right to a trial-type hearing.

The state's interest in this case, including the function involved and the fiscal and administrative burdens that the trial-type hearing would entail, is no different from that present in all tax disputes in South Carolina. In a tax dispute governed by the Revenue Procedures Act, (1) a taxpayer requests a credit by filing its tax return; (2) the Department of Revenue issues a proposed assessment if it disagrees with the claimed credit; (3) the taxpayer may then protest the proposed assessment to the Department of Revenue; (4) the Department of Revenue considers the protest and communicates with the taxpayer; (5) the Department of Revenue issues a final decision if it does not agree with the taxpayer's protest; (6) the taxpayer may then appeal to the Administrative Law Court for a trial-type hearing; and (7) appeal rights from the Administrative Law Court are provided to both parties. *See* S.C. Code §§ 12-60-10 *et seq*. As this case involves a tax dispute, the same rights afforded to taxpayers in other tax disputes should also be provided here, and that can only be the case if a trial-type hearing is provided prior to an appeal to this Court. Notably, the State Energy Office has already essentially assumed all burdens of a trial-type hearing. The parties have been preparing for a trial-type hearing since International Paper filed a request for a contested case hearing some nineteen (19) months ago on March 24, 2011. International Paper and the State Energy Office have exchanged thousands of pages of documents through discovery requests and begun and concluded the depositions of many witnesses in the case. The State Energy Office has received all of International Paper's documentation supporting the claimed credit for 2010 and 2011, and has already deposed and cross-examined Petitioner's proposed witnesses in these cases.[8] In short, there are no significant fiscal and administrative burdens that a trial-type hearing would impose on the State Energy Office.

[8] Respondent scheduled and completed the oral depositions of all key witnesses identified by International Paper in its Pre-Hearing Statements filed with the Court, except for Phil Lazzari whose deposition was scheduled by the parties but cancelled the day before the deposition by counsel for Respondent.

Weighing the three factors articulated in *Ogburn-Matthews* leads to the conclusion that the State Energy Office should have provided International Paper with a trial-type hearing.[9] The interests of International Paper are strong, the burdens on the government are limited, and the likelihood of an erroneous decision without a trial-type hearing is great.

International Paper has been prejudiced by the actual administrative procedures used by the State Energy Office. Article I, Section 22 required the State Energy Office to implement hearing procedures that (1) provided adequate notice; (2) an adequate opportunity for hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003). The State Energy Office did not (1) provide notice to International Paper of its position prior to issuing its determinations; (2) provide any opportunity for hearing; (3) provide any opportunity to introduce evidence in response to the position taken in the determinations; or (4) the right to confront or cross-examine factual and expert witnesses relied upon to evaluate International Paper's applications.

2. *Impartial Adjudicator*

Due Process requires a hearing before an impartial adjudicator. *See, e.g., Babcock Center, Inc. v. Office of Audits*, 286 S.C. 398, 402, 334 S.E.2d 112, 114 (1985) ("Due process of course requires a hearing before an impartial decision maker..." *citing Woodland Nursing Home Corp. v. Weingberger*, 411 F.Supp. 501 (S.D.N.Y. 1976)); 73A C.J.S. *Public Administrative Law*

[9] Even if it is determined that International Paper does not meet the standard articulated in *Ogburn-Matthews*, South Carolina law still requires a testimonial hearing where matters turn on questions of fact. When important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. *Brown v. State Bd. of Educ.*, 301 S.C. 326, 329 391 S.E.2d 866, 867 (1990) (*citing Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)). The Court has also held that the right to confrontation (of witnesses) applies in the civil context as well. *Id.* (*citing South Carolina Dep't of Social Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995); *In re Vora*, 354 S.C. 590, 600, 582 S.E.2d 413, 418). At a minimum, the State Energy Office in this case should have provided "an opportunity to be heard by the Agency; that is to submit [its] position and [its] comments for consideration by the Agency, with opportunity to respond to opposing views before a final determination [was] made." *Ogburn-Matthews*, 332 S.C. at 565, 505 S.E.2d at 605. No opportunity to respond to the State Energy Office views has ever been provided.

and Procedure, § 265 (2004) ("An administrative proceeding should be conducted by an impartial officer free of bias, hostility, and prejudgment."). The same persons who perform both the investigative, prosecutorial, and adjudicative functions within the same agency are presumed to be honest and fair unless it is shown "under a realistic appraisal of psychological tendencies and human weakness, conferring both functions on the same individuals poses such a risk that it is likely to violate due process." *Garris*, 333 S.C. at 444, 511 S.E.2d at 54.

The State Energy Office did not provide International Paper a fair hearing concerning its credit applications, or even an opportunity to respond to the State Energy Office determinations. If the Court determines that this case should be remanded for a hearing before the State Energy Office,[10] International Paper requests that the State Energy Office be ordered to identify an impartial adjudicator to conduct the hearing.

Given the proceedings before this Court, any State Energy Office staff who have been involved in this case, directly or indirectly, now pose too great a risk of bias to serve as an impartial adjudicator with respect to International Paper's 2010 and 2011 credit applications as the "will to win" has been institutionalized.[11] *See Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 69, 492 S.E.2d 62, 72 (1997) (Partiality exists where an adjudicator either has ex parte information as a result of prior investigation or has developed, by prior involvement with the case, a "will to win."). The staff of the State Energy Office have investigated and litigated this case for over nineteen (19) months. During this time, the staff and director of the State Energy Office have

[10] The Court's authority to remand this case is discussed in Part IV, Record on Appeal.
[11] If the State Energy Office had provided a fair hearing in early 2011 when International Paper's first application was filed, a State Energy Office employee could have potentially been an impartial adjudicator.

developed trial positions and strategies designed to support the denial of International Paper's applications.[12]

A hearing required in a case of administrative action need not be before the administrative body or a member of it. 73A C.J.S. *Public Administrative Law and Procedure*, § 264 (2004). Since the State Energy Office, unlike other state agencies,[13] may not have any hearing officers, it may be appropriate for an adjudicator outside of the State Energy Office to be designated to ensure that the adjudicator is in fact impartial.

IV. Record on Appeal

ALC Rule 36.B. states that the record on appeal shall consist of:

1. All pleadings, motions, and intermediate rulings;
2. All evidence received or considered;
3. A statement of matters judicially noticed;
4. All proffers of proof of excluded evidence;
5. The final order or decision which is subject to review;
6. The transcript of the testimony taken during the proceeding.

S.C. Code § 1-23-600(E) indicates that cases heard in this Court's appellate jurisdiction should be heard in the same manner prescribed by S.C. Code § 1-23-380. S.C. Code § 1-23-380(3) allows a party to request leave to present evidence and, if granted, allows the agency to modify its findings and decisions by reason of the additional evidence. S.C. Code § 1-23-380(4) requires review to be confined to the record, but gives the court authority to remand a case to an

[12] The Director of the State Energy Office, Ashlie Lancaster, has been directly involved in this case. She has submitted affidavits, is listed as a witness by the State Energy Office, and has personally attended all depositions in this case.

[13] *See, e.g.*, S.C. Code Reg. § 114-130(e)(1) (hearing officers preside over South Carolina Department of Social Services hearings); S.C. Code Reg. § 47-51(C) (hearing officers preside over South Carolina Department of Employment and Workforce claims for benefits).

agency for action the court considers appropriate if there are irregularities in procedure before an agency. S.C. Code § 1-23-380(5) authorizes the Court to reverse or modify an agency decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

a. in violation of constitutional or statutory provisions;

b. in excess of the statutory authority of the agency;

c. made upon unlawful procedure;

d. affected by other error of law;

e. clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

f. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Due to the procedural infirmities in proceedings, the parties may not be able to agree on the contents of the record. The parties have exchanged thousands of pages of documents and some, but not all, witnesses have been deposed to-date by the parties. Absent a remand, International Paper would submit that the record in this case should consists of at least:

1. all documents exchanged by the parties which are deemed relevant by each party;

2. all substantive pleadings and motions in this case to date; and

3. all tax credit certifications issued by the State Energy Office and related information; and

4. such additional evidence that may be necessary for International Paper to establish the facts which would have been presented through testimony of witnesses.[14]

Since such a proposed record would consist of additional documents exchanged after the issuance of the State Energy Office's original March 1, 2011 determination in response to International paper's 2010 application, the review of the matter by this Court should be based on the State Energy Office's initial and amended 2010 determinations, as well as State Energy Office's initial and "amended" determinations for 2011. In lieu of the preceding method of developing a record, the Court may also remand this matter to the State Energy Office with specific instructions to hold a trial-type hearing and how this hearing should be held.

V. Conversion of Contested Case to Appeal

International Paper believes that the Court may also convert a request for a contested case hearing to an appeal by granting Petitioner leave to move and amend its request for a contested case hearing to a notice of appeal from an agency's final decision. ALC Rule 18(C) states that any pleading, paper, or document can be amended at any time upon motion and for good cause shown, unless the amendment would substantially prejudice any other party in the presentation of its case. Pursuant to ALC Rule 11 International Paper requested contested case hearings in response to the State Energy Office's final determinations on March 25, 2011 and March 2, 2012. The court consolidated these cases on May 1, 2012. The request for a contested case hearing is analogous to a summons and complaint filed in South Carolina Circuit Courts. *See*

[14] The questioning of counsel for Respondent when deposing International Paper witnesses suggests that the State Energy Office may argue that International Paper has not provided sufficient documentation to verify certain equipment costs. International Paper has repeatedly offered, both prior to filing and after filing applications, to provide additional cost verification (estimated to consist of thousands of pages). The State Energy Office determinations do not indicate that lack of verification is a basis for denying the credit and the issue therefore appears irrelevant. However, if the State Energy Office is permitted to argue as an alternative that the credit should be denied due to lack of cost verification then International Paper should be allowed to supplement the record with such verification.

SCRCP 4 and 7. ALC Rule 11(B) requires that a petitioner must serve a copy of the request for a contested case hearing upon each party and affected agency in accordance with ALC Rule 5. International Paper contends that the request for a contested case hearing is a pleading for which ALC Rule 18(C) may apply since it serve the request upon the State Energy Office and its counsel.

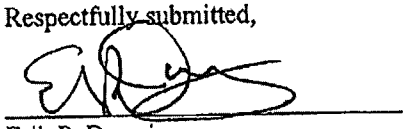
In the event the Court determines that it does not have *de novo* jurisdiction but does have appellate jurisdiction, Petitioner requests leave to amend its request for contested case hearing to notice of appeal pursuant to Rule 18(C). There is good cause for the court to grant leave to International Paper to amend its pleading. International Paper and the State Energy Office have proceeded since 2011 under the assumption that the request for a contested case is hearing is proper. ALC Rule 33 states that any notice of appeal which is incomplete or not in compliance with this rule will not be assigned to an administrative law judge until all required information is received and the filing fee is processed. The Court may therefore grant leave to International Paper to amend its request for a contested case hearing to a notice of appeal to comply with the procedures in Rule 33.

VI. Conclusion

International Paper requested that the State Energy Office certify costs it incurred for the purchase and installation of equipment for the tax credit under S.C. Code § 12-6-3620. International Paper sought to comply with all requests and procedures of the State Energy Office in the application process and thereafter. The State Energy Office procedures did not provide International Paper with adequate notice and a meaningful opportunity for hearing as required by Article I, Section 22. International Paper filed a request for a contested case hearing with this Court to obtain a meaningful opportunity for hearing. International Paper believes that this

Court has jurisdiction under S.C. Code § 1-23-600(A) to hear this matter *de novo*. If this Court determines that it does not have *de novo* jurisdiction, however, the Court should determine that it has appellate jurisdiction. In its appellate capacity the Court may: (1) review the record in this case (which will need be determined either through consent of the parties or separate proceeding) and based upon such record modify or reverse the decisions of the State Energy Office as necessary because they were made upon unlawful procedure, affected by an error of law, erroneous in view of the evidence, and made pursuant to an unwarranted exercise of discretion; or (2) remand this case to the State Energy Office with instructions requiring the State Energy Office to provide International Paper a trial-type hearing before an impartial adjudicator where International Paper may present evidence to dispute the original and amended State Energy Office determinations.

Respectfully submitted,



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October 29, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	Docket No. 12-ALJ-30-0086-CC **PETITIONER'S MEMORANDUM IN RESPONSE TO RESPONDENT'S SECOND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Respondent State Energy Office ("State Energy Office") filed a Motion to Dismiss on October 3, 2012 alleging that the "Budget and Control Board, State Energy Office," is not an executive agency subject to the jurisdiction of the South Carolina Administrative Law Court under Title 1, Chapter 23. On October 15, 2012, Petitioner International Paper Company ("International Paper") filed a responsive Memorandum in Opposition to Respondent's Motion to Dismiss for Lack of Jurisdiction. The Court held a hearing on the Motion to Dismiss on October 17, 2012. The State Energy Office filed a Memorandum in Support of Motion of Dismiss at the October 17, 2012 hearing. The Court allowed International Paper until October 29, 2012 to file a supplemental response to the State Energy Office's Motion to Dismiss. The Court, *sua sponte,* subsequently requested both parties to also address specific issues related to the Court's jurisdiction in these proceedings.

On October 29, 2012 International Paper filed Petitioner's Supplemental Memorandum in Opposition to Respondent's Motion for Lack of Jurisdiction ("Petitioner's Supplemental Memorandum"). On October 29, 2012 the State Energy Office filed Respondent's Second Memorandum in Support of Motion to Dismiss ("Respondent's Second Memorandum"). Respondent's Second Memorandum was not limited to the issues addressed in Petitioner's Supplemental Memorandum, or to the specific issues requested by the Court to be addressed

related to its jurisdiction in the proceedings, but raised new issues. Specifically, the State Energy Office now argues, for the first time in Respondent's Second Memorandum, that International Paper "abandoned the process" provided by the State Energy Office. This response to Respondent's Second Memorandum is confined to the State Energy Office's new allegations of abandonment of administrative process.

Abandonment of State Energy "Process"

Respondent's Second Memorandum seeks to portray the State Energy Office as having a "process" that International Paper voluntarily abandoned when the State Energy Office reviewed International Paper's 2010 application for a credit under S.C. Code § 12-6-3620 (Supp. 2011) ("Biomass Resource Credit").[1] The Respondent does so by ignoring the statutory requirements of S.C. Code § 12-6-3620, alleging that it had an administrative hearing or review "process" in place applicable to the 2010 credit application, making incomplete and misleading factual representations concerning International Paper's 2010 application, and by completely ignoring the actions of Respondent in evaluating International Paper's 2011 Application for Biomass Resource Credit.[2]

Respondent should have made a certification decision by March 1st pursuant to S.C. Code § 12-6-3620, provided notice of any available "process," described relevant communications between the State Energy Office and International Paper relating to the preparation, filing, and evaluation of International Paper's 2010 application, and addressed the

[1] Respondent's Second Memorandum does not claim that International Paper abandoned any "process" relating to International Paper's 2011 Application for Biomass Resource Credit.

[2] Respondent also alleges that an alleged denial of due process cannot now be raised. This is not a case involving an issue that was not raised to a trial judge. Additionally, the issue of due process is being raised by International Paper now in response to Respondent's Motion to Dismiss. Due process requirements would be met if this case is heard in the *de novo* jurisdiction of the Court because International Paper would have a meaningful opportunity for hearing where it could respond to the position of the State Energy Office. If this case is heard in the appellate jurisdiction of the Court, an amendment to the requests for a contested case hearing will be necessary and the amended pleading will specifically raise the failure to provide adequate due process.

"process" used to review International Paper's 2011 application. When these factors are properly considered, they show that International Paper did not abandon any alleged "process" or administrative procedures for review.

Although the issue of abandonment of process has no bearing on this Court's jurisdiction, the issue is relevant to the determination of whether to remand this case pursuant to S.C. Code § 1-23-380(4) (Supp. 2011) if the Court determines that it has appellate, not *de novo*, jurisdiction.[3]

1. **S.C. Code § 12-6-3620**

S.C. Code § 12-6-3620(D)(1) (Supp. 2011) requires a taxpayer to submit a request for credit to the State Energy Office by January 31st. The State Energy Office then **"must notify the taxpayer** that it qualifies for the credit and the amount of the credit allocated to the taxpayer **by March first of that year."** *Id.* (emphasis added).

The State Energy Office has developed an application form, SC SCH. ETC-50, used by taxpayers to apply for the credit under S.C. Code § 12-6-3620. No other published information is provided by the State Energy Office on the credit under S.C. Code § 12-6-3620.[4] *See* State Energy Office website, http://www.energy.sc.gov/index.aspx?m=1&t=5 (last visited October 30, 2012).

The State Energy Office application form, SC SCH. ETC-50, states that the "...State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit

[3] If the Court were to determine that International Paper abandoned a process International Paper would seek leave to present additional evidence pursuant to S.C. Code § 1-23-380(3). If granted, the practical effect is the same as remanding this matter because the Court can order that additional evidence be presented to the State Energy Office and the State Energy Office may then modify its findings and decision.

[4] The State Energy Office, however, has seen fit to publish guidance on other credits, including guidelines and documentation requirements. For the credit under S.C. Code § 12-6-3600, the State Energy Office has published an application, ETC-40: Application for Ethanol or Biodiesel Production Credit, and guidelines, ETC-40 Guidelines. *See* State Energy Office website, http://www.energy.sc.gov/index.aspx?m=1&t=5 (last visited October 30, 2012). For the credit under S.C. Code § 12-6-3610, the State Energy Office has published an application, ETC-41: Application for Renewable Fuels Property Credits, guidelines, ETC-41: Guidelines, and a documentation spreadsheet, ETC-41: Documentation.

allocated to the taxpayer by March first..." Exhibit 1, 2010 and 2012 Forms SC SCH. ETC-50.[5] The State Energy Office application forms do not indicate that the March 1st deadline can be extended.

Despite the express language of S.C. Code § 12-6-3620 requiring the State Energy Office to notify a taxpayer that it qualifies for the credit and the amount of the credit by March 1st, acknowledged in the State Energy Office's own forms, the State Energy Office alleges that some "further steps, investigation or review would have been given to the IPC application for the tax credits" if it had provided additional information in response to the State Energy Office's request for additional information made in its March 1, 2011 decision.[6] *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 19. The State Energy Office does not illuminate what these unarticulated and unpublished "further steps...or review" may be.

2. State Energy Office "Process"

The State Energy Office has alleged that it had a review process involving "dialogue and exchange of information between the Energy Office and the taxpayer." *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 11.

The State Energy Office application forms do not describe any "process" used by the State Energy Office when reviewing an application. The State Energy Office application forms do not describe any procedures available if a taxpayer disagrees with the position of the State Energy Office. Nor does the State Energy Office website describe any process for reviewing applications or appealing a decision. *See* State Energy Office website,

[5] The 2012 application form is the form used to apply for a credit for the 2011 tax year.
[6] This representation appears to be a farce designed to give the illusion of a process. The March 1, 2011 decision simply requested substantiating documents and did not indicate that any process could continue in any meaningful way. Also, as discussed in Petitioner's Response in Opposition to Respondent's Motion to Dismiss dated December 28, 2011, the Department of Revenue, not the State Energy Office, is the agency that appears to be tasked with substantiating costs under S. C. Code § 12-6-3620.

http://www.energy.sc.gov/index.aspx?m=1&t=5 (last visited October 30, 2012). Finally, the 2010 and 2011 State Energy Office decisions issued to International Paper in these case do not describe any procedures for discussing, appealing, or reviewing a certification decision. In short, the State Energy Office has no administrative review or appeal "process" in place, never notified or communicated any such process to International Paper (or from anything in the public domain, any other taxpayer for that matter), and there is no evidence to the contrary.

Adequate notice is a fundamental principle of administrative law and due process. *See S.C. Ambulatory Surgery Center v. S.C. Workers' Compensation Comm'n*, 389 S.C. 380, 391, 699 S.E.2d 146, 152 (2010); C. Koch, 2 Administrative Law and Practice § 5:32 (3d ed.). No information has ever been provided to International Paper concerning the State Energy Office "process." International Paper was incapable of abandoning a process that it did not know existed and the State Energy Office was required to inform International Paper of any available process to comply with the requirements of due process. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972) ("For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'" (citations omitted)); *Bliek v. Palmer*, 102 F.3d 1472 (8th Cir. 1997) (failure to describe all available procedures in notice violated due process).

3. State Energy Office Factual Representations

The State Energy Office begins its abandonment argument by making much ado about the date International Paper filed its application, January 31st.[7] *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 14. The State Energy Office then suggests

[7] January 31st is the last day for filing an application to claim the cost to purchase and install equipment through December 31st of the preceding year. Notably, the State Energy Office also waited until the last day to certify, March 1st.

that International Paper could have submitted 6,000 documents with its application. *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 14. Next, the State Energy Office cites the testimony of Tracy Bolger out of context to support the proposition that International Paper made a unilateral decision not to submit information which was required by the application form because the law did not mandate that the information be provided. *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 14. Finally, the State Energy Office observes that International Paper did not provide the information requested in the March 1, 2011 decision. *Respondent's Second Memorandum in Support of Motion to Dismiss*, p. 14.

The State Energy Office fails to describe the relevant communications that occurred with respect to the review of International Paper's 2010 credit application in an effort to portray International Paper as a taxpayer who blithely went through the application process without forethought or regard to the specific requests of the State Energy Office. When all relevant facts are considered, instead of the few chosen by Respondent, it is clear that International Paper directly and repeatedly communicated with the State Energy Office in advance of filing its 2010 credit application, provided the information requested by the State Energy Office representative and manager who was the principal point of contact for the 2010 application, and International Paper continued to provide all information requested by the State Energy Office, even after the filing of the 2010 application.

In late 2009 Tracy Bolger (International Paper's state income tax analyst) spoke with John Clark (then Director of the State Energy Office) regarding the Biomass Resource Credit. Exhibit 2, (Bolger, p. 4, ln. 14 – 20). Mr. Clark did not provide any information regarding the credit. *Id.* In the spring of 2010, Mrs. Bolger first spoke with Ms. Myers (State Energy Office

Manager of Renewable Energy Programs) regarding the credit under S.C. Code § 12-6-3620. Exhibit 2, (Bolger, p. 12, ln. 18 – p. 13, ln. 7). Erika Myers was International Paper's point of contact at the State Energy Office and told Tracy Bolger that she was the authority on S.C. Code § 12-6-3620. Exhibit 2, (Bolger, p. 20, ln. 6 – 21; p. 25, ln. 15 – 20). Erika Myers was familiar with the papermaking process and the energy processes at paper mills. Exhibit 2, (Bolger, p. 13, ln. 8 – 13); *see also* Exhibit 3, July 29, 2008 Letter from E. Myers to J. Tiencken, Jr. regarding black liquor.[8]

Tracy Bolger notified Erika Myers of International Paper's intent to file a 2010 application for Biomass Resource Credit related to equipment added to International Paper's Georgetown and Eastover South Carolina facilities. Exhibit 4, (Aff. of Bolger, § 9).[9] International Paper had not applied for a Biomass Resource Credit previously. Exhibit 4, (Aff. of Bolger, § 6). Mrs. Bolger offered to arrange an inspection of International Paper's facilities to discuss the Biomass Resource Credit and provide State Energy Office representatives with the opportunity to inspect equipment, ask questions, and receive any additional information they needed in order to evaluate the equipment for purposes of the Biomass Resource Credit. Exhibit 4, (Aff. of Bolger, § 9).

On December 9, 2010, Mrs. Bolger requested that Ms. Myers call her to discuss how Ms. Myers would like the plant inspection to be arranged, and how long she expected the tour to take so that plant engineering staff could be made available to help with showing improvement projects and the equipment used at the facility. Exhibit 4, (Aff. of Bolger, § 14, Ex. F). Mrs. Bolger also asked how Ms. Myers would wish to see information presented on International

[8] Erika Myers maiden name is Hartwig.
[9] The affidavit of Tracy Bolger was previously submitted to the Court with Petitioner's Response in Opposition to Respondent's Motion to Dismiss dated December 28, 2011.

Paper's fixed asset additions (the equipment subject to the claimed credit) or projects of a certain dollar amount. Exhibit 4, (Aff. of Bolger, § 14, Ex. F).

Mrs. Bolger and Ms. Myers were unable to speak on December 10, 2010, but did speak by phone on December 13, 2010 concerning what equipment listings and reports Ms. Myers needed for purposes of the Georgetown facility inspection. Exhibit 4, (Aff. of Bolger, § 16).

On January 11, 2011 Mrs. Bolger emailed Ms. Myers offering to provide her with project cost summaries for the equipment at the Georgetown facility inspection, as well as a memo giving a description of the project and a listing of the equipment for each project and the equipment cost. Mrs. Bolger offered to provide cost detail summaries. Exhibit 4, (Aff. of Bolger, § 20, Ex. I).

On January 13, 2011 Ms. Myers emailed Mrs. Bolger in reply to her January 11, 2011 email, thanking Ms. Bolger for all of her follow-up and stating that the production of project memos should be sufficient for the Georgetown facility inspection, and if there are any components for which Ms. Myers had specific questions she would coordinate after the tour and get additional back-up material. Exhibit 4, (Aff. of Bolger, § 21, Ex. J).

Following Ms. Myers' January 13, 2011 email, Mrs. Bolger sent her equipment improvement and upgrade lists including descriptions and project explanations for the Georgetown facility. Exhibit 4, (Aff. of Bolger, § 22).

The Georgetown facility inspection was held on January 26, 2011. Asset/equipment and related cost information for equipment was provided to the State Energy Office. Exhibit 4, (Aff. of Bolger, § 24).

On January 31, 2011 International Paper filed an application for Biomass Resource Credit for tax year 2010 ("2010 Application"). Erika Myers told Tracy Bolger that invoices and

ePADs (extensive internal project memoranda) should not be provided initially due to their voluminous nature. Exhibit 2, (Bolger, p. 73, ln. 14 – p. 74, ln. 2). International Paper understood that it was providing all information requested by the State Energy Office with the 2010 Application. Exhibit 5, (Shands, p. 26, ln. 12 – p. 27, ln. 11). [10]

On January 31, 2011, Mrs. Bolger participated in a conference call with Roberts Shands and herself on behalf of International Paper, and Erika Myers and Ralph Jenkins on behalf of State Energy. During the call, Erika Myers requested additional information concerning steam production at International Paper's facilities in Georgetown and Eastover. Exhibit 4, (Aff. of Bolger, § 26).

On February 16, 2011, Mrs. Bolger provided additional information to the State Energy Office through email to Ms. Myers containing comparative steam production data for 2009 and 2010 at both the Georgetown and Eastover facilities, as well as information concerning the percentage yields of paper fibers to biomass energy from dry logs at both the Georgetown and Eastover facilities. Mrs. Bolger also responded to specific questions from Ms. Myers concerning certain equipment identified in the Application. (Aff. of Bolger, § 27, Ex. L).

On February 16, 2011 Erika Myers emailed Ashlie Lancaster (Director of State Energy Office) to let her know that she was "planning to request more substantial documentation on all of these figures, unless you think this is sufficient." Exhibit 6, February 16, 2011 email from E. Myers to A. Lancaster. The State Energy Office, however, did not request any additional information from International Paper prior to the issuance of its March 1, 2011 credit certification.

[10] Notably, the 2010 application form requests a wide variety of information, including the equipment manufacturer, length of warranty, the country from where the equipment will be purchased, and the duration equipment is expected to be used. The March 1, 2011 State Energy Office decision requests none of this information.

On March 1, 2011 the State Energy Office issued its decision, responding to the 2010 Application. (Aff. of Bolger, § 28, Ex. M). The decision requested that International Paper provide substantiating documents to confirm its expenditures, the percentage of feedstock that went to the black liquor recovery boiler, and documentation to show the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.

On March 25, 2011 International Paper filed a request for a contested case hearing before the Court seeking a determination that the State Energy Office failed to correctly certify that International Paper's equipment as claimed in its 2010 Application qualified for the Biomass Resource Credit.

On December 14, 2011 the State Energy Office filed a motion to dismiss this case, alleging that the State Energy Office previously did not receive sufficient information from International Paper to render a final agency decision as required by S.C. Code § 12-6-3620 and further alleging that it had received information through discovery in the case and desired to issue what it considers to be a final agency decision. On March 14, 2012, pursuant to this Court's March 5, 2012 order, the State Energy Office issued an amended final decision to International Paper. The amended decision did not request any further information.

The forgoing facts demonstrate that International Paper communicated with the State Energy Office in advance of filing its 2010 credit application, provided the information requested by the State Energy Office manager who was the principal point of contact with the 2010 application, and continued to provide information requested by the State Energy Office even after its application had been filed.

3. **2011 International Paper Application**

On January 31, 2012 International Paper filed an Application for Biomass Resource Credit for the 2011 tax year with the State Energy Office related to costs incurred by International Paper for the purchase and installation of equipment necessary and integral to the process of creating heat and steam from a biomass resource (the "2011 Application"). The 2011 Application is not mentioned at all in Respondent's Second Supplemental Memorandum in Support of Motion to Dismiss.[11] or Respondent's Memorandum in Support of Motion to Dismiss.

On March 1, 2012 the State Energy Office denied International Paper's 2011 Application, certifying none of the requested credits. The State Energy Office did not communicate with International Paper prior to denying the 2011 Application. On March 2, 2012 International Paper filed a request for a contested case hearing before the Court seeking a determination that the State Energy Office failed to correctly certify that International Paper's equipment as claimed in its Application qualified for the Biomass Resource Credit. On March 20, 2012, after International Paper had filed its request for contested case proceeding and without any further order or approval of this Court, the State Energy Office issued an "amended" decision applicable to the 2011 Application.

Respondent's Second Memorandum does not address or even discuss the 2011 Application, its initial decision made March 1, 2012, and subsequent "amended" decision issued March 20, 2012. The reasons why are readily apparent. The State Energy Office's alleged administrative "process" was not followed when reviewing the 2011 Application and the predicate for arguing that International Paper failed to pursue the available process in 2010 is

[11] The 2011 Application is also not mentioned at all in Respondent's Memorandum in Support of Motion to Dismiss.

undermined by the amended 2011 decision the State Energy Office issued after International Paper filed a request for a contested case hearing relating to its 2011 Application.

The State Energy Office's alleged "process" of dialogue and exchange was not followed when it reviewed International Paper's 2011 Application. There was no dialogue whatsoever during the review process of the 2011 Application, and the State Energy Office decision did not provide an opportunity to continue dialogue beyond March 1st (as the State Energy Office believes it has the authority to do).[12]

The predicate the State Energy Office uses to argue that International Paper abandoned the "process" relating to the 2010 application after March 1, 2011 is that "...its jurisdiction and ability to proceed with its continuing review was ended by Petitioner's filing for a contested case hearing with this Court." *Respondent's Second Memorandum*, p. 11, fn. 10. However, the State Energy Office amended its 2011 decision after International Paper filed a request for a contested case hearing. For unknown reasons, the State Energy Office did not feel compelled to cease review of International Paper's 2011 application after a contested case request was filed, but did in 2010.

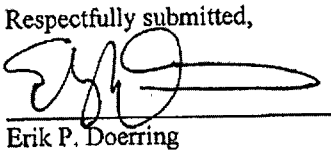
Conclusion

The State Energy Office's argument that International Paper somehow abandoned administrative procedures the State Energy Office allegedly would have offered after March 1, 2011 is without merit. The State Energy Office has never notified International Paper, directly

[12] The stated basis of denial for the 2011 tax credit certification decision was, among others, that a direct correlation between individual projects and an increase in energy production could not be established. While Respondent states that "[i]f sufficient information is not initially provided, it may be requested (as was done in this case)[,]" the State Energy Office did not request that International Paper provide any information concerning the correlation of individual projects and an increase in energy production. *Respondent's Second Memorandum*, p. 12-13. Had the State Energy Office done so, International Paper could have provided additional information to show that there was a direct correlation between a $9 million project at its Eastover facility for 2011 and a specific increase in biomass-fueled energy creation from the equipment installed at this project. Given the acrimony between International Paper and the State Energy Office that has developed in this case, it is perhaps not surprising that the State Energy Office had no desire to meaningfully consider International Paper's 2011 application.

or indirectly, that the State Energy Office has a process of any kind that would give International Paper an opportunity to respond to the State Energy Office's review of its applications. International Paper provided all information relating to its 2010 application as requested by the State Energy Office. The State Energy Office did not contact International Paper at all to discuss International Paper's 2011 application. Without further communication, notice or procedural instructions from the State Energy Office after the issuance of its March 1, 2011 and March 1, 2012 credit certification denials, International Paper thereafter sought a hearing with this Court for the opportunity to respond to the State Energy Office's denial of the tax credit certifications.

Respectfully submitted,



Erik P. Doerring
Jeffrey T. Allen
McNair Law Firm, P.A.
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Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
edoerring@mcnair.net
jtallen@mcnair.net
Attorneys for Petitioner

October 31, 2012
Columbia, South Carolina

EXHIBIT 1

STATE ENERGY OFFICE

APPLICATION FOR BIOMASS RESOURCE CREDIT

Under Code Section 12-6-3620

SC SCH. ETC-50
(UPDATED 10/09)
2010

Name as Shown on Tax Return	Fed EI No.
Mailing Address	Contact Person
STREET	Contact Person's Title
CITY COUNTY STATE ZIP	Telephone Number ( )
Physical Address	Fax Number ( )
STREET	Email
CITY COUNTY STATE ZIP	

1. Has the taxpayer applied for and/or received the biomass resource credit under S.C. Code 12-6-3620 in prior tax years? If yes, please list the tax years and the amount of the credit received.

2. Give a description of the project including:
   - what the energy will be used for;
   - duration the equipment is expected to be used at the facility;
   - name and location of company installing the equipment;
   - name and location(s) where the equipment will be installed; and
   - type of biomass feedstock
   - did the facility maintain an average of 90 percent biomass feedstock over the tax year?

   Be as specific as possible and attach additional pages if necessary.

3. List purchase price of equipment and installation costs needed to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of at least 90% biomass resource. Include:
   - name, type, and cost of the equipment;
   - manufacturer of equipment;
   - length of warranty for equipment (if applicable);
   - what state or country the equipment will be purchased from;
   - for electricity production how many MW capacity the system will produce and on average how many kWh will produce per year. For thermal energy how many therms the system will produce

RFRP9812-62

and on average how many decatherms the system will produce per year. For any equipment that is displacing electricity or thermal energy, how many units of energy is it displacing;
- cost for labor and installation charges;
- cost for shipping; and
- other relevant costs (if applicable).

Be as specific as possible and attach additional pages if necessary.

For assistance with this form, contact the State Energy Office at (803) 737-8030.

Date

Signature of Officer (or other appropriate official)

Print Officer's Name

Title

Mail To: State Energy Office
ATTN: Renewable Energy
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

NOTE: All claims generated between July 1, 2008 and December 31, 2009 must be received by January 31, 2010. The State Energy Office will send the Department of Revenue the maximum amount the taxpayer may claim. The State Energy Office will then notify each taxpayer of the maximum amount of credit allowed. Any unused part of the actual credit amount can be carried forward for up to 15 years.

General Information

Section 12-6-3620. For taxable years beginning after 2007, and ending before taxable year 2020, there is allowed a credit against the income tax imposed pursuant to Section 12-6-530 or license fees imposed pursuant to Section 12-20-50, or both, for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. The credit may be claimed in the year in which the equipment is placed in service and may be claimed for all expenditures incurred for the purchase and installation of the equipment. A taxpayer may use up to six hundred fifty thousand dollars of credit for a single taxable year. The tax credit is nonrefundable but unused credits may be carried forward for fifteen years.

To obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the

RFRFP 81-0263

credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

The period from July 1, 2008 through December 31, 2009

For the state's fiscal year beginning July 1, 2008, the maximum amount of the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009. Attach the State Energy Office letter of certification or keep with your tax records if filing electronically.

NOTE: If a facility stops using biomass resources as at least 90% of its primary fuel source, any unused credit is suspended until the facility resumes using biomass resources as at least 90% of its fuel source. A suspension of unused credit does not extend the 15-year carryforward period.

Definitions:

A "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

A "commercial use" is a use intended to generate profit.

The State Energy Office reserves the right to request more information from the taxpayer if deemed necessary.

RPTEP 8192464

STATE ENERGY OFFICE

APPLICATION FOR BIOMASS RESOURCE CREDIT

Under Code Section 12-6-3620

SC SCH. ETC-50
(UPDATED 1/2012)
2012

Name as Shown on Tax Return	Fed EI No.
Mailing Address	Contact Person
STREET	Contact Person's Title
CITY COUNTY STATE ZIP	Telephone Number ( )
Physical Address	Fax Number ( )
STREET	Email
CITY COUNTY STATE ZIP	

1. Has the taxpayer applied for and/or received the biomass resource credit under S.C. Code 12-6-3620 in prior tax years? If yes, please list the tax years and the amount of the credit received.

2. Give a description of the project including:
   - what the energy will be used for;
   - duration the equipment is expected to be used at the facility;
   - name and location of company installing the equipment;
   - name and location(s) where the equipment will be installed; and
   - type of biomass feedstock
   - did the facility maintain an average of 90 percent biomass feedstock over the tax year?

   Be as specific as possible and attach additional pages if necessary.

3. List purchase price of equipment and installation costs needed to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of at least 90% biomass resource. Include:
   - name, type, and cost of the equipment;
   - manufacturer of equipment;
   - length of warranty for equipment (if applicable);
   - what state or country the equipment will be purchased from;
   - for electricity production how many MW capacity the system will produce and on average how many kWh will produce per year. For thermal energy how many therms the system will produce

and on average how many decatherms the system will produce per year. For any equipment that is displacing electricity or thermal energy, how many units of energy is it displacing;

- cost for labor and installation charges;
- cost for shipping; and
- other relevant costs (if applicable).

Attach documentation such as invoices, paid receipts, and spreadsheets. Be as specific as possible and attach additional pages if necessary. The SC Energy Office maintains the right to schedule a site visit prior to approval.

For assistance with this form, contact the State Energy Office at (803) 737-8030.

Date

Signature of Officer (or other appropriate official)

Print Officer's Name

Title

Mail To: State Energy Office
ATTN: Renewable Energy
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

NOTE: All claims generated between January 1, 2011 and December 31, 2011 must be received by **January 31, 2012**. The State Energy Office will send the Department of Revenue the maximum amount the taxpayer may claim. The State Energy Office will then notify each taxpayer of the maximum amount of credit allowed. Any unused part of the actual credit amount can be carried forward for up to 15 years.

General Information

Section 12-6-3620. For taxable years beginning after 2007, and ending before taxable year 2020, there is allowed a credit against the income tax imposed pursuant to Section 12-6-530 or license fees imposed pursuant to Section 12-20-50, or both, for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. The credit may be claimed in the year in which the equipment is placed in service and may be claimed for all expenditures incurred for the purchase and installation of the equipment. A taxpayer may use up to six hundred fifty thousand dollars of credit for a single taxable year. The tax credit is nonrefundable but unused credits may be carried forward for fifteen years.

To obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of

credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

Attach the State Energy Office letter of certification or keep with your tax records if filing electronically.

NOTE: If a facility stops using biomass resources as at least 90% of its primary fuel source, any unused credit is suspended until the facility resumes using biomass resources as at least 90% of its fuel source. A suspension of unused credit does not extend the 15-year carryforward period.

Definitions:

A "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

A "commercial use" is a use intended to generate profit.

The State Energy Office reserves the right to request more information from the taxpayer if deemed necessary.

EXHIBIT 2

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

- - -

INTERNATIONAL PAPER COMPANY, Petitioner,	:	CASE NO.:
vs.	:	12-ALJ-30-0086-CC
SOUTH CAROLINA STATE ENERGY OFFICE, Respondent.	:	

- - -

Thursday, September 27, 2012

- - -

ORAL DEPOSITION OF TRACY BOLGER, taken at the McNair Law Firm, 1221 Main Street, Suite 1800, Columbia, South Carolina, commencing at 1:55 p.m., before Tami I. Watters, a Registered Professional Reporter and Notary Public.

- - -

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29201
803-212-0012

Electronically signed by Tami Watters (001-226-651-5075) f03fc61a-a272-48a0-bfe2-5a203cb258ca

A No.

Q Now, one of the things you can't do is nod your head in a deposition because she can't take down the nods, so you have to say yes or no or whatever answer you want to give, all right?

A All right.

Q Tell me about due diligence you did.

A What specifically would you like to know?

Q Everything. If we're here until tomorrow noon listening to you, that's fine.

I'd like to know everything you did with respect to due diligence in this matter.

A Okay.

Q What did you do?

A I called the State Energy Office in late '09, talked to Mr. Clark and asked him about what the requirements were for the credit. And he really didn't know anything about it and didn't get very far. Didn't get an application from him, didn't get anything from him.

And then we got into our yearend busy season and picked that matter back up again in the spring at which time I somehow got in contact with Erika.

And we had lengthy discussions about the

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Q Robert assigned it to you?
A Robert assigned it to me.
Q And that was in '09?
A The fall of '09.
Q I'm sorry?
A The fall.
Q Oh, the fall --
A The fall. Late '09.
Q What did you do about it at that time?
A I looked up the statute, tried to find -- I went to the South Carolina Department of Energy website, tried to see if there was any information about it and called up and talked to Mr. Clark.

And, at that point, I didn't really get any further information than I found in the statute or the website.

Q Okay. And what was the next thing you did with regard to the statute?
A That would have been in the following year when I contacted, again, the website. And somehow I either called up there and they directed me to Erika -- I somehow got to Erika. I don't know who told me to call Erika or transferred me to Erika.

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Maybe by the time I called up there, the receptionist, you know, when I asked about the credit, transferred me to Erika.

Q And when was that in 2010?

A That probably would have been early -- you know, March or April or somewhere in there.

Q And what did you learn from your contact with Erika at that time?

A That she was familiar with the papermaking process, paper mill process, the energy processes at paper mills, and she wanted me to walk her through the systems that we were qualifying.

Q Okay. Did you do that at that time?

A Yeah. And it was through several conversations.

Q Let's walk through it right now. Tell me about that system that you're talking about qualifying.

Tell me what you told Erika, or at least what you described to her.

A Just how -- how we make electricity or how we make steam.

Q Here's what I'd like you to do: You just told me you walked her through the system.

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organic?

A Yeah, and other organic materials.

Q And you knew that at the time you submitted this application?

A Yes.

Q And that was your understanding and belief as to why it fit --

A It was also my understanding and belief it fit because Erika said it did.

Q What ability does Erika have to change the terms of a statute?

A It was her interpretation working with me.

Q Okay.

A She was the authority. She said, "I wrote it. I developed it, I know what it is."

So I -- who am I to say to her that she doesn't know what she's talking about?

Q So you took her interpretation of it and that became your interpretation?

A Yes.

Q And she told you that it will be admissible -- you could consider it a biomass resource under other organics, even though it had noncommercial wood?

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both be sold, right? Correct?

A Sure.

Q So they don't qualify as noncommercial wood, do they?

A No. But they are an organic material.

Q So they qualify for other organic materials?

A Yes, they do.

Q And that is the position of International Paper on this application; is that right?

A Yes, it is. And it is also the agreement that I had with Erika.

Q Where's Erika?

A I don't know. Where is she?

Q What was she?

A What was she?

Q Yeah.

A She was the point of contact and the authority on this credit. She never said that there was -- she wasn't the authority.

Q So you relied upon what Erika told you and --

A And she understood what we did because she had another client that was also doing the same thing.

Electronically signed by Tami Watters (001-226-651-5075)

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A It appears to be, yes.
Q Well, do you remember receiving it?
A I --
Q Or composing it?
A Yeah.
Q So you composed it?
A I did.
Q What did you say in number three? Would you read that for me, please?
A "We also need to attach invoices for all the equipment we submit with the application. Once I have a listing of which equipment qualifies, I can go to FileNet and get the invoices."
Q So November 15th 2010, you recognized that invoices had to be provided as part of the application?
A We knew that. But we also were finding out as time went on that the quantity of invoices and the method for obtaining those invoices would be voluminous, and Erika didn't want all that.
Q So she told you not to submit that?
A Yeah. We have an e-mail that says, you know, hold off.
Q Hold off submitting information required by the application or hold off submitting what you

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were calling ePADs?

A Both, cost and ePAD.

Q Okay. Who is Gary Warner?

A He was an SAP -- he's our accounting IT guy.

Q Now, I think you told me who Donna was. And Cassandra Lester, who was that?

A She works with Donna.

Q Would you have sent an e-mail saying the South Carolina Energy Office was reviewing the credits and that they need invoices for any equipment purchased over $5,000?

A Yeah, I saw that e-mail. I sent that e-mail.

Q So you did write saying that?

A I wrote that.

Q But subsequent to that, you're saying that you were told don't bother?

A That it was too much, yeah.

Q In November, did you ask Brian Fender out of the Eastover plant whether you thought the improvements displaced any non-biomass energy?

A What?

Q Here, this will help refresh. This is IP_1913.

Electronically signed by Tami Watters (001-226-651-5075) f03fc61a-a272-48a0-bfe2-5a203cb258ca

EXHIBIT 3

Domtar Paper Company, LLC
Marlboro Mill
585 Willamette Road
PO Box 678
Bennettsville, SC 29512
Tel.: (843) 479-0200
Fax: (843) 479-0608

Domtar

July 2, 2008

Dr. John Clark, Director
South Carolina Energy Office
1201 Main Street, Suite 430
Columbia, South Carolina 29201

Dear Dr. Clark:

We are writing on behalf of Domtar, a major North American pulp and paper manufacturer with 15 pulp and paper facilities in the United States and Canada, including an integrated pulp and paper mill in Bennettsville (Marlboro Mill.)

Domtar is contemplating the installation of a steam turbine generator at Marlboro. In addition, modifications will be made to an existing biomass (waste wood) boiler and other changes will be made to allow the Marlboro Mill to generate a significant amount of electricity. If this project proceeds, it would be the latest example of near continuous investment in the facility, keeping the Marlboro Mill a true world class paper mill and one of the most modern in North America.

In addition to an existing biomass boiler, the Marlboro Mill utilizes a "recovery boiler" to burn wood lignin (the "glue" that binds wood fiber into trees) and recovers spent pulping chemicals for re-use in the pulping process.

During the kraft pulp process, wood chips are introduced into a pressure vessel with caustic soda, heat and pressure added. During this pulping process, the lignins that bind the wood fiber are partially dissolved, thereby liberating the remaining wood fiber. Wood fiber is then washed, oftentimes bleached and later will be used in the manufacture of paper. The remaining liquid, containing dissolved lignins is processed to evaporate water and condense the material, and is now known as black liquor. Concentrated black liquor is then fired in a recovery boiler to produce energy, with the chemical residue able to be reconstituted for re-use in a future pulping cycle.

In the pulping process, wood fiber is broken down with value added to the fiber when it is manufactured into pulp and the lignins are burned to supply heat for steam production.

Dr. John Clark
July 2, 2008
Page two

Domtar is aware of Section 12-6-3620, Code of Laws of South Carolina where "biomass resource" is defined to mean "wood, wood waste, agricultural waste, animal waste, sewage, landfill gas, and other organic materials." During the process organic wood fiber is separated into two components, with organic material (wood fiber) being manufactured into pulp and organic material (lignin) being used for energy production.

The recognition of black liquor as a biomass resource is widespread. Section 1301 of the Energy Tax Incentives Act of 2005 (P.L. 109-58 added "any nonhazardous lignin waste material" the definition of open-loop biomass and Section 402(b) of the Gulf Opportunity Zone Act of 2005 (P.L. 109-135 amended the definition of open-loop biomass to include "any lignin material, thus making it clear that the federal government views lignins as a biomass material." Many states have similar determinations.

Domtar seeks a determination from your Department that black liquor qualifies as a biomass resource, and therefore electricity generated from steam produced from burning black liquor will qualify for tax credits available to those producing electricity from burning biomass, as well as biomass incentive payments.

Finally, we are attaching two documents that seek to provide further clarity to the subject. The first attachment is a brief, non-scientific explanation of the recovery process. The next attachment is further explanation of the qualities of black liquor and energy potential provided by the lignin material.

Thank you for your time and attention to this important matter.

Sincerely,

Bill Edwards, Vice President and General Manager
Marlboro Mill

Thomas Howard, Vice President
Government Relations

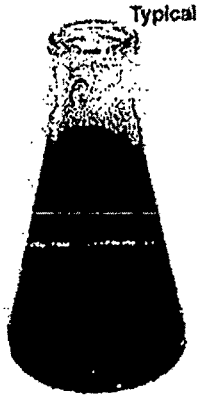
RP 8193-711

Domtar

What is Black Liquor?

Black liquor is a recycled byproduct formed during the pulping of wood in the papermaking industry. In this process, lignin is separated from cellulose, with the latter forming the paper fibers. Black liquor is the combination of the lignin residue with water and the chemicals used for the extraction. Black liquor represents the fifth largest source of energy in the country and is burned in a recovery boiler. The boiler produces steam and electricity and recovers the inorganic chemicals for recycling throughout the process.

From the Forest Encyclopedia Network



Typical black liquor analysis

Agent	Content
Na	19 3
K	3 34
S_{tot}	5 50
Cl_2	0 41
S^{2-}	1 93
NaOH	1 1
CO_3^{2-}	8 2
Na_2SO_3	0 1
$Na_2S_2O_3$	2 13
Na_2SO_4	1 23
C	31 9
H	3 33
N	0 08

Calorimetric heat value, HHV 12 74 (MJ/kg dry solids)

Black Liquor

White liquor is a solution of caustic chemicals, such as sodium hydroxide, that is added to wood chips in Kraft and sulfite pulping processes to dissolve lignin and release celluloso fibers from wood. The fibers are then washed, and the resulting slurry of water, caustic chemicals and dissolved lignin is called black liquor. Black liquor is recycled in a process that gives off heat energy, carbon dioxide, and recoverable chemicals. These chemicals need only a 10 percent supplement of additional caustic chemicals to become white liquor again (Larson and Raymond 1997).

Nearly 47 million dry tons of black liquor is produced annually and is typically recovered as part of the pulping process (BEES 2001). The liquor is created and consumed in recovery boilers on-site. The steam that is generated during the black liquor recovery process contributes significantly toward meeting the energy needs of pulp and paper mills. In addition, some chemicals can be recovered from the liquor and through recycling can reduce the pulping process chemical needs by almost 90 percent.

RP 819-3-712

Black Liquor



Wikipedia, the free encyclopedia

A Black Liquor Sample

Black liquor is a byproduct of the Kraft process, (also known as Kraft pulping or sulfate process) during the production of paper pulp. Wood is decomposed into cellulose fibers (from which paper is made), hemicellulose and lignin fragments. Black liquor is an aqueous solution of lignin residues, hemicellulose, and the inorganic chemicals used in the process.

The invention of the recovery boiler by G.H. Tomlinson in the early 1930s, was a milestone in the advancement of the Kraft process. Most Kraft pulp mills adopted this technology to recover and burn much of the black liquor, generating steam and recovering the "cooking chemicals" (sodium hydroxide and sodium sulfide used to separate lignin from the cellulose fibers needed for papermaking). This enhancement not only managed to deal with pollution load reduction and chemical recovery increase but also made it possible for Kraft pulp mills to become largely energy self sufficient. In efficient recovery boiler mills the amount of energy is more than necessary to run the process and the surplus can be sold. Approximately 7 tons of black liquor (15% solids by weight of which 10% is inorganic and 5% is organic) is produced in the manufacture of one ton of pulp. Pulp mills producing 1,000 ton of pulp per day and more are common.

By 2000, most Kraft mills recovered 99.5% or more of the black liquor, and purified the remainder in biological treatment plants, reducing the environmental impact of the waste waters below the level of scientific significance.

RP 819-3-713

Black liquor recovery: how does it work?

By Magnus Marklund (ETC)

Black liquor (BL), a by-product of the papermaking process, is an important liquid fuel in the pulp and paper industry. It consists of the remaining substances after the digestive process where the cellulose fibres have been cooked out from the wood. In figure 1 a simple schematic description of the pulping process is shown.

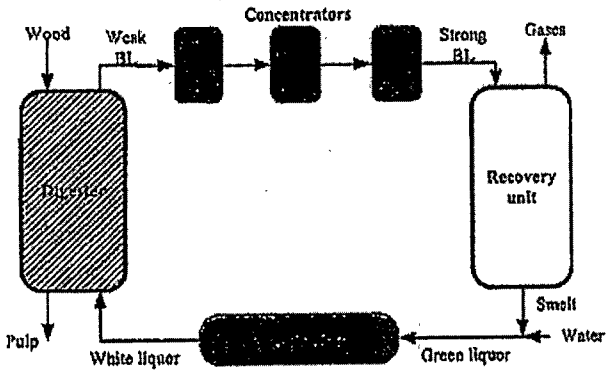


Figure 1: Schematic description of the pulping process.

Wood chips are fed into a digester. An aqueous solution, white liquor, flows through the digester and neutralises the organic acids in the chemical matrix of the wood. The lignin and other organic material, which contributes to about half of the mass of the wood, dissolves into the white liquor and exits the digester as weak black liquor. The remaining material, pulp, consists of wood fibres and is used in the papermaking process.

The weak black liquor has a solid content of approximately 15% by weight, which is far too low for combustion. To raise the solid content in the liquor it is being evaporated by a sequence of concentrators. When the resulting strong black liquor reaches the recovery unit (boiler or gasifier) it has a solid content of around 75%. In this unit the black liquor converts some of its chemical energy either by full (recovery boiler) or partial (gasifier) combustion of the liquor which yields an inorganic smelt and gases. The composition of the smelt and gases differ depending on which type of recovery technology that has been used. Most of the chemicals in the smelt that leaves the recovery unit is then led back into the pulping process as white liquor after a couple of recovery processes (e.g. causticizing).

Chemically, black liquor is a mixture of several basic elements where the largest fractions are carbon, oxygen, sodium and sulphur. Results from an elemental analysis done by SP, Sveriges Provnings- och forskningsinstitut, on a dryblack liquor sample is given in table 1. The sample was taken from AssiDomän Kraftliner in Piteå in January 2000.

Table 1: Elemental analysis of a black liquor (dry solids) sample.

Element	w/w (%)
C	36.40
Na	18.60
S	4.80
H	3.50
K	2.02
Cl	0.24
N	0.14
O (by diff.)	34.30
TOTAL	100.00

This report is aimed to provide a comparison of the recovery boiler with a pressurised gasifier for black liquor. Fundamentals concerning the conversion of black liquor, some details about the two recovery technologies and differences between these two will be presented.

Conversion of black liquor

In order to convert the chemicals and energy in the black liquor in an efficient way, the black liquor has to be atomised to droplets and sprayed into the recovery unit in some way. Independent of choice of either a recovery boiler or a gasifier the conversion stages of the black liquor droplets are mainly the same.

As the black liquor droplets enters the recovery unit they are being exposed for hot gases and will undergo drying, pyrolysis and char conversion. During these stages the droplets undergo morphological changes which lead to changes in both the heat transfer and aerodynamic properties of the droplets. In figure 2 these three main stages are shown graphically.

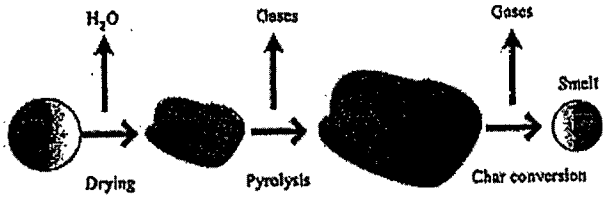


Figure 2: Conversion stages of a black liquor droplet.

First the black liquor droplet dries and loses its contained moisture. The rate at which the material dry is controlled by the heat transfer, thus the droplets will dry faster at higher temperature. Then the droplet goes through a pyrolysis stage where the organic matter in the liquor degrades, forming various gaseous compounds from volatile substances. The rate at which the gases are formed is controlled by the heat transfer rate to a droplet where a low oxygen content will increase the the time for pyrolysis [Frederick 1990]. The resulting gases from pyrolysis are mainly H_2, CO, CH_4, TRS-gases (Total Reduced Sulphur), CO_2, H_2O and some heavier carbonates [Grace 1992]. The result is a swollen porous char particle, which contains about 25% non-volatile organic coal material and about 75% inorganic salts (Na_2CO_3, Na_2S, Na_2SO_4 and corresponding potassium salts). The charcoal is the main frame

and the salts are in liquid form [Hupa et al. 1994]. At this stage the droplet volume might have increased by as much as 30 times the original volume [Grace 1992]. This is the case for liquors coming from a sulfate mill. For liquors coming from a sulfite mill the swelling is much less [Forssén et al. 2000]. The final stage is char conversion, during which mostly gas phase species react with organic constituents in the char particle, converting them into gaseous species. The main reactions that convert the carbon in the char particle are [Grace 1994]

$$C + \tfrac{1}{2}O_2 \rightarrow CO, \quad (1)$$
$$C + O_2 \rightarrow CO_2, \quad (2)$$
$$C + CO_2 \rightarrow 2CO, \quad (3)$$
$$C + H_2O(g) \rightarrow CO, \quad (4)$$
$$C + \tfrac{1}{2}Na_2SO_4 \rightarrow CO_2 + \tfrac{1}{2}Na_2S, \quad (5)$$

and

$$C + \tfrac{1}{2}Na_2SO_4 \rightarrow CO + \tfrac{1}{2}Na_2S \quad (6)$$

where reaction 3 and 4 are dominating. If the O_2-concentration is low compared to CO_2 and $H_2O(g)$ then most of the oxygen will be consumed by combustion of gases surrounding the particle and the char combustion will be dependent on the gasification reactions, (3) and (4).

At the end of the char conversion stage the droplet (particle) is impoverished of coal and collapse to a small droplet of smelt that consists, in the ideal case, only of inorganic material. The diameter of the droplet is now about half the original diameter [Hupa et al. 1994] and consists mainly of Na_2S and Na_2CO_3 (plus Na_2SO_4 and NaCl) in ionized form.

Recovery boiler

Recovery boilers used today are mostly of the Tomlison type (figure 3) and acts both as a high-pressure steam boiler and as a chemical reactor with reductive and oxidative zones.

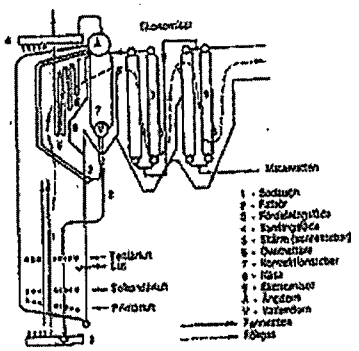


Figure 3: A schematic drawing of a conventional recovery boiler (descriptions in Swedish).

Black liquor (~120°C) are sprayed into the boiler (~900°C) by, so called, liquor guns right below the tertiary air register. The droplets then go through the first two conversion stages (drying and pyrolysis) very quickly before they, mostly before the end of total conversion, fall onto a bed of char at the bottom of the boiler. Here, the conversion is completed before the smelt exits by a channel through the boiler wall. The resulting combustible gases are burned completely by the different air registers along the wall of the boiler. This produces steam in the surrounding water pipes of the boiler, over heaters and economiser. The steam is then used in other mill processes and to run a steam turbine in order to produce electrical energy.

The different conversion zones and layers in the char/smelt bed in a recovery boiler can be seen in figure 4 (left picture) as well as some of the corresponding chemistry (Right picture).

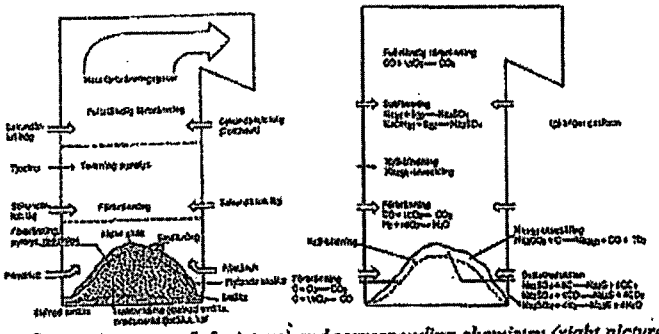


Figure 4: Conversion zones (left picture) and corresponding chemistry (right picture) in a recovery boiler.

Black liquor gasification

During the last decade, extensive efforts have been made in order to develop alternative recovery technologies based on black liquor gasification to supplement and/or replace the conventional recovery boiler. One of the major driving forces for the interest in black liquor gasification is the possibility of using the product gas for combined-cycle power generation. Studies have indicated that this has the potential for a significant increase in the amount of electrical power that can be produced from the black liquor.

Black liquor gasification processes convert the organic substances in the liquor into combustible fuel gases (e.g. H_2, CH_4, CO, etc) and the inorganics into compounds suitable for regeneration of pulping chemicals. The heat necessary to drive the gasification process is derived from partial combustion of the fuel gas or some other fossil fuel. The proportion of the black liquor fuel value consumed in meeting this heat requirement is an important process variable.

The black liquor gasifier processes that has been under development can mainly be broken down into three general types as follows [Grace et al. 1995]:

1. Partial combustion in short-residence-time entrained-flow reactors,
2. Partial combustion in long-residence-time fluidized beds,
3. Steam gasification in indirect heated fluidized beds.

The most successful process in each of these types have been the Chemrec process, the ABB process and the TRI (MTCI) process, respectively. For the moment are only the Chemrec process and the TRI process ready to introduce commercialised units. Chemrec AB has their atmospheric booster as a supplement to a recovery boiler for an increased capacity and TRI (ThermoChem Recovery International) has their PulseEnhanced Steam Reforming unit for mid-sized black liquor recovery applications.

Maybe the most promising technology is Chemrec's pressurised black liquor gasification process (PBLG) with an integrated combined cycle for power generation. This technology is not ready to be commercialised however a lot of R&D effort is made for that purpose. At the laboratory of Energy Technology Centre (ETC) in Piteå, Sweden, a pressurised black liquor gasification unit, is under construction. This new, world unique unit (owned by Chemrec) will form the basis for a development program of a full-scale commercial unit and bring Sweden to the front of the research in black liquor gasification. Brief descriptions of this gasification plant and the gasification process are presented below.

The PBLG unit consists mainly of two parts (figure 5), a gasifier and a counter-current condensor.

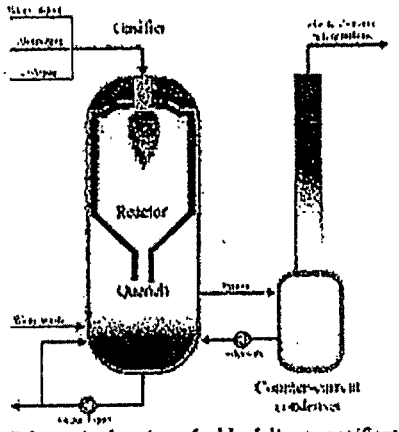


Figure 5: Schematic drawing of a black liquor gasification plant.

The gasifier can be split into two parts. Apart from the reactor in the upper part, a quench-cooler is placed in the lower part. At the top of the reactor black liquor is sprayed into the hot environment (~1000°C) through nozzles together with oxygen. The droplets first dries and devolatilize due to the heat and some of the resulting fuel gas mix and burn with the under-stoichiometric amount of oxygen. The amount of oxygen supplied is an important process variable and should be as small as possible since it is favourable with a high heating value on the resulting gas for use in a combined cycle.

Finally the resulting char is gasified mainly through reactions (3) and (4) before it leaves the reactor as inorganic (ideally) smelt. Since gasification of char is a relatively slow process it is

important with high enough residence times for the droplets in order to prevent organic material in the resulting smelt.

To prevent the reactor from being overheated and severely corroded a cooling screen, consisting of water pipes placed around it, can be used. Other wise is the reactor mostly constructed by some ceramic material.

The quench-cooler is needed for separation of the products exiting the reactor (gases and smelt). The exiting gases from the reactor first passes through the counter-current condenser where some volatile substances are condensed and then further on to a cleaning process before the gas can be used in a gas turbine.

Comparison

The investment cost for a full-scaled PBLG unit is estimated to be slightly higher than for a new conventional recovery boiler [Wamqvist et al. 2000]. However, pressurised black liquor gasification with an integrated combined cycle (BLGCC) has the potential to double the amount of net electrical energy for a kraft pulp mill compared to a modern recovery boiler with a steam turbine [Axegård 1999]. For more closed systems with less need of steam, this increase in electrical energy will be even higher.

Another advantage with the PBLG process is the increased control of the fate of sulphur and sodium in the process that can be used to improve the pulp yield and the quality for the mill. This control is very important for the green liquor quality and is quite limited with a conventional recovery boiler. A disadvantage with gasification is that it will increase the causticizing load. However, BLG has a lower requirement for make-up saltcake compared to the recovery boiler.

Even though the PBLG process might have a lot of advantages compared to the recovery boiler there is still a number of uncertainties for this technology. These are not only chemical questions but also some mechanical and material (refractory) questions need to be answered before it can be taken into full use.

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STATE OF SOUTH CAROLINA
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COLUMBIA, SOUTH CAROLINA 29201
(803) 737-8030 FAX (803) 737-9846
www.energy.sc.gov

July 29, 2008

Mr. John H. Tiencken, Jr.
Tiencken Law Firm, LLC
234 Seven Farms Drive, Suite 113
Daniel Island, SC 29492

Mr. Tiencken:

I have received your letter and information regarding Domtar's plans to install a steam turbine generator and modification of an existing biomass (waste wood) boiler at the Marlboro Mill. I have noted your request for a determination from the South Carolina Energy Office about whether or not black liquor qualifies as a 'biomass resource'. Given that the federal government recognizes lignin as a biomass material per the Gulf Opportunity Zone Act of 2005, we accept black liquor as a recognized biomass resource eligible for South Carolina incentives including the biomass energy equipment tax credit and biomass energy incentive payments.

The South Carolina Energy Office is in the process of generating an application form Domtar will need to fill out with details about the biomass energy equipment they intend to purchase and use for the production of biomass energy as well as costs associated with the installation of the equipment. These expenses will need to be approved by the South Carolina Energy Office prior to claiming the biomass energy equipment tax credit through the South Carolina Department of Revenue. The South Carolina Energy Office anticipates that this application form will be finalized no later than September 30, 2008.

The South Carolina Department of Revenue is in the process of finalizing tax forms TC-50 (biomass energy equipment credit) and L-2201 (biomass energy incentive payment) and should have those available in the near future. One of my colleagues will notify you when the South Carolina Energy Office application form and the South Carolina Department of Revenue form become available.

Thank you for your interest in promoting renewable energy development in South Carolina and please let me know if you have additional questions.

Sincerely,

Erika Hartwig
South Carolina Energy Office

RP 819-3-749

EXHIBIT 4

Affidavit of Tracy Bolger with Exhibits
See R-I at 63-132

EXHIBIT 5

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

- - -

INTERNATIONAL PAPER COMPANY, Petitioner,	:	CASE NO.:
	:	12-ALJ-30-0086-CC
vs.	:	
SOUTH CAROLINA STATE ENERGY OFFICE, Respondent.	:	

- - -

Thursday, September 27, 2012

- - -

ORAL DEPOSITION OF ROBERT EUGENE SHANDS, III, taken at the McNair Law Firm, 1221 Main Street, Suite 1800, Columbia, South Carolina, commencing at 10:10 a.m., before Tami I. Watters, a Registered Professional Reporter and Notary Public.

- - -

EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29201
803-212-0012

Electronically signed by Tami Watters (001-226-651-5075)
bacdeacf-bbf1-4213-8586-40b1dc60316a

experience that I had at Georgetown.

Q So did you ever have any of these conversations that you're referring to personally?

A Which ones specifically?

Q Like the mill visit. Who did you talk to?

A I was at the mill visit, yes, sir.

Q I understand you were there. Who did you talk to?

A That was Erika Myers who was the person that was heading up the mill visit.

Q And you wrote a confirming letter saying the application doesn't -- we don't have to follow the application?

A No. There's no confirming letter.

Q Any kind of confirming notes that you wrote memos between yourself or memos to your vice president saying, "We don't have to pay attention to what's on the application because we've talked to Erika Myers and she's waived a whole bunch of things"?

A No. We were trying to rely on the State Energy Office to determine what they -- what they needed in order to process the application and to help us identify -- or there to be some type of

Electronically signed by Tami Watters (001-226-651-5075) bacdoacf-bbf1-4213-8586-40b1dc60316a

agreement in regards to what qualified.

Q Who gave you the idea or where did you learn that Erika Myers had authority to waive any requirements of the law or of the application?

A Oh, I -- we -- I mean, she was the individual that I understood was the manager of that particular process.

Q And --

A Now, the waiving of it, all I can say is my understanding is we were supplying what was requested of us for this application.

Q Well, you say you were supplying what was requested. Well, where is the manufacturer of the equipment?

A Right.

Q Where is that?

A Yeah. That's not included.

Q Now, when the Energy Office refused to certify your request for the tax credit in this case, had they -- did they at that time -- had they asked you for additional information?

A And when you're saying refused the request, are you --

Q Any time.

A Well, the first application, the request

EXHIBIT 6

Oops! Just saw the calendar invite so need to resend the call-in number. Sorry! Catching up from the few days out of the office.
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

From: Myers, Erika
Sent: Tuesday, February 08, 2011 4:55 PM
To: Lancaster, Ashlie
Subject: FW: International Paper 2010 SC Biomass Credit Application

Ashlie,
Per our earlier conversation, here is the tax credit form from International Paper. We will need to determine what percentage of these costs actually qualify under the SC Biomass Equipment Tax Credit. Many of these installations were replacing old and aging components of the black liquor cycle as part of the Recovery Boiler, but Ralph and I have concerns that some of it does not fall under the intent of the law.
It would be great to have General Council review this application with us and help us determine what may and may not qualify.
Thank you,
Erika

Erika H. Myers
Manager, Renewable Energy Programs
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Columbia, SC 29201
(803) 737-7951 - direct
(803) 737-9846 - fax
emyers@energy.sc.gov

From: Myers, Erika
Sent: Wednesday, February 16, 2011 4:43 PM
To: Jenkins, Ralph; Lancaster, Ashlie
Subject: FW: International Paper Biomass Energy Credit application questions from Conference call
Importance: High

Ralph and Ashlie,
Looks like the steam production increases were not as high as they originally projected. Obviously we are not counting the increases from the power boilers, so that leaves a very small percentage increase from the recovery boilers. I am planning to request more substantial documentation on all of these figures, unless you think this is sufficient. Also she still doesn't answer the question about what percentage of the water used in the new water feed boiler pumps go specifically to the recovery boilers at Eastover or Georgetown.

Please let me know if you have additional items you would like me to request.

Thank you,
Erika

Erika H. Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
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(803) 737-9846 - fax
amyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Wednesday, February 16, 2011 4:21 PM
To: Myers, Erika; Jenkins, Ralph
Cc: Robert E Shands
Subject: International Paper Biomass Energy Credit application questions from Conference call

Erika & Ralph,

Below is information you requested in our previous conference call.

1. Steam Production in Decatherms (Dth):
   Eastover

	2009	2010
Recovery Boiler #1	2,890,800 Dth	3,022,200 Dth
Recovery Boiler #2	6,132,000 Dth	6,280,900 Dth
Power Boiler #1	2,540,400 Dth	2,505,400 Dth
Power Boiler #2	2,330,200 Dth	2,461,600 Dth
Total Steam Production	13,893,400 Dth	14,270,100 Dth

   Georgetown

	2009	2010
Recovery Boiler #1	2,718,100 Dth	2,761,300 Dth
Recovery Boiler #2	2,659,300 Dth	2,667,800 Dth
Power Boiler #1	2,676,300 Dth	2,878,600 Dth
Power Boiler #2	3,520,500 Dth	3,609,400 Dth
Total Steam Production	11,574,200 Dth	11,877,100 Dth

2. The percentage yields of paper fibers to biomass energy in a bone dry log are: 55% biomass energy and 45% paper fiber. These yields are consistent at both Eastover and Georgetown.

3. Eastover questions about certain fixed assets in the application:

   a. Project # 076910A746C – Sodium Analyzer (asset # 645113) – The equipment is treating the water before it is sent to both of the recovery and power boilers.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office, Respondent.	Docket No.: 11 - ALJ - 30 - 0192 - CC PETITIONER'S PREHEARING STATEMENT

Pursuant to the Court's Order for Prehearing Statements, Petitioner submits the following:

1. **Nature of Proceeding:**

   This is an appeal of a determination by the South Carolina State Energy Office ("Energy Office") which erroneously failed to certify that equipment identified in Petitioner's Application for Biomass Resource Credit qualified for the credit provided in South Carolina Code § 12-6-3620.

2. **Statutory provisions(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:**

   S.C. Code § 12-6-3620

   S.C. Code § 48-52-410

   S.C. Code § 1-23-505

   S.C. Code § 1-23-600

3. **Issues Presented for Determination:**

   Whether the equipment identified in Petitioner's Application for Biomass Resource Credit qualifies for the credit provided South Carolina Code § 12-6-3620?

4. **Action Requested of the Court:**

   Petitioner requests the Court to issue an order requiring Respondent to certify that the equipment identified in Petitioner's Application for Biomass Resource Credit qualifies for the credit provided in South Carolina Code § 12-6-3620.

5. **Summary of Facts to be Presented:**

Petitioner operates two paper production mills in South Carolina. Petitioner's Georgetown Mill began operating in 1937 and spans more than 900 acres. Petitioner's Eastover Mill was acquired in 1999 as part of the acquisition of Union Camp Corporation.

Both mills operate four boilers which produce 100% of the steam used to create electricity and supply heat to the production process. Over 95% of the mills' electricity needs are generated through the internal production of steam. Two of the boilers at each facility are internally referred to as power boilers. The other two boilers at each facility are internally referred to as recovery boilers.

Biomass fuel is used for both the power boilers and recovery boilers and represents more than 50% of the fuel for the power boilers and virtually 100% of the fuel used for the recovery boilers. The recovery boilers burn "black liquor" almost exclusively, while other boilers may burn bark (also biomass resource), tires, and other products.

Black liquor is derived from wood products. Wood consists of two primary elements, lignin and cellulose. On average, a dry log consists of 55% lignin and 45% cellulose. Cellulose is the fiber component of wood. Lignin functions as the glue that holds cellulose together to form wood. Lignin is an excellent fuel which yields more energy when burned than cellulose. In order for lignin to be used as a fuel, it must be separated from the cellulose, concentrated and then burned.

Attached as proposed Exhibit 1 is an illustration showing the process Petitioner undertakes at its mill facilities to create steam and electricity from biomass resources. The illustration is also numbered to show the major equipment elements involved in this process, as well as equipment that is not directly involved in the process of creating steam and electricity from biomass resources. Equipment necessary and integral to the process of creating steam and electricity from biomass resources is identified in green-colored icons, numbered 1, 3a, 4-15, while equipment not directly involved in this process is identified in brown-colored icons, numbered 2, 3b, and 16-32. The numerical identification of equipment in the illustration is used herein for reference.

Petitioner's process of generating energy and paper from biomass resources begins with the delivery of wood chips *(4)* or logs *(5)* from third-party suppliers. Wood chips are typically ready for processing when received; however, logs must be converted into chips of a specific size. Logs are removed from delivery trucks using a portable crane. The crane then loads the logs onto a conveyor which transports the logs to the debarker *(6)*. The debarker tumbles the logs in large drums to remove the bark. Next, the raw logs are sent through the chipper *(7)* to form wood chips.

Wood chips are next separated into their two primary elements, lignin and cellulose. To accomplish the bifurcation of wood chips into its two components of lignin and cellulose the chips are cooked in a chemical solution in large vats called digesters *(8)*. The digestion process can be either batch or continuous. The Eastover and Georgetown mills

use both digestion processes. In continuous cooking, wood chips together with a pre-heated mixture of white liquor (a solution of sodium hydroxide (NaOH) and sodium sulphide (Na_2S)) are added to the digester where they are cooked at high pressure for 1 – 1.5 hours. After cooking, the wood chips are converted into a watery mixture of weak black liquor (lignin and cooking chemicals) and cellulose fiber. The hot solution is extracted into a low-pressure tank where flash steam is generated for re-use in the continuous digester. In batch cooking, the digester is filled with chips, covered with white liquor, and then heated under high pressure for up to 3.5 hours. After the batch cooking is complete, the contents are discharged into a blow tank *(9)*.

After the wood chips have cooked the contents from the batch digestion blow tank *(9)* and/or the continuous digester *(8)* are sent to the brown stock washers *(10)* in order to begin the process of separating the lignin and cooking chemicals (weak black liquor) from the cellulose wood fiber. The brown stock washers consist of a series of spinning drums to extract the weak black liquor from the wood fibers. At this point in the process, the lignin and cooking liquids are sent to the evaporator *(11)* and the cellulose wood fibers are sent to the bleaching process *(16)*. The process of converting the cellulose wood fibers to paper continues through other equipment in the plant (identified in Exhibit 1 as equipment with brown-colored numerical icons, numbers 16-32) and is not further addressed herein.

Once the weak black liquor has been pumped through multiple evaporators, the liquid is concentrated from 15% solids to 50 - 75% solids to form strong black liquor. This concentrated black liquor is pumped to the recovery boiler *(12)* where it is further concentrated, sprayed into the furnace, and burned. Feed water is pumped first to the economizers where it is heated by flue gas. The pre-heated water then enters the water circulation system of the boiler. When black liquor is burned, pre-heated water is converted into high pressure steam. The superheated steam flows from the recovery boiler to a turbine generator plant (3a) where electricity is generated for use within the mill. The bi-product steam is further recovered and sent as heat to the dryers and other mill manufacturing processes.

Finally, the ashes (smelt) from the burned black liquor are dissolved in weak lime wash from the lime kiln to create weak green liquor. This solution is then pumped to the causticizer *(13)* where it is mixed with lime from the lime kiln *(14)* in order to facilitate the production of white liquor. The white liquor slurry is then pumped to the clarifier *(15)* where the lime mud is separated from the white liquor. The recovered lime mud is sent to the lime kiln *(14)* where it is regenerated and circulated back to the causticizer *(13)* for the creation of new white liquor. The white liquor is sent back to the digesters *(8)* as an essential part of the continuous cycle to separate the lignin and cellulose within wood chips.

South Carolina Code § 12-6-3620(A) provides a credit for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource.

Prior to submitting an Application for Biomass Resource Credit, Petitioner met with representatives of Respondent on various occasions in late 2010. Petitioner consulted with Respondent's representatives to determine what equipment should be included in the application. Specific dollar investment levels were not discussed. Respondent was helpful and communicative at this stage.

Petitioner submitted its Application for Biomass Resource Credit in January 2011 and included equipment placed in service in 2010 which was necessary and integral for the creation of energy from a biomass resource. Respondent ceased communicating with Petitioner at such time, perhaps surprised by the large investment figures.

Respondent then erroneously determined that: (1) "credits are only allowable for equipment that is directly in contact with biomass energy production equipment;" and (2) "allowable credits are for the creation of new biomass generation, and therefore the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements ... will be applied to calculate allowable credits."

South Carolina Code § 12-6-3620 by its express terms, applies to all equipment used to create energy. There is no limit to equipment directly in contact with biomass energy production equipment, or that the credit should somehow be limited to equipment used to create "new" energy. The term "directly in contact" or "new" are found nowhere in South Carolina Code § 12-6-3620. Neither the State Energy Office nor any other agency or court has issued any interpretive guidance regarding the biomass resource credit which suggests that the credit provided by South Carolina Code § 12-6-3620 is limited to equipment which comes into direct contact with a biomass resource or that "new" energy must be created.

6. **Summary of Motions:**

Petitioner does not anticipate filing any motions at this time.

7. **Proposed Witnesses and Exhibits:**

Witnesses:

Brian Fender – Eastover Mill Project Engineering Manager

Bob Lelasher – Eastover Mill Utilities Process Engineer

Phil Lazzari – Georgetown Mill Energy Champion

Alan Mynatt – Georgetown Power Business Unit Manager

Tracy Bolger – State Income Tax Analyst

Robert Shands – State Tax Manager

Exhibits:

Exhibit 1 – Rendering of Biomass Production Process

Exhibit 2 – Aerial Photograph of Georgetown Mill

Exhibit 3 – Aerial Photograph of Eastover Mill

Petitioner will supplement this prehearing statement as needed to identify any additional witnesses or exhibits that will be presented at trial.

8. **Statement Regarding Necessity for Discovery:**

Discovery is necessary in this case in order for Petitioner to ascertain Respondent's prior interpretations of the biomass resource credit and determine if any formal interpretational policies have been developed by Respondent.

9. **Estimated Length of Hearing:**

Petitioner estimates the length of the hearing to be 4 days. The length of the hearing may be reduced to 2 days if Petitioner and Respondent are able to stipulate facts concerning costs and functions of Petitioner's equipment.

10. **Dates of Unavailability:**

September 14, 2011; November 3 – 4, 2011; December 12 – 26, 2011

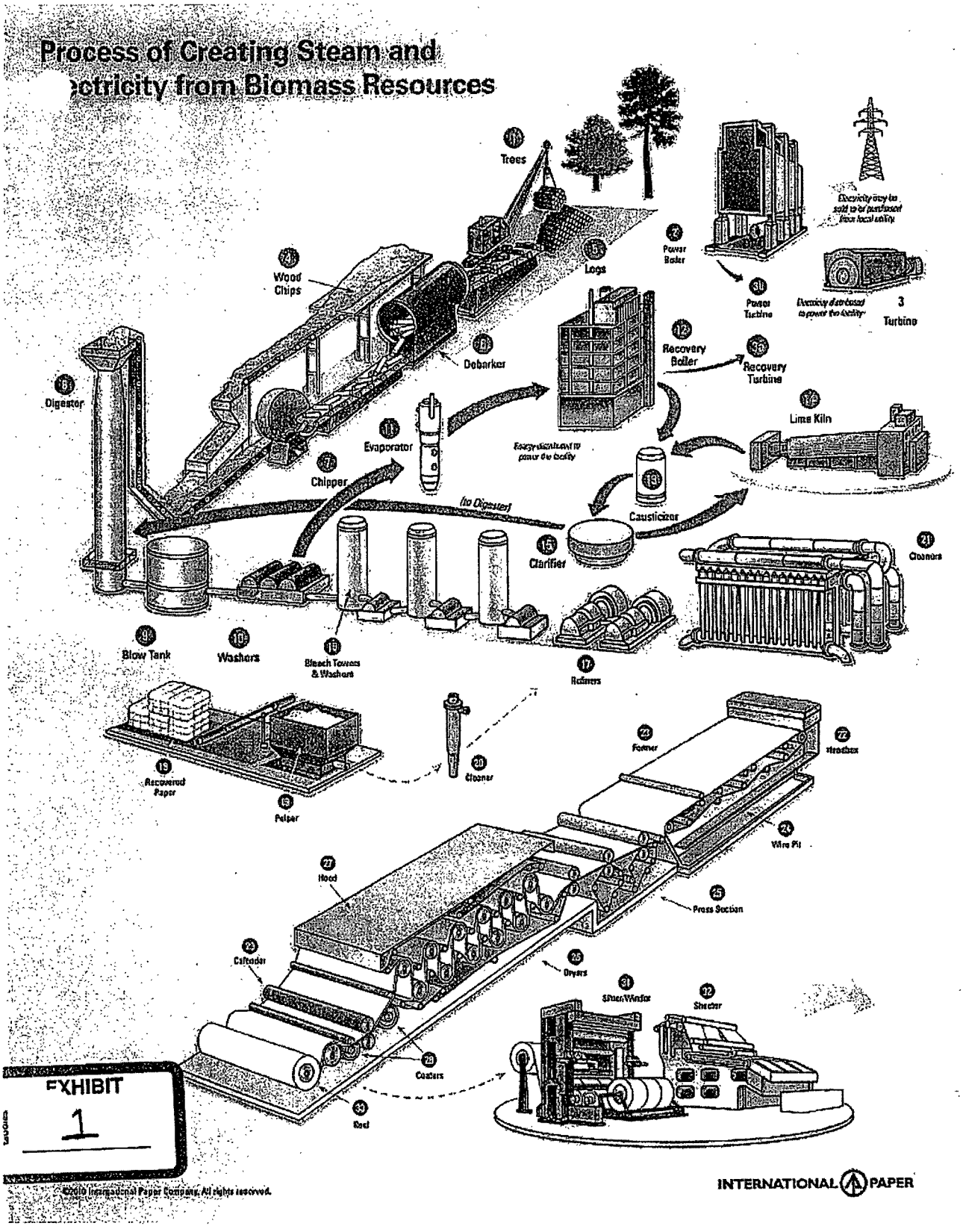
Respectfully submitted,

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August 15, 2011
Columbia, South Carolina

COLUMBIA 1045636v1



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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	)	**DOCKET NO. 11-ALJ-30-0192-CC** **RESPONDENT'S PREHEARING STATEMENT**

Pursuant to the court's requirement for Prehearing Statements, the Respondent South Carolina Budget and Control Board, State Energy Office, hereby files this Prehearing Statement:

1. **The nature of this proceeding:**

On March 5, 2011 the International Paper Company ("IPC") filed a request for a contested case hearing before the Administrative Law Court. IPC contends that the South Carolina State Energy Office ("Energy") improperly refused to certify that IPC was entitled to an energy tax credit based upon an expenditure of $22,064,014.16.

The IPC application for certification of the $22,064,014.16 expenditure was received by Energy on January 28, 2011. Energy replied to IPC on March 1, 2011 indicating concerns with the request and seeking additional information. Not having received a final decision from Energy by March 5th, IPC filed its request for a contested case hearing on that date.

The proceeding will determine if IPC is entitled to a tax credit related to its expenditure of $22,064,014.16 pursuant to the *S.C. Code Ann.* §12-6-3620 (Supp. 2010) and if so, the extent of that credit. At present the parties have until December 31, 2011 to complete discovery and anticipate a 3-4 day hearing in February 2012.

2. **The statutory provisions conferring subject matter jurisdiction on the court and other applicable statutes and regulations:**

This matter involves the State Energy Office with regard to an application for a tax credit pursuant to the *S.C. Code Ann.* §12-6-3620 (Supp. 2010). The statute requires that the request for credit be submitted to Energy by January 31st and Energy must notify the taxpayer of the amount of credit by March 1st. On March 1st, Energy requested additional

information as a decision of the amount of credit to be allowed could not be made with the information previously supplied by IPC.

Each party is expected to provide the other with sufficient information during the discovery process to permit a decision on the merits of the issues involved. Jurisdiction of the court is pursuant to the State Revenue Procedures Act, *S.C. Code Ann.* § 12-60-10 *et seq.* and the South Carolina Administrative Procedures Act, *S.C. Code Ann.* § 1-23-380 (2005).

S.C. Code Ann. § 12-6-3620(A) is a primary revenue provision involved in this matter. It provides for a 25% credit to be allowed against income tax for costs incurred by a taxpayer

for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit
. . . must be certified by the State Energy Office.

The term "biomass resource" is defined by the statute as "noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels" and since the credit is limited to $650,000 per taxable year, it may be carried forward for up to fifteen years. *Id.* at 12-6-3620(B).

3. **The issues to be presented for determination, including any claims or defenses expected to be raised:**

The issues involved in this matter relate to the question of what costs for the purchase and installation of equipment should be allowed IPC, if any, out of the $22,064,014.16 claimed? While each separate expenditure is subject to discrete review for qualification for the credit, the parties disagree upon most criteria to be applied to make those decisions. This includes criteria ranging from the purchase and installation of similar performing equipment to replace worn-out equipment to criteria related to whether the newly purchased equipment is any more efficient than the equipment it replaced.

IPC contends that it is entitled to receive a credit for expenditures on existing systems regardless whether any additional energy efficiency or productivity results. The State Energy Office refuses to certify IPC costs which are for regulatory compliance for emissions reductions, maintenance, and the refurbishing of equipment or property which does not result in the creation of additional or the more efficient production of energy specifically from a biomass resource. Energy efficiency improvements not directly related to the increased production of power from biomass energy, such as energy efficiency improvements that reduce steam consumption, cannot be certified for the tax credit. Additionally, IPC is claiming credits for project costs included in the chemical recovery process past the recovery boiler stage; however, the green liquor and white

liquor do not meet the definition of 'biomass resource' contained in the statute as they are considered inorganic chemicals. As such, the State Energy Office cannot certify these expenses for the tax credit.

4. **The action requested of the court, if any:**

The State Energy Office is required to decide which taxpayer costs qualify for a 25% tax credit which can then be carried forward for fifteen years. In this case the amount could exceed the sum of $5,516,000. Energy is not willing to certify a credit against tax dollars for expenditures which are essentially for maintenance and refurbishment of existing facilities and equipment which provides no measurable improvement in the efficiency or economy of the energy creation process or for expenditures for measures past the recovery boiler stage that do not meet the definition of biomass resource. Energy expects the court to decide that the Energy Office appropriately exercised its discretion with regard to its decisions concerning the application of IPC.

The State Energy Office will respond to the claim of IPC that it should be allowed a tax credit in the amount of approximately $5,516,000. The Energy Office will explain why on March 1, 2011 it would not certify the requested amount based upon incomplete information and the fact that the purchase and installation of the majority of the subject equipment appeared to create no new energy.

5. **A brief summary of the facts to be presented at the hearing:**

It is expected that the International Paper Company will establish that it has spent over twenty-two million dollars at its paper mills in Eastover and Georgetown South Carolina to purchase and install equipment at those two paper plants. IPC contends that the expenditures qualify for the available tax credit for the purchase and installation of equipment used to create energy from a biomass resource. It is also expected that IPC will take the position that any such expenditure should be eligible for a tax credit because the equipment was installed in an integrated system and that the determination of a credit should be similar if not identical to the evaluative process of sales tax exemptions. The State Energy Office does not agree with this position.

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

None known.

7. **A proposed list of witnesses and exhibits**

Witnesses for the State Energy Office:

Ashlie Lancaster
Ms. Lancaster is the Director of the State Energy Office and will testify to the administration of that Office and in particular, to the administration of the Legislature's

directives pursuant to the *S.C. Code Ann.* § 12-6-3620. She will explain the methods and principles applied in the initial determination in this case regarding the allowance of tax credits for the purchase and installation of equipment by International Paper Company.

Erika Myers
Ms. Myers is the former Renewable Energy Manager of the State Energy Office. She is expected to testify to State energy policies and procedures with respect to various projects, including the biomass resource credit application of IPC. She can testify to the legislative history of the statute and its progress and goals in addition to the means and methods used to evaluate the IPC application. She will also testify to the reasons why the information provided by IPC was insufficient to make a determination of the entitlement to any energy credit.

Ralph Jenkins
Mr. Jenkins is the Technical Services Manager of the State Energy Office. He is expected to testify to State energy policies and procedures with respect to various projects, including the biomass resource credit application of IPC. He can testify to the means and methods used to evaluate the IPC application. He will also testify to the reasons why the information provided by IPC was insufficient to make a determination of the entitlement to any energy credit.

Robert Leitner
Mr. Leitner is Director of the South Carolina Institute for Energy Studies at Clemson University (SCIES). He is expected to testify to SCIES concurrence with Energy's initial review and assessment of the IPC application.

Larry J. Boyleston
Mr. Boyleston is the former Deputy Commissioner of the South Carolina Department of Agriculture (Agriculture). He is expected to testify to Agriculture's concurrence with Energy's initial review and assessment of the IPC application.

Expert Witness(es)
The State Energy Office is currently seeking additional witnesses to testify to the energy policies and goals of the State and how those policies have been and are implemented. In addition, Energy is also seeking to obtain independent witnesses with expertise in the paper-making process and the use and creation of energy during that process.
As discovery progresses and more information concerning the basis and theory of IPC's claim are known, it may be necessary for Energy to employ additional experts in the field of paper-making, economics, chemistry or energy.
Moreover, as relevant, Energy may also call upon members of the South Carolina Biomass Council who were involved in the original passage of this credit.

8. A statement regarding the necessity for discovery, if any:

The State Energy Office requires additional and complete information from International Paper concerning the credits for which it has applied prior to being capable of making

any final determination with regard to the amount of any tax credit that can be certified. Similarly, it is expected that IPC will seek additional information regarding the policies of the Energy Office and its previous treatment of other applications for credits.

9. **The estimated time required for the hearing, and any dates the parties, counsel or key witnesses are specifically unavailable during the next three months:**

At the present time discovery is expected to be completed by December 31, 2011 and the hearing set for three to four days in February 2012.

10. **Please note if any party deems it necessary for the undersigned to conduct a prehearing scheduling conference or issue regarding motions, discovery, etc.:**

At this time no scheduling or other conferences are needed by the State Energy Office nor are any motions or other requests of the court anticipated.

Respectfully Submitted,

Frank S. Potts
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August 15, 2011

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	)	Docket No.: 11-ALJ-30-0192-CC PETITIONER'S AMENDED PREHEARING STATEMENT

Pursuant to the Court's Order for Prehearing Statements, Petitioner previously submitted a prehearing statement on August 15, 2011. The parties have since engaged in discovery and Respondent has amended its determination at issue in this case. Petitioner is therefore amending its prehearing statement as follows:

1. **Nature of Proceeding:**

   This is an appeal of determinations by the South Carolina State Energy Office ("Energy Office") which erroneously failed to certify that equipment identified in Petitioner's 2010 Application for Biomass Resource Credit qualifies for the credit provided in South Carolina Code § 12-6-3620.

2. **Statutory provisions(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:**

   S.C. Code § 12-6-3620

   S.C. Code § 48-52-410

   S.C. Code § 1-23-505

   S.C. Code § 1-23-600

   S.C. Code § 12-36-2120(17)

   Anonymous Corporation v. SCDOR (99-ALJ-17-0153-CC) (affirmed by the Court of Appeals in Unpublished Opinion No. 2003-UP-029)

   Hercules Contractors and Engineers Inc. v. S.C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984)

   S.C. Regulation 117-302.5

   S.C. Rev. Rul. #04-7

3. **Issues Presented for Determination:**

Whether the equipment identified in Petitioner's 2010 Application for Biomass Resource Credit qualifies for the credit provided South Carolina Code § 12-6-3620?

4. **Action Requested of the Court:**

Petitioner requests the Court to issue an order requiring Respondent to certify that costs for the purchase and installation of equipment identified in Petitioner's 2010 Application for Biomass Resource Credit qualify for the credit provided in South Carolina Code § 12-6-3620.

Alternatively, Petitioner requests the Court to issue an order requiring Respondent to certify that costs for the purchase and installation of equipment identified in Petitioner's 2010 Application for Biomass Resource Credit which is located in the evaporator **(11)** and recovery boiler **(12)** process areas qualify for the credit provided in South Carolina Code § 12-6-3620.

5. **Summary of Facts to be Presented:**

Petitioner operates two paper production mills in South Carolina. Petitioner's Georgetown Mill began operating in 1937 and spans more than 900 acres. Petitioner's Eastover Mill was acquired in 1999 as part of the acquisition of Union Camp Corporation.

Both mills operate four boilers which produce 100% of the steam used to create electricity and supply heat to the production process. Over 95% of the mills' electricity needs are generated through the internal production of steam. Two of the boilers at each facility are internally referred to as power boilers. The other two boilers at each facility are internally referred to as recovery boilers.

Biomass fuel is used for both the power boilers and recovery boilers and represents more than 50% of the fuel for the power boilers and virtually 100% of the fuel used for the recovery boilers. The recovery boilers burn "black liquor" almost exclusively, while other boilers may burn bark (also biomass resource), tires, and other products.

Black liquor is derived from wood products. Wood consists of two primary elements, lignin and cellulose. On average, a dry log consists of 55% lignin and 45% cellulose. Cellulose is the fiber component of wood. Lignin functions as the glue that holds cellulose together to form wood. Lignin is an excellent fuel which yields more energy when burned than cellulose. In order for lignin to be used as a fuel, it must be separated from the cellulose, concentrated and then burned.

Attached as proposed Exhibit 1 is an illustration showing the process Petitioner undertakes at its mill facilities to create steam and electricity from biomass resources. The illustration is also numbered to show the major equipment elements involved in this process, as well as equipment that is not directly involved in the process of creating steam and electricity from biomass resources. Equipment necessary and integral to the process

of creating steam and electricity from biomass resources is identified in green-colored icons, numbered 1, 3a, 4-15, while equipment not directly involved in this process is identified in brown-colored icons, numbered 2, 3b, and 16-32. The numerical identification of equipment in the illustration is used herein for reference.

Petitioner's process of generating energy and paper from biomass resources begins with the delivery of wood chips *(4)* or logs *(5)* from third-party suppliers. Wood chips are typically ready for processing when received; however, logs must be converted into chips of a specific size. Logs are removed from delivery trucks using a portable crane. The crane then loads the logs onto a conveyor which transports the logs to the debarker *(6)*. The debarker tumbles the logs in large drums to remove the bark. Next, the raw logs are sent through the chipper *(7)* to form wood chips.

Wood chips are next separated into their two primary elements, lignin and cellulose. To accomplish the bifurcation of wood chips into its two components of lignin and cellulose the chips are cooked in a chemical solution in large vats called digesters *(8)*. The digestion process can be either batch or continuous. The Eastover and Georgetown mills use both digestion processes. In continuous cooking, wood chips together with a pre-heated mixture of white liquor (a solution of sodium hydroxide (NaOH) and sodium sulphide (Na_2S)) are added to the digester where they are cooked at high pressure for 1 – 1.5 hours. After cooking, the wood chips are converted into a watery mixture of weak black liquor (lignin and cooking chemicals) and cellulose fiber. The hot solution is extracted into a low-pressure tank where flash steam is generated for re-use in the continuous digester. In batch cooking, the digester is filled with chips, covered with white liquor, and then heated under high pressure for up to 3.5 hours. After the batch cooking is complete, the contents are discharged into a blow tank *(9)*.

After the wood chips have cooked the contents from the batch digestion blow tank *(9)* and/or the continuous digester *(8)* are sent to the brown stock washers *(10)* in order to begin the process of separating the lignin and cooking chemicals (weak black liquor) from the cellulose wood fiber. The brown stock washers consist of a series of spinning drums to extract the weak black liquor from the wood fibers. At this point in the process, the lignin and cooking liquids are sent to the evaporator *(11)* and the cellulose wood fibers are sent to the bleaching process *(16)*. The process of converting the cellulose wood fibers to paper continues through other equipment in the plant (identified in Exhibit 1 as equipment with brown-colored numerical icons, numbers 16-32) and is not further addressed herein.

Once the weak black liquor has been pumped through multiple evaporators, the liquid is concentrated from 15% solids to 50 - 75% solids to form strong black liquor. This concentrated black liquor is pumped to the recovery boiler *(12)* where it is further concentrated, sprayed into the furnace, and burned. Feed water is pumped first to the economizers where it is heated by flue gas. The pre-heated water then enters the water circulation system of the boiler. When black liquor is burned, pre-heated water is converted into high pressure steam. The superheated steam flows from the recovery boiler to a turbine generator plant **(3a)** where electricity is generated for use within the

mill. The bi-product steam is further recovered and sent as heat to the dryers and other mill manufacturing processes.

Finally, the ashes (smelt) from the burned black liquor are dissolved in weak lime wash from the lime kiln to create weak green liquor. This solution is then pumped to the causticizer *(13)* where it is mixed with lime from the lime kiln *(14)* in order to facilitate the production of white liquor. The white liquor slurry is then pumped to the clarifier *(15)* where the lime mud is separated from the white liquor. The recovered lime mud is sent to the lime kiln *(14)* where it is regenerated and circulated back to the causticizer *(13)* for the creation of new white liquor. The white liquor is sent back to the digesters *(8)* as an essential part of the continuous cycle to separate the lignin and cellulose within wood chips.

Prior to submitting its 2010 Application for Biomass Resource Credit, Petitioner met with representatives of Respondent on various occasions in late 2010. Petitioner consulted with Respondent's representatives to determine what equipment should be included in the application. Specific dollar investment levels were not discussed. Respondent was helpful and communicative at this stage.

Petitioner submitted its 2010 Application for Biomass Resource Credit in January 2011 and included costs incurred in 2010 for the purchase and installation equipment which was necessary and integral for the creation of energy from a biomass resource. Respondent ceased communicating with Petitioner at such time.

In response to Petitioner's 2010 Application for Biomass Resource Credit, Respondent initially determined on March 1, 2011 ("2010 Determination") that the Biomass Resource Credit applied only to the creation of new energy and that allowable credits would be determined by reference to the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements. The 2010 Determination further stated that certain equipment costs qualified for the Biomass Resource Credit (including equipment located in process areas from the woodyard to the recovery boiler), that certain equipment costs did not qualify, and that a percentage of certain equipment costs would be allowed which correlated to the percentage of feedstock that went to the black liquor recovery boiler.

Petitioner filed a request for a contested case hearing with the Administrative Law Court ("ALC") with respect to the 2010 Determination. Respondent was granted leave to amend to the 2010 Determination and thereafter issued an amended determination ("2010 Amended Determination").

The 2010 Amended Determination determined that Petitioner was not entitled to any credit under South Carolina Code § 12-6-3620. In determining whether Petitioner was entitled to a credit Respondent identified three "tests" that it used:

- Test 1: Only equipment that uses a fuel consisting of no less ninety percent biomass resource is eligible.

- Conclusion: Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment.

- Test 2: Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.

  - Conclusion: None of the chemical recovery process is eligible.

- Test 3: Equipment must produce or demonstrably contribute to an increased output of energy to qualify for the incentive.

  - Conclusion: A direct correlation between individual products and an increase in energy production could not be established.

The 2010 Amended Determination also included a footnote which provided:

> "The "black liquor" fuel utilized by International Paper at its Eastover and Georgetown mills (which is injected into the Thomlinson recovery boilers for burning) does not meet the mandatory definition of a 90% "biomass resource" under the State statute. Regardless of that fact, a three part test was also utilized to determine if the expenditures would qualify if the "black liquor" met the statutory definition since International Paper has previously represented that the fuel utilized (the "black liquor") does meet the statutory definition."

South Carolina Code § 12-6-3620(A) provides a credit for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. South Carolina Code § 12-6-3620(C)(1) defines a biomass resource as "noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels."

Petitioner filed its 2010 Application for Biomass Resource Credit based on its interpretation of the statute and course of dealings with representatives of Respondent prior to the submission of the 2010 Application for Biomass Resource Credit. Petitioner's application was prepared based on the conclusion that logs are the biomass resource utilized to produce energy. Thus, Petitioner has included costs incurred for the purchase and installation of equipment from the woodyard, where wood is first processed at its facilities, through the recovery boiler and chemical recovery equipment. All costs included in the application are for the purchase and installation of equipment that is integral and necessary to produce energy from the logs, including the processing and handling of the logs, separating the wood components of logs, burning separated wood components, and reusing byproducts of the burning to support continued separation of wood components in a closed loop system. Importantly, Respondent's 2010

Determination concluded that costs beginning with the woodyard could qualify for the tax credit.

Respondent has now changed its position and is apparently asserting in its 2010 Amended Determination that black liquor is the biomass resource utilized to produce energy, while denying that black liquor is a qualifying biomass resource under the statute. If black liquor, and not the logs themselves, is considered to be the qualifying biomass resource, then all of the equipment included in Petitioner's Application for Biomass Resource Credit would potentially not qualify for the tax credit. However, Respondent's determination that only the recovery boiler and turbines could qualify for the tax credit unduly and unreasonably narrows the scope of the tax credit. All equipment which is integral and necessary to produce energy from black liquor should qualify for the tax credit if black liquor is considered the applicable biomass resource. The equipment devoted solely to producing energy from black liquor includes not only the recovery boiler **(12)** and turbine process areas, but the evaporator **(11)** process area as well.

South Carolina Code § 12-6-3620 by its express terms, applies to equipment used to create energy from a fuel consisting of no less than ninety percent biomass. There is no question that Petitioner creates energy from a biomass resource, whether logs or black liquor. Logs and black liquor are consumed by Petitioner's equipment and create energy. Respondent, however, seeks to impose an additional requirement to qualify for the tax credit which is not set forth in South Carolina Code § 12-6-3620, namely that equipment must increase energy production capacity.

6. Summary of Motions:

Petitioner is filing a motion to consolidate this case with the pending case involving Petitioner's 2011 Application for Biomass Resource Credit, Docket No. 12-ALJ-30-0086-CC. Petitioner is also filing a motion to continue the trial date in this case. Petitioner may also file a motion to seal the record in this case to protect confidential business information that may be introduced at trial. Petitioner does not anticipate filing any other motions at this time.

7. Proposed Witnesses and Exhibits:

Witnesses:

Brian Fender – Eastover Mill Project Engineering Manager

Bob Lelasher – Eastover Mill Utilities Process Engineer

Phil Lazzari – Georgetown Mill Energy Champion

Andrew Jones – International Paper Energy & Chemical Recovery Solutions

Christopher Verrill – International Paper Energy & Chemical Recovery Solutions

Tracy Bolger – State Income Tax Analyst

Robert Shands – State Tax Manager

Exhibits:

Exhibit 1 – Rendering of Biomass Production Process

Exhibit 2 – Aerial Photograph of Georgetown Mill

Exhibit 3 – Aerial Photograph of Eastover Mill

Exhibit 4 – Photographs of Specific Georgetown Mill Equipment.

Exhibit 5 - Photographs of Specific Eastover Mill Equipment

Exhibit 6 – 2010 State Energy Office Determination

Exhibit 7 – Amended 2010 State Energy Office Determination

Exhibit 8 – 2011 State Energy Office Determination

Exhibit 9 – International Paper financial books and records identifying the equipment and substantiating the equipment cost

Exhibit 10 – Expert Report re: Black Liquor as a qualifying biomass resource

Petitioner will supplement this prehearing statement as needed to identify any additional witnesses or exhibits that will be presented at trial.

8. Statement Regarding Necessity for Discovery:

Discovery is necessary in this case in order for Petitioner to ascertain Respondent's prior interpretations of the biomass resource credit, Respondent's administrative consistency in applying its interpretation of the biomass resource credit to applicants, agencies involved in establishing Respondent's interpretations of the biomass resource credit, and changes in Respondent's interpretation of the biomass resource credit.

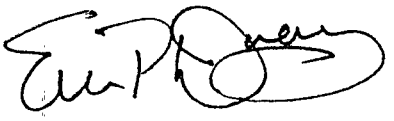
9. Estimated Length of Hearing:

Petitioner estimates the length of the hearing to be 4 days.

10. Dates of Unavailability:

May 8, 2012; May 23 – 25, 2012; July 23 – 25, 2012; August 6-17, 2012; September 3-14, 2012.

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

April 25, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Inc. Appellant/Petitioner, vs. SC State Energy Office Respondent.	Docket No.: 11-ALJ-30-0192-CC **RESPONDENT'S AMENDED PREHEARING STATEMENT**

Pursuant to the court's requirement for Prehearing Statements, the Respondent South Carolina Budget and Control Board, State Energy Office, hereby files this Amended Prehearing Statement:

1. The nature of this proceeding:

On March 5, 2011 the International Paper Company ("IPC") filed a request for a contested case hearing before the Administrative Law Court. IPC contends that the South Carolina State Energy Office ("Energy") improperly refused to certify that IPC was entitled to an energy tax credit based upon an expenditure of $22,064,014.16.

The IPC application for certification of the $22,064,014.16 expenditure was received by Energy on January 28, 2011. Energy replied to IPC on March 1, 2011 indicating concerns with the request and seeking additional information. Not having received a final decision from Energy by March 5th, IPC filed its request for a contested case hearing on that date.

Pursuant to a motion made by Energy in December 2011, the matter was remanded and a decision was thereafter rendered by Energy on March 20, 2012 which denied certification of the tax credit requested by IPC.

The proceeding will determine if the decision of Energy to deny a tax credit related to the expenditure by IPC of $22,064,014.16 pursuant to the ***S.C. Code Ann.*** §12-6-3620 (Supp. 2010) was within the discretion granted Energy by the General Assembly of South Carolina.

2. The statutory provisions conferring subject matter jurisdiction on the court and other applicable statutes and regulations:

This matter involves the State Energy Office with regard to an application for a tax credit pursuant to the ***S.C. Code Ann.*** §12-6-3620 (Supp. 2010). The statute requires that the request for credit be submitted to Energy by January 31st and Energy must notify the taxpayer of the amount of credit by

March 1st. On March 1st, Energy requested additional information as a decision regarding the amount of credit to be allowed could not be made with the information previously supplied by IPC.

Each party has now provided the other with sufficient information during the discovery process to permit a decision on the merits of the issues involved. Jurisdiction of the court is pursuant to the State Revenue Procedures Act, ***S.C. Code Ann.*** § 12-60-10 *et seq.* and the South Carolina Administrative Procedures Act, ***S.C. Code Ann.*** § 1-23-380 (2005).

S.C. Code Ann. § 12-6-3620(A) is a primary revenue provision involved in this matter. It provides for a 25% credit to be allowed against income tax for costs incurred by a taxpayer

> for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit . . . must be certified by the State Energy Office.

The term "biomass resource" is defined by the statute as "noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels" and since the credit is limited to $650,000 per taxable year, it may be carried forward for up to fifteen years. *Id.* at 12-6-3620(B).

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

The issues involved in this matter relate to the question of what costs for the purchase and installation of equipment should be allowed IPC, if any, out of the $22,064,014.16 claimed? While each expenditure is subject to discrete review for qualification for the credit, the parties disagree upon most criteria to be applied to make those decisions. This includes criteria ranging from the purchase and installation of similar performing equipment to replace worn-out equipment to criteria related to whether the newly purchased equipment is any more efficient than the equipment it replaced.

IPC contends that it is entitled to receive a credit for expenditures on existing systems regardless whether any additional energy efficiency or productivity results. The State Energy Office refuses to certify IPC costs which are for regulatory compliance for emissions reductions, maintenance, and the refurbishing of equipment or property which does not result in the creation of additional or the more efficient production of energy specifically from a biomass resource. Energy efficiency improvements not directly related to the increased production of power from biomass energy, such as energy efficiency improvements that reduce steam consumption, cannot be certified for the tax credit. Additionally, IPC is claiming credits for project costs included in the chemical recovery process past the recovery boiler stage; however, the green liquor and white liquor do not meet the definition of 'biomass resource' contained in the statute as they are considered inorganic chemicals. As such, the State Energy Office cannot certify these expenses for the tax credit.

4. The action requested of the court, if any:

The State Energy Office is required to decide which taxpayer costs qualify for a 25% tax credit which can then be carried forward for fifteen years. In this case the amount could exceed the sum

of $5,516,000. Energy is not willing to certify a credit against tax dollars for expenditures which are essentially for maintenance and refurbishment of existing facilities and equipment which provides no measurable improvement in the efficiency or economy of the energy creation process or for expenditures for measures past the recovery boiler stage that do not meet the definition of biomass resource. Energy expects the court to decide that the Energy Office appropriately exercised its discretion with regard to its decisions concerning the application of IPC.

The State Energy Office will respond to the claim of IPC that it should be allowed a tax credit in the amount of approximately $5,516,000. The Energy Office will explain why in its amended determination it has refused to certify any of the IPC calendar year 2010 expenditures as eligible for the statutory tax credit.

5. A brief summary of the facts to be presented at the hearing:

It is expected that the International Paper Company will establish that it has spent over twenty-two million dollars at its paper mills in Eastover and Georgetown South Carolina to purchase and install equipment at those two paper plants. IPC contends that the expenditures qualify for the available tax credit for the purchase and installation of equipment used to create energy from a biomass resource. It is also expected that IPC will take the position that any such expenditure should be eligible for a tax credit because the equipment was installed in an integrated system and that the determination of a credit should be similar if not identical to the evaluative process of sales tax exemptions. The State Energy Office does not agree with this position.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

None expected.

7. A proposed list of witnesses and exhibits

Witnesses for the State Energy Office:

Ashlie Lancaster
Ms. Lancaster is the Director of the State Energy Office and will testify to the administration of that Office and in particular, to the administration of the Legislature's directives pursuant to the *S.C. Code Ann.* § 12-6-3620. She will explain the methods and principles applied in the initial determination in this case regarding the allowance of tax credits for the purchase and installation of equipment by International Paper Company.

Erika Myers
Ms. Myers is the former Renewable Energy Manager of the State Energy Office. She is expected to testify to State energy policies and procedures with respect to various projects, including the biomass resource credit application of IPC. She can testify to the legislative history of the statute and its progress and goals in addition to the means and methods used to evaluate the IPC application. She will also testify to the reasons why the information provided by IPC was insufficient to make a determination of the entitlement to any energy credit.

Elizabeth Crocker
Ms. Crocker was consulted as the representative of the South Carolina Department of Agriculture prior to the issuance of the March 2011 decision. Ms. Crocker may or may not be asked to testify.

Expert Witness(es)
Dr. Bruce Babcock of Charleston, South Carolina has been retained by the Energy Office as an expert with knowledge of the paper-making industry and to provide opinions regarding the processes used with respect to this case.

The State Energy Office anticipates the submission into evidence of its determination concerning the application dated March 20, 2012. Any other documents provided by the IPC during discovery in this case may also be submitted in response to evidence presented by IPC.

8. A statement regarding the necessity for discovery, if any:

The State Energy Office has been provided most of the written discovery requested and is awaiting some additional information which IPC has agreed to provide. Depositions of witnesses have not yet been scheduled but are anticipated to be done by agreement of the parties.

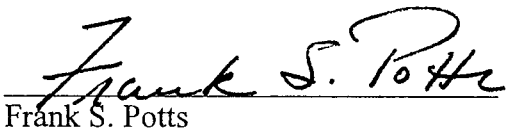
9. The estimated time required for the hearing, and any dates the parties, counsel or key witnesses are specifically unavailable during the next three months:

At the present time trial has been set for the week of June 19, 2012 however it is anticipated that IPC will move for a continuance to which Energy will consent. Counsel for Energy is unavailable from June 25th through July 6th.

10. Please note if any party deems it necessary for the undersigned to conduct a prehearing scheduling conference or issue regarding motions, discovery, etc.:

At this time it is anticipated that IPC will request a continuance of the hearing date until the late Summer or Fall of 2012 and that the issue of the determinations of Energy for the calendar years 2011 and 2012 be consolidated for trial. Energy expects to consent to both requests.

Respectfully submitted,



Frank S. Potts
Office of General Counsel
South Carolina Budget and Control Board
Post Office Box 11608
Columbia, South Carolina 29211

Attorney for Respondent

April 23, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Petitioner, v. South Carolina State Energy Office, Respondent.	)	Docket No.: 12-ALJ-30-0086-CC PETITIONER'S PREHEARING STATEMENT

Pursuant to the Court's Order for Prehearing Statements, Petitioner submits the following:

1. **Nature of Proceeding:**

   This is an appeal of a determination by the South Carolina State Energy Office ("Energy Office") which erroneously failed to certify that equipment identified in Petitioner's 2011 Application for Biomass Resource Credit qualified for the credit provided in South Carolina Code § 12-6-3620.

2. **Statutory provisions(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:**

   S.C. Code § 12-6-3620

   S.C. Code § 48-52-410

   S.C. Code § 1-23-505

   S.C. Code § 1-23-600

   S.C. Code § 12-36-2120(17)

   Anonymous Corporation v. SCDOR (99-ALJ-17-0153-CC) (affirmed by the Court of Appeals in Unpublished Opinion No. 2003-UP-029)

   Hercules Contractors and Engineers Inc. v. S.C. Tax Commission, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984)

   S.C. Regulation 117-302.5

   S.C. Rev. Rul. #04-7

3. **Issues Presented for Determination:**

Whether the equipment identified in Petitioner's 2011 Application for Biomass Resource Credit qualifies for the credit provided South Carolina Code § 12-6-3620?

4. **Action Requested of the Court:**

Petitioner requests the Court to issue an order requiring Respondent to certify that costs for the purchase and installation of equipment identified in Petitioner's 2011 Application for Biomass Resource Credit qualify for the credit provided in South Carolina Code § 12-6-3620.

Alternatively, Petitioner requests the Court to issue an order requiring Respondent to certify that costs for the purchase and installation of equipment identified in Petitioner's 2011 Application for Biomass Resource Credit which is located in the evaporator **(11)** and recovery boiler **(12)** process areas qualify for the credit provided in South Carolina Code § 12-6-3620.

5. **Summary of Facts to be Presented:**

Petitioner operates two paper production mills in South Carolina. Petitioner's Georgetown Mill began operating in 1937 and spans more than 900 acres. Petitioner's Eastover Mill was acquired in 1999 as part of the acquisition of Union Camp Corporation.

Both mills operate four boilers which produce 100% of the steam used to create electricity and supply heat to the production process. Over 95% of the mills' electricity needs are generated through the internal production of steam. Two of the boilers at each facility are internally referred to as power boilers. The other two boilers at each facility are internally referred to as recovery boilers.

Biomass fuel is used for both the power boilers and recovery boilers and represents more than 50% of the fuel for the power boilers and virtually 100% of the fuel used for the recovery boilers. The recovery boilers burn "black liquor" almost exclusively, while other boilers may burn bark (also biomass resource), tires, and other products.

Black liquor is derived from wood products. Wood consists of two primary elements, lignin and cellulose. On average, a dry log consists of 55% lignin and 45% cellulose. Cellulose is the fiber component of wood. Lignin functions as the glue that holds cellulose together to form wood. Lignin is an excellent fuel which yields more energy when burned than cellulose. In order for lignin to be used as a fuel, it must be separated from the cellulose, concentrated and then burned.

Attached as proposed Exhibit 1 is an illustration showing the process Petitioner undertakes at its mill facilities to create steam and electricity from biomass resources. The illustration is also numbered to show the major equipment elements involved in this process, as well as equipment that is not directly involved in the process of creating steam and electricity from biomass resources. Equipment necessary and integral to the process

of creating steam and electricity from biomass resources is identified in green-colored icons, numbered 1, 3a, 4-15, while equipment not directly involved in this process is identified in brown-colored icons, numbered 2, 3b, and 16-32. The numerical identification of equipment in the illustration is used herein for reference.

Petitioner's process of generating energy and paper from biomass resources begins with the delivery of wood chips *(4)* or logs *(5)* from third-party suppliers. Wood chips are typically ready for processing when received; however, logs must be converted into chips of a specific size. Logs are removed from delivery trucks using a portable crane. The crane then loads the logs onto a conveyor which transports the logs to the debarker *(6)*. The debarker tumbles the logs in large drums to remove the bark. Next, the raw logs are sent through the chipper *(7)* to form wood chips.

Wood chips are next separated into their two primary elements, lignin and cellulose. To accomplish the bifurcation of wood chips into its two components of lignin and cellulose the chips are cooked in a chemical solution in large vats called digesters *(8)*. The digestion process can be either batch or continuous. The Eastover and Georgetown mills use both digestion processes. In continuous cooking, wood chips together with a pre-heated mixture of white liquor (a solution of sodium hydroxide (NaOH) and sodium sulphide (Na_2S)) are added to the digester where they are cooked at high pressure for 1 – 1.5 hours. After cooking, the wood chips are converted into a watery mixture of weak black liquor (lignin and cooking chemicals) and cellulose fiber. The hot solution is extracted into a low-pressure tank where flash steam is generated for re-use in the continuous digester. In batch cooking, the digester is filled with chips, covered with white liquor, and then heated under high pressure for up to 3.5 hours. After the batch cooking is complete, the contents are discharged into a blow tank *(9)*.

After the wood chips have cooked the contents from the batch digestion blow tank *(9)* and/or the continuous digester *(8)* are sent to the brown stock washers *(10)* in order to begin the process of separating the lignin and cooking chemicals (weak black liquor) from the cellulose wood fiber. The brown stock washers consist of a series of spinning drums to extract the weak black liquor from the wood fibers. At this point in the process, the lignin and cooking liquids are sent to the evaporator *(11)* and the cellulose wood fibers are sent to the bleaching process *(16)*. The process of converting the cellulose wood fibers to paper continues through other equipment in the plant (identified in Exhibit 1 as equipment with brown-colored numerical icons, numbers 16-32) and is not further addressed herein.

Once the weak black liquor has been pumped through multiple evaporators, the liquid is concentrated from 15% solids to 50 - 75% solids to form strong black liquor. This concentrated black liquor is pumped to the recovery boiler *(12)* where it is further concentrated, sprayed into the furnace, and burned. Feed water is pumped first to the economizers where it is heated by flue gas. The pre-heated water then enters the water circulation system of the boiler. When black liquor is burned, pre-heated water is converted into high pressure steam. The superheated steam flows from the recovery boiler to a turbine generator plant **(3a)** where electricity is generated for use within the

mill. The bi-product steam is further recovered and sent as heat to the dryers and other mill manufacturing processes.

Finally, the ashes (smelt) from the burned black liquor are dissolved in weak lime wash from the lime kiln to create weak green liquor. This solution is then pumped to the causticizer *(13)* where it is mixed with lime from the lime kiln *(14)* in order to facilitate the production of white liquor. The white liquor slurry is then pumped to the clarifier *(15)* where the lime mud is separated from the white liquor. The recovered lime mud is sent to the lime kiln *(14)* where it is regenerated and circulated back to the causticizer *(13)* for the creation of new white liquor. The white liquor is sent back to the digesters *(8)* as an essential part of the continuous cycle to separate the lignin and cellulose within wood chips.

Petitioner submitted its 2011 Application for Biomass Resource Credit in January 2012 and included costs incurred in 2011 for the purchase and installation equipment which was necessary and integral for the creation of energy from a biomass resource. On March 1, 2012 Respondent issued its determination that Petitioner was not entitled to any credit under South Carolina Code § 12-6-3620 ("2011 Determination"). In determining whether Petitioner was entitled to a credit Respondent identified three "tests" that it used:

- Test 1: Only equipment that uses a fuel consisting of no less ninety percent biomass resource is eligible.
    - Conclusion: Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment.
- Test 2: Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.
    - Conclusion: None of the chemical recovery process is eligible.
- Test 3: Equipment must produce or demonstrably contribute to an increased output of energy to qualify for the incentive.
    - Conclusion: A direct correlation between individual products and an increase in energy production could not be established.

On March 20, 2012 Respondent transmitted an "amended" determination which added a footnote to the March 1, 2012 determination, providing:

> "The "black liquor" fuel utilized by International Paper at its Eastover and Georgetown mills (which is injected into the Thomlinson recovery boilers for burning) does not meet the mandatory definition of a 90% "biomass resource" under the State statute. Regardless of that fact, a three part test was also utilized to determine if the expenditures would qualify if the "black liquor" met the statutory definition since International Paper has

previously represented that the fuel utilized (the "black liquor") does meet the statutory definition."

Petitioner submitted a 2010 Application for Biomass Resource Credit. Respondent did not certify that the costs for the purchase and installation of equipment identified in Petitioner's 2010 Application for Biomass Resource Credit qualified for the credit provided in South Carolina Code § 12-6-3620. Petitioner filed a request for a contested case hearing with the Administrative Law Court and the case is presently pending before The Honorable Ralph King Anderson, III.

In response to Petitioner's 2010 Application for Biomass Resource Credit, Respondent initially determined on March 1, 2011 ("2010 Determination") that the Biomass Resource Credit applied only to the creation of new energy and that allowable credits would be determined by reference to the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements. The 2010 Determination further stated that certain equipment costs qualified for the Biomass Resource Credit (including equipment located in process areas from the woodyard to the recovery boiler), that certain equipment costs did not qualify, and that a percentage of certain equipment costs would be allowed which correlated to the percentage of feedstock that went to the black liquor recovery boiler. In March 2012 Respondent issued an amended 2010 Determination which applied the same "tests" set forth by Respondent in the 2011 Determination and found that the equipment was not entitled to any credit under South Carolina Code § 12-6-3620.

South Carolina Code § 12-6-3620(A) provides a credit for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. South Carolina Code § 12-6-3620(C)(1) defines a biomass resource as "noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels."

Petitioner filed its 2010 and 2011 Application for Biomass Resource Credit based on its interpretation of the statute and course of dealings with representatives of Respondent prior to the submission of the 2010 Application for Biomass Resource Credit. Petitioner's applications were prepared based on the conclusion that logs are the biomass resource utilized to produce energy. Thus, Petitioner has included costs incurred for the purchase and installation of equipment from the woodyard, where wood is first processed at its facilities, through the recovery boiler and chemical recovery equipment. All costs included in the application are for the purchase and installation of equipment that is integral and necessary to produce energy from the logs, including the processing and handling of the logs, separating the wood components of logs, burning separated wood components, and reusing byproducts of the burning to support continued separation of wood components in a closed loop system. Importantly, Respondent's 2010 Determination concluded that costs beginning with the woodyard could qualify for the tax credit.

Respondent has now changed its position and is apparently asserting in its 2011 Determination that black liquor is the biomass resource utilized to produce energy, while denying that black liquor is a qualifying biomass resource under the statute. If black liquor, and not the logs themselves, is considered to be the qualifying biomass resource, then all of the equipment included in Petitioner's Application for Biomass Resource Credit would potentially not qualify for the tax credit. However, Respondent's determination that only the recovery boiler and turbines could qualify for the tax credit unduly and unreasonably narrows the scope of the tax credit. All equipment which is integral and necessary to produce energy from black liquor should qualify for the tax credit if black liquor is considered the applicable biomass resource. The equipment devoted solely to producing energy from black liquor includes not only the recovery boiler **(12)** and turbine process areas, but the evaporator **(11)** process area as well.

South Carolina Code § 12-6-3620 by its express terms, applies to equipment used to create energy from a fuel consisting of no less than ninety percent biomass. There is no question that Petitioner creates energy from a biomass resource, whether logs or black liquor. Logs and black liquor are consumed by Petitioner's equipment and create energy. Respondent, however, seeks to impose an additional requirement to qualify for the tax credit which is not set forth in South Carolina Code § 12-6-3620, namely that equipment must increase energy production capacity.

6. **Summary of Motions:**

Petitioner is filing a motion to consolidate this case with the pending case involving Petitioner's 2010 Application for Biomass Resource Credit, Docket No. 11-ALJ-30-0192-CC. Petitioner may also file a motion to seal the record in this case to protect confidential business information that may be introduced at trial. Petitioner does not anticipate filing any other motions at this time.

7. **Proposed Witnesses and Exhibits:**

Witnesses:

Brian Fender – Eastover Mill Project Engineering Manager

Bob Lelasher – Eastover Mill Utilities Process Engineer

Phil Lazzari – Georgetown Mill Energy Champion

Andrew Jones – International Paper Energy & Chemical Recovery Solutions

Christopher Verrill – International Paper Energy & Chemical Recovery Solutions

Tracy Bolger – State Income Tax Analyst

Robert Shands – State Tax Manager

Exhibits:

Exhibit 1 – Rendering of Biomass Production Process

Exhibit 2 – Aerial Photograph of Georgetown Mill

Exhibit 3 – Aerial Photograph of Eastover Mill

Exhibit 4 – Photographs of Specific Georgetown Mill Equipment.

Exhibit 5 - Photographs of Specific Eastover Mill Equipment

Exhibit 6 – 2010 State Energy Office Determination

Exhibit 7 – Amended 2010 State Energy Office Determination

Exhibit 8 – 2011 State Energy Office Determination

Exhibit 9 – International Paper financial books and records identifying the equipment and substantiating the equipment cost

Exhibit 10 – Expert Report re: Black Liquor as a qualifying biomass resource

Petitioner will supplement this prehearing statement as needed to identify any additional witnesses or exhibits that will be presented at trial.

8. Statement Regarding Necessity for Discovery:

Discovery is necessary in this case in order for Petitioner to ascertain Respondent's prior interpretations of the biomass resource credit, Respondent's administrative consistency in applying its interpretation of the biomass resource credit to applicants, agencies involved in establishing Respondent's interpretations of the biomass resource credit, and changes in Respondent's interpretation of the biomass resource credit.

9. Estimated Length of Hearing:

Petitioner estimates the length of the hearing to be 4 days.

10. Dates of Unavailability:

May 8, 2012; May 23 – 25, 2012; July 23 – 25, 2012; August 6-17, 2012; September 3-14, 2012.

11. Email address:

edoerring@mcnair.net; jtallen@mcnair.net

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

April 25, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Inc. Appellant/Petitioner, vs. SC State Energy Office Respondent.	)	Docket No.: 12-ALJ-30-0086-CC **RESPONDENT'S AMENDED PREHEARING STATEMENT**

Pursuant to the court's requirement for Prehearing Statements, the Respondent South Carolina Budget and Control Board, State Energy Office, hereby files this Amended Prehearing Statement:

1. The nature of this proceeding:

On March 2, 2012 the International Paper Company ("IPC") filed a request for a contested case hearing before the Administrative Law Court. IPC contends that the South Carolina State Energy Office ("Energy") improperly refused to certify that IPC was entitled to an energy tax credit based upon its application dated January 30, 2012. The IPC application for certification of the $7,474,977 expenditure was received by Energy on January 30, 2012. Energy replied to IPC on March 1, 2012 denying the requested certification. On March 2, 2012 IPC filed its request for a contested case hearing. The proceeding will determine if the decision of the State Energy Office to deny the credits requested by the International Paper Company is in accordance with the laws of the State of South Carolina.

2. The statutory provisions conferring subject matter jurisdiction on the court and other applicable statutes and regulations:

This matter involves the State Energy Office with regard to an application for a tax credit pursuant to the ***S.C. Code Ann.*** §12-6-3620 (Supp. 2010). The statute requires that the request for credit be submitted to Energy by January 31st and Energy must notify the taxpayer of the amount of any credit certified by March 1st. Jurisdiction of the court is pursuant to the State Revenue Procedures Act, ***S.C. Code Ann.*** § 12-60-10 *et seq.* and the South Carolina Administrative Procedures Act, ***S.C. Code Ann.*** § 1-23-380 (2005).

S.C. Code Ann. § 12-6-3620(A) is a primary revenue provision involved in this matter. It provides for a 25% credit to be allowed against income tax for costs incurred by a taxpayer

> for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit
> . . . must be certified by the State Energy Office.

The term "biomass resource" is defined by the statute as "noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels" and since the credit is limited to $650,000 per taxable year, it may be carried forward for up to fifteen years. *Id.* at 12-6-3620(B).

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

The issues involved in this matter relate to the question of what costs for the purchase and installation of equipment should be allowed IPC, if any, out of the expenditure claimed? While each separate expenditure is subject to discrete review for qualification for the credit, the parties disagree upon most criteria to be applied to make those decisions. This includes criteria ranging from the purchase and installation of similar performing equipment to replace worn-out equipment to criteria related to whether the newly purchased equipment is any more efficient than the equipment it replaced and whether the equipment for which a credit is sought uses at least ninety percent biomass resources as its primary fuel source. IPC contends that it is entitled to receive a credit for expenditures on existing systems regardless whether any additional energy efficiency or productivity results. The State Energy Office refuses to certify IPC costs which are for regulatory compliance for emissions reductions, maintenance, and the refurbishing of equipment or property which does not result in the creation of additional or the more efficient production of energy specifically from a biomass resource. Energy efficiency improvements not directly related to the increased production of power from biomass energy, such as energy efficiency improvements that reduce steam consumption, cannot be certified for the tax credit. Additionally, IPC is claiming credits for project costs included in the chemical recovery process past the recovery boiler stage; however, none of the liquors produced thereby meet the definition of 'biomass resource' contained in the statute. As such, the State Energy Office cannot certify these expenditures for the tax credit.

4. The action requested of the court, if any:

The State Energy Office requests that this Court, after review of the decision of March 1, 2012 by that Office, affirm that its decision was made in accordance with the laws of the State of South Carolina in accordance with the discretion granted by the General Assembly of the State of South Carolina.

5. A brief summary of the facts to be presented at the hearing:

It is expected that the International Paper Company will establish that it has spent over seven million dollars at its paper mills in Eastover and Georgetown South Carolina to purchase and install equipment at those two paper plants. IPC contends that the expenditures qualify for the available tax credit for the purchase and installation of equipment used to create energy from a biomass resource. It is also expected that IPC will take the position that any such expenditure should be eligible for a tax credit because the equipment was installed in an integrated system and that the determination of a credit should be similar if not identical to the evaluative process of sales tax exemptions. The State Energy Office does not agree with this position.

The State Energy Office will explain the exercise of its discretion to determine that none of the expenditures made to the Kraft paper-making process qualify for certification and that the State Energy Office properly exercised its discretion in refusing to certify any of the costs incurred for a 25% tax credit for the production of energy from biomass resources under the applicable statute.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

None known.

7. A proposed list of witnesses and exhibits

Witnesses for the State Energy Office:

Ashlie Lancaster
Ms. Lancaster is the Director of the State Energy Office and will testify to the administration of that Office and in particular, to the administration of the Legislature's directives pursuant to the *S.C. Code Ann.* § 12-6-3620. She will explain the methods and principles applied in the determinations made in this case.

Expert Witness(es)
Bruce Babcock of Charleston has been retained by the State Energy Office as an expert resource in this case. Bruce Babcock holds a PhD in the industry and his credentials and report have been provided to counsel for IPC. Dr. Babcock is expected to testify to the Kraft paper-making process, including the use of biomass resources in that process, the functions of recovery boilers and various other aspects of the same.

Exhibits introduced are expected to be the determination of the State Energy Office dated March 1st as amended and any reports prepared by Dr. B. Babcock.

8. A statement regarding the necessity for discovery, if any:

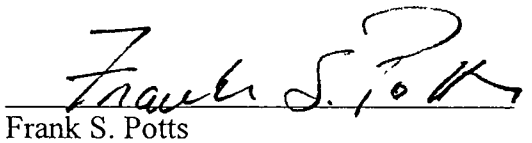
The State Energy Office has been provided with sufficient information with which to exercise its discretion with respect to whether the request of the International Paper Company should be granted however further discovery may be conducted for the purpose of litigation.

9. The estimated length of the hearing;
It is anticipated that this hearing will probably be combined with a hearing in docket number 11-ALJ-30-0192-CC and that both can be heard within one week.

10. Any dates in the next ninety (90) days when you will not be available for a hearing; and
June 25th through July 6th.

11. An email address where you can be reached.
Fpotts@gs.sc.gov

Respectfully submitted,



Frank S. Potts
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Attorney for Respondent

April 23, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, vs. South Carolina State Energy Office Respondent.	)	Docket No. 12-ALJ-30-0086-CC **SUBPOENA DUCES TECUM**

To: SOUTH CAROLINA DEPARTMENT OF REVENUE
Attention: Milton G. Kimpson, Esq.
301 Gervais Street
Columbia, SC 29201

YOU ARE COMMANDED TO (check all applicable):

X Appear and testify in the above-captioned case at the place, date and time shown below concerning the matters set forth in Exhibit A (you are required to designate one or more persons to testify on your behalf with respect to the matters listed on the attached Exhibit A);

and

X Produce the following items (attached), at the place, date and time shown below:

1. All documents and/or correspondence between the South Carolina Department of Revenue ("Department") and International Paper Company relating to S.C. Code Ann. § 12-6-3620, including specifically, but without limitation, correspondence from or to Jerilynn Van Story.

2. All documents and/or correspondence between the Department, the South Carolina State Energy Office, and/or any other state agency, including but not limited to the South Carolina Department of Agriculture and the South Carolina Institute for Energy Studies, relating to S.C. Code Ann. § 12-6-3620, including specifically, but without limitation, correspondence from or to Jerry Lynn Van Story.

3. All documents and/or correspondence relating to the administrative procedures, practices, and policies of the Department related to S.C. Code Ann. § 12-6-3620.

4. All documents and/or correspondence relating to the Department's involvement with the enactment, amendment, or proposed amendment of S.C. Code Ann. § 12-6-3620.

5. All documents and/or correspondence relating to the Department's interpretation of the requirements of S.C. Code Ann. § 12-6-3620.

6. All documents related to any agreements or proposed agreements between the Department and the South Carolina State Energy Office relating to the administrative responsibilities imposed on each agency under S.C. Code Ann. § 12-6-3620.

7. All documents and/or guidance, including drafts, issued by the Department which interpret S.C. Code Ann. § 12-6-3620.

Date and Location of Deposition:	**Party Requesting Subpoena:**
September 21, 2012 **Date**	Jeffrey T. Allen **Name**
McNair Law Firm, PA 1221 Main Street Columbia, South Carolina 29201 **Location**	McNair Law Firm, PA Post Office Box 11390 Columbia, South Carolina 29211 **Address**
10:00 a.m. Time of Appearance	(803) 799-9800 Telephone

I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH ALC RULE 22(A).

ISSUING ATTORNEY'S NAME, ADDRESS, AND TELEPHONE NUMBER:

Jeffrey T. Allen, Post Office Box 11390, Columbia, South Carolina, 29211; (803)799-9800

ISSUING ATTORNEY'S SIGNATURE AND TITLE:

Jeffrey T. Allen
Attorney for Petitioner

S.C. Bar #: 72096

Date of issue: September 5, 2012

Exhibit A
Matters for Examination

1. The administrative procedures, practices, and policies of the Department related to S.C. Code Ann. § 12-6-3620.
2. Communications between the Department and International Paper Company relating to S.C. Code Ann. § 12-6-3620.
3. Communications relating to S.C. Code Ann. § 12-6-3620 between the Department, the South Carolina State Energy Office, and/or any other state agency, including but not limited to the South Carolina Department of Agriculture and the South Carolina Institute for Energy Studies, relating to S.C. Code Ann. § 12-6-3620.
4. The Department's involvement and/or recommendations to any state agency or other person relating to the International Paper Company's 2010 and 2011 applications for biomass resource tax credit under S.C. Code Ann. § 12-6-3620.
5. The Department's role in the enactment, amendment, or proposed amendment of S.C. Code Ann. § 12-6-3620.
6. The Department's interpretation of the requirements of S.C. Code Ann. § 12-6-3620.
7. Agreements or proposed agreements between the Department and the South Carolina State Energy Office relating to the administrative responsibilities imposed on each agency under S.C. Code Ann. § 12-6-3620.
8. Agreements or proposed agreements between the Department and other state agencies relating to the division or delegation of administrative responsibilities of each agency in administering any tax statutes of the South Carolina Code.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	Docket No. 11-ALJ-30-0192-CC AFFIDAVIT OF ERIKA H. MYERS

Personally appeared before me, Erika H. Myers, who being duly sworn, deposes and says:

1. I am more than 18 years of age.

2. In December of 2010 I was employed by the State Energy Office as the Manager of Renewable Energy Programs and supervised the administration of tax credit evaluations pursuant to the SC Code Ann., Section 12-6-3620.

3. In December of 2010 the State Energy Office was contacted by Tracy Bolger of International Paper to advise that an application for a tax credit would be made pursuant to section 12-6-3620.

4. I was advised that the basis of the application for tax credit under section 12-6-3620 was the expenditure of funds as capital improvements for the creation of energy from biomass resource.

5. I inquired of International Paper whether the subject expenditures would result in the production of additional energy from biomass resource at the two paper mills (Eastover and Georgetown) and was advised that additional energy would be produced as a result of the expenditures. Ms. Bolger added that it was her opinion that there was no requirement in the law for an increase in energy production to receive a tax credit.

6. An example of Ms. Bolger's contentions was in response to questions about expenditures for the woodyard—where wood was delivered and stored. She advised me that the expenditures for the woodyard were to increase the capacity of the same and to accept and process more wood which would result in increased energy production.

7. As a part of our evaluation of the application by International Paper we visited the Georgetown mill on January 26, 2011. The visit was delayed for nearly a half hour because of a meeting that Ms. Bolger and Robert Shand were having with the mill personnel who would accompany us on our visit.

8. At no time during the tour did we have the opportunity to speak with mill personnel without the presence of Ms. Bolger and Mr. Shand and based upon their responses to questions it was obvious that they had been carefully coached to reply only that the expenditures were for capital improvements and that the funds being spent were directly related to the biomass operations.

9. At the conclusion of the mill tour as we questioned mill personnel I felt intimidated by the International Paper tax attorney, Ms. Bolger, who became very defensive about some of our insinuations that not all of the equipment expenditures would qualify for a credit based on our initial analysis.

10. We were advised numerous times that the expenditures at the mill for which a credit was requested would increase the energy produced from biomass resource although it was repeated that International Paper did not believe such an increase was required by law.

11. It was never disclosed to the State that International Paper had full and complete descriptions of the reasons for the expenditures, the amounts involved and whether the work would produce additional energy despite the fact that this was the exactly the type of information which we repeatedly and continually requested.

12. I did not learn until discovery materials were received from International Paper in this matter that information known as "epads" existed and that they provided answers to a great many of the questions asked. Instead we were provided with partial and incomplete information in what I believe was an attempt to both withhold information and to provide responses to questions which were designed to mislead me into making a favorable recommendation.

13. My initial recommendations to Ashlie Lancaster were based upon the selected information provided to me and were certainly not based upon full and complete responses to my queries by International Paper. I believe that International Paper provided misleading answers and very incomplete information.

14. The letter dated March 1, 2011 to International Paper signed by Ashlie Lancaster was an act of good faith to provide a response about the status of the company's application prior to the deadline to submit the tax credit information to the SC Department of Revenue. The letter was never intended to be nor was it a final determination or decision of the State Energy Office and was based upon inadequate and incomplete information having been provided by International Paper Company.

FURTHER AFFIANT SAYETH NOT.

ERIKA H. MYERS

SWORN TO AND subscribed before me
this 16th day of December 2011.

Notary Public for South Carolina
My Commission Expires: August 12, 2021

JULIA M. KAYNE
Notary Public
Commonwealth of Virginia
7505852
My Commission Expires Jan 31, 2015

Julia M. Kayne
Notary Public
7505852

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company, Inc. Petitioner, vs. South Carolina State Energy Office Respondent.	)	AFFIDAVIT OF ERIKA MYERS Docket No.: 12-ALJ-30-0086-CC

Personally appeared before me, Erika H. Myers, who being duly sworn, deposes and says:

1. My name is Erika Myers. I have lived at my current residence in Arlington, Virginia from December 17, 2011 to the present. This is (and has been) my residence since December 17, 2011 (see the attached lease). I was first employed by ICF International, LLC on November 7, 2011 as a variable part-time employee and reported to my supervisor based in the Fairfax, Virginia headquarters. I became a full-time employee in February 2012. My regular place of business is 9300 Lee Highway, Fairfax, VA 22031.

2. My job with ICF does not require me to travel to the State of South Carolina although it is possible it could do so just as I can be required to travel to any other State as a part of my job. I have a contract with the State Energy Office which is for the purpose of providing them information about my previous employment with the State which ended in April 2011. The contract with the State Energy Office does not require me to travel to South Carolina nor has the State requested that I come back to the State.

3. On December 15, 2011 I was served with two subpoenas by the McNair Law Firm. One subpoena was for a deposition from January 12 – 13, 2012 and the second was for appearance at a trial on February 7, 2012. This deposition was cancelled by the McNair Law Firm.

4. On December 17, 2011 I made a permanent move to Arlington, Virginia to live with my husband who had been living in the Washington, DC area since August 2011 as part of his employment, and to seek a permanent full-time job in that area. Attached is a copy of the lease we signed on November 9, 2011. Except for some items left to "stage" our house in Hopkins, the majority of our furniture and personal belongings were moved to Virginia on December 17, 2011. Our house had been listed for sale since April 2011 because my husband and I knew we were moving out-of-state for new career opportunities (the home was eventually sold in May 2012).

5. After I moved to Arlington, I received a letter from Erik P. Doerring with copies of the two subpoenas I was served on December 15th (see the attached). In essence, the letter told me that the two subpoenas were still valid and in-effect but that if I would appear International Paper would pay for my reasonable costs of travel, hotel and meals to attend the deposition. I was also told that I remained subject to the subpoena for trial unless I was otherwise notified. I believed Mr. Doerring and took him at his word. I agreed to the terms of his letter based upon the fact that he told me that the

subpoenas served upon me on December 15th required my appearance even though I had moved to Arlington, Virginia. My sole reason for coming to South Carolina was for the deposition in the case with International Paper as it was my impression I had no other alternative.

Further affiant sayeth not.

Erika H. Myers

COUNTY OF Fairfax
STATE OF Virginia
10/5/31

Sworn to and subscribed before me, this the 5th day of October, 2012.

Julia M. Kayne

Notary Public Julia M. Kayne

My Commission Expires:
Jan. 31, 2015
Com. # 7505852

JULIA M. KAYNE
Notary Public
Commonwealth of Virginia
7505852
My Commission Expires Jan 31, 2015

Apartment Lease Contract

NATIONAL APARTMENT ASSOCIATION

Date of Lease Contract: November 9, 2011
(when the Lease Contract is filled out)

This is a binding document. Read carefully before signing.

Moving In – General Information

1. **PARTIES.** This Lease Contract (sometimes referred to as the "lease") is between you, the resident(s) *(list all people signing the Lease Contract)*:
Aaron Myers, Erika Myers

and us, the owner
Persons Square on Columbia Pike

(name of apartment community or title holder). You've agreed to rent Apartment No. 211, at 2501 9th Road South *(street address)* in Arlington *(city)*, Virginia, 22204 *(zip code)* for use as a private residence only. The terms "you" and "your" refer to all residents listed above. The terms "we," "us," and "our" refer to the owner listed above (or any of owner's successors' in interest or assigns). Written notice to or from our managers constitutes notice to or from us. The names and addresses of the persons authorized to manage the premises are listed below. If anyone else has guaranteed performance of this Lease Contract, a separate Lease Contract Guaranty for each guarantor is attached.

Managers: Carbon Thompson
Residential Management

2. **OCCUPANTS.** The apartment will be occupied only by you and *(list all other occupants not signing the Lease Contract)*:

No one else may occupy the apartment. Persons not listed above must not stay in the apartment for more than 10 consecutive days without our prior written consent, and no more than twice that many days in any one month. If the previous space isn't filled in, two days per month is the limit.

3. **LEASE TERM.** The initial term of the Lease Contract begins on the 17th day of December, 2011, and ends at midnight the 16th day of February, 2013. This Lease Contract will automatically renew month-to-month unless either party gives at least 60 days written notice of termination or intent to move-out as required by paragraph 37. If the number of days isn't filled in, at least 30 days notice is required.

4. **SECURITY DEPOSIT.** Unless modified by addenda, the total security deposit at the time of execution of this Lease Contract for all residents in the apartment is $ 300.00, due on or before the date this Lease Contract is signed.

5. **KEYS AND FURNITURE.** You will be provided 2 apartment key(s), 2 mailbox key(s), and 2 other access devices for garage. Your apartment will be *(check one)*: ☐ furnished or ☒ unfurnished.

6. **RENT AND CHARGES.** Unless modified by addenda, you will pay $ 2652.00 per month for rent, payable in advance and without demand:

☒ at the on-site manager's office, or

☒ at our online payment site, or

☐ at _____

Prorated rent of $ 1283.00 *is due for the remainder of the (check one)*: ☒ 1st month or ☐ 2nd month, on _____/_____.

Otherwise, you must pay your rent on or before the 1st day of each month (due date). You must not withhold or offset rent unless authorized by statute. If you fail to pay rent within 5 days after we have given you written notice of your nonpayment and of our intent to terminate the Lease Contract if rent is not paid within this 5-day period, we may then terminate the Lease Contract and obtain possession of the premises. We may, at our option, require at any time that you pay all rent and other sums in cash, certified or cashier's check, money order, or one monthly check rather than multiple checks. If you don't pay all rent on or before the 5th day of the month, you'll pay an initial late charge of $ _____ plus a late charge of $ _____ per day after that date until paid in full to the extent permitted by applicable law. In the alternative, we may simply charge you 10 % of your monthly rent payment as a late fee. Daily late charges will not exceed 15 days for any single month's rent. To the extent permitted by applicable law, you'll also pay a charge of $ 50.00 for each returned check or rejected electronic payment, plus initial and daily late charges from due date until we receive acceptable payment. If you don't pay rent on time, you'll be delinquent and all remedies under this Lease Contract will be authorized. We'll also have all other remedies for such violation.

7. **UTILITIES.** We'll pay for the following items, if checked:

☐ water ☐ gas ☐ electricity ☐ master antenna
☐ wastewater ☐ trash ☐ cable TV ☐ other _____

You'll pay for all other utilities, related deposits, and any charges, fees, or services on such utilities. You must not allow utilities to be disconnected—including disconnection for not paying your bills—until the lease term or renewal period ends. Cable channels that are provided may be changed during the lease term if the change applies to all residents. Utilities may be used only for normal household purposes and must not be wasted. If your electricity is ever interrupted, you must use only battery-operated lighting. If any utilities are submetered for the apartment, or prorated by an allocation formula, we will attach an addendum to this Lease Contract in compliance with state agency rules or city ordinance.

8. **INSURANCE.** We do not maintain insurance to cover your personal property or personal injury. We are not responsible to any resident, guest, or occupant for damage or loss of personal property or personal injury from (including but not limited to) fire, smoke, rain, flood, water and pipe leaks, hail, ice, snow, lightning, wind, explosions, earthquake, interruption of utilities, theft, hurricane, negligence of other residents, occupants, or invited/uninvited guests or vandalism unless otherwise required by law.

We urge you to get your own insurance for losses to your personal property or injuries due to theft, fire, water damage, pipe leaks and the like.

Additionally, you are *(check one)*: ☒ required to purchase personal liability insurance ☐ not required to purchase personal liability insurance. If no box is checked, personal liability insurance is not required. If required, failure to maintain personal liability insurance is an incurable breach of this Lease Contract and may result in the termination of tenancy and eviction and/or any other remedies as provided by this Lease Contract or state law.

You acknowledge that no portion of the rent paid by you under this agreement will be specifically allocated for the purchase of the owner's structural fire insurance, though the owner may use a portion of gross rental proceeds obtained from all rental units in the community to purchase such structural fire insurance, and in such an event, that you are in no way a co-insured under any such policy.

9. **LOCKS AND LATCHES.** Keyed lock(s) will be rekeyed after the prior resident moves out. The rekeying will be done either before you move in or, if the apartment has a keyless deadbolt on each exterior door, within 10 days after you move in.

You may at any time ask us to: (1) install one keyed deadbolt lock on an exterior door if it does not have one; (2) install a bar and/or sliding door pinlock on each sliding glass door; (3) install one keyless deadbolt on each exterior door; (4) install one doorviewer on each exterior door; and (5) change or rekey locks or latches during the lease term. We must comply with those requests, but you must pay for them to the extent permitted by applicable law. We must install and pay for such safety devices if the governing body of the particular locality has passed an ordinance requiring us to do so.

What You Are Now Requesting. You now request the following to be installed at your expense (if one is not already installed), subject to any statutory restrictions on what you may request.

☒ keyed deadbolt lock ☒ doorviewer
☐ keyless deadbolt ☐ sliding door pinlock
☐ sliding door bar

Payment for Rekeying, Repairs, Etc. To the extent permitted by applicable law, you must pay for all repairs or replacements arising from misuse or damage to devices by you or your family, occupants, or guests during your occupancy. To the extent permitted by applicable law, you may be required to pay in advance if we notify you within a reasonable time after your request that you are more than 30 days delinquent in reimbursing us for repairing or replacing a device which was misused or damaged by you, your guest or an occupant or if you have requested that we repair, install, change or rekey the same device during the 30 days preceding your request and we have complied with your request.

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Special Provisions and "What If" Clauses

10. **SPECIAL PROVISIONS.** The following special provisions and any addenda or written rules furnished to you at or before signing will become a part of this Lease Contract and will supersede any conflicting provisions of this printed lease form.

See special provisions on the last page

See any additional special provisions.

11. **EARLY MOVE-OUT.** To the extent permitted by applicable law, you'll be liable to us for a reletting charge of $ 2254.20 (not to exceed 100 % of the highest monthly rent during the lease term) if you:

(1) fail to give written move-out notice as required in paragraphs 23 or 37; or
(2) move out without paying rent in full for the entire lease term or renewal period; or
(3) move out at our demand because of your default; or
(4) are judicially evicted.

The reletting charge is not a cancellation fee and, to the extent permitted by applicable law, does not release you from your obligations under this Lease Contract. See the next paragraph.

Not a Release. The reletting charge is not a lease cancellation fee or buyout fee. It is an agreed-to liquidated amount covering only part of our damages, that is, our time, effort, and expense in finding and processing a replacement. By law, we are limited to the recovery of actual damages. These damages may be uncertain and difficult to ascertain—particularly those relating to inconvenience, paperwork, advertising, showing apartments, utilities for showing, checking prospects, office overhead, marketing costs, and locator-service fees. You agree that the reletting charge is a reasonable estimate of such damages and that the charge is due whether or not our reletting attempts succeed. If no amount is stipulated, you must pay our actual reletting costs so far as they can be determined. The reletting charge does not release you from continued liability for future or past-due rent; charges for cleaning, repairing, repainting, or unreturned keys or other sums due.

12. **REIMBURSEMENT.** You must promptly reimburse us for loss, damage, government fines, or cost of repairs or service in the apartment community due to a violation of the Lease Contract or rules, improper use, or negligence by you or your guests or occupants. Unless the damage or wastewater stoppage is due to our negligence, we're not liable for—and, to the extent permitted by applicable law, you must pay for—repairs, replacement costs, and damage to the following if occurring during the lease term or renewal period: (1) damage to doors, windows, or screens; (2) damage from windows or doors left open; and (3) damage from wastewater stoppages caused by improper objects in lines exclusively serving your apartment. We may require payment at any time, including advance payment of repairs for which you're liable. Delay in demanding sums you owe is not a waiver.

13. **PERSONAL PROPERTY LEFT IN APARTMENT.** For this purpose, "apartment" excludes common areas but includes interior living areas and exterior patios, balconies, attached garages, and storerooms for your exclusive use.

Removal After Termination of the Lease Contract and Delivery of Possession. We may consider any property left behind in your apartment as abandoned property. Except as provided by applicable law, we're not liable for casualty loss, damage, or theft. We will give you 10 days' written notice to your last known address, address correction requested, if we are going to dispose of the property in any way. If we have sold any abandoned property, we may apply the funds received to any amounts you may owe us, including reasonable costs incurred by us in selling or storing the abandoned property. Any remaining funds will be treated as a security deposit. All property in the apartment is presumed to be yours unless proven otherwise. This paragraph is not applicable if we have been granted a writ of possession for the apartment.

Removal after Eviction. To the extent permitted by applicable law, we may ask the sheriff to place all property remaining in the apartment or in common areas (including any vehicles you or any occupant or guest owns or uses) in the public way if you are judicially evicted (see definitions in paragraph 42). You will have 24 hours to remove your property from the public way or it will be disposed of by the landlord.

Removal after Surrender or Abandonment. To the extent permitted by applicable law, we may remove or store all property remaining in the apartment or in common areas (including any vehicles you or any occupant or guest owns or uses) if you surrender or abandon the apartment (see definitions in paragraph 42).

Disposition or Sale. Disposition or sale of your abandoned property, if any, must comply with Virginia Code §55-248.33:1.

14. **FAILING TO PAY FIRST MONTH'S RENT.** If you don't pay the first month's rent when or before the Lease Contract begins such non-compliance will constitute a default by you under this Lease.

15. **RENT INCREASES AND LEASE CONTRACT CHANGES.** No rent increases or Lease Contract changes are allowed before the initial Lease Contract term ends, except for changes allowed by any special provisions in paragraph 10, by a written addendum or amendment signed by you and us, or by reasonable changes of apartment rules allowed under paragraph 18. If, at least 5 days before the advance notice deadline referred to in paragraph 3 or such longer period as is required by applicable law, we give you written notice of rent increases or lease changes effective when the lease term or renewal period ends, this Lease Contract will automatically continue month-to-month with the increased rent or lease changes. The new modified Lease Contract will begin on the date stated in the notice (without necessity of your signature) unless you give us written move-out notice under paragraph 37.

16. **DELAY OF OCCUPANCY.** If occupancy is or will be delayed for construction, repairs, cleaning, or a previous resident's holding over, we're not responsible for the delay. The Lease Contract will remain in force subject to: (1) abatement of rent on a daily basis during delay; and (2) your right to terminate as set forth below. Termination notice must be in writing. After termination, you are entitled only to refund of deposit(s) and any rent paid. Rent abatement or lease termination does not apply if delay is for cleaning or repairs that don't prevent you from occupying the apartment.

If there is a delay and we haven't given notice of delay as set forth immediately below, you may terminate up to the date when the apartment is ready for occupancy, but not later.

(1) If we give written notice to any of you when or after the initial term as set forth in Paragraph 3—and the notice states that occupancy has been delayed because of construction or a previous resident's holding over, and that the apartment will be ready on a specific date—you may terminate the Lease Contract within 3 days of your receiving the notice, but not later.

(2) If we give written notice to any of you before the initial term as set forth in Paragraph 3 and the notice states that construction delay is expected and that the apartment will be ready for you to occupy on a specific date, you may terminate the Lease Contract within 7 days after any of you receives written notice, but not later. The readiness date is considered the new initial term as set forth in Paragraph 3 for all purposes. This new date may not be moved to an earlier date unless we and you agree.

17. **DISCLOSURE RIGHTS.** If someone requests information on you or your rental history, we are only permitted to release your rent payment record and amount of payment without your prior consent. A contract purchaser of the rental property may inspect all tenants' information without obtaining your consent. If you have defaulted on your rent payment, this provision does not apply.

While You're Living in the Apartment

18. **COMMUNITY POLICIES OR RULES.** You and all guests and occupants must comply with any written apartment rules and community policies, including instructions for care of our property. Our rules are considered part of this Lease Contract. To the extent permitted by applicable law, we may make reasonable changes to written rules. If they are distributed and applicable to all units in the apartment community and do not change dollar amounts on page 1 of this Lease Contract and you have been given reasonable notice of the same.

19. **LIMITATIONS ON CONDUCT.** The apartment and other areas reserved for your private use must be kept clean. Trash must be disposed of at least weekly in appropriate receptacles in accordance with local ordinances. Passageways may be used only for entry or exit. Any swimming pools, saunas, spas, tanning beds, exercise rooms, storerooms, laundry rooms, and similar areas must be used with care in accordance with apartment rules and posted signs. Glass containers are prohibited in all common areas. You, your occupants, or guests may not anywhere in the apartment community: use candles or use kerosene lamps or kerosene heaters without our prior written approval; cook on balconies or outside; or solicit business or contributions. Conducting any kind of business (including child care services) in your apartment or in the apartment community is prohibited—except that any lawful business conducted "at home" by computer, mail, or telephone is permissible if customers, clients, patients, or other business associates do not come to your apartment for business purposes. We may regulate: (1) the use of patios, balconies, and porches; (2) the conduct of furniture movers and delivery persons; and (3) recreational activities in common areas. You'll be liable to us for damage caused by you or any guests or occupants.

We may exclude from the apartment community guests or others who, in our judgment, have been violating the law, violating this Lease Contract or any apartment rules, or disturbing other residents, neighbors, visitors, or owner representatives. We will serve written notice personally on any such guest and also serve you a copy of the notice if your guest is the one in violation. In addition to the remedies we may have against you, we can apply to a magistrate for a warrant for trespass, provided we have served the required notice. We may also exclude from any outside area or common area a person who refuses to show photo identification or refuses to identify himself or herself as a resident, occupant, or guest of a specific resident in the community.

You agree to notify us if you or any occupants are convicted of any felony, or misdemeanor involving a controlled substance, violence to another person or destruction of property. You also agree to notify us if you or any occupant registers as a sex offender in any state. Informing us of criminal convictions or sex offender registry does not waive our right to evict you.

20. **PROHIBITED CONDUCT.** You and your occupants or guests may not engage in the following activities: behaving in a loud or obnoxious manner; disturbing or threatening the rights, comfort, health, safety, or convenience of others (including our agents and employees) in or near the apartment community; disrupting our business operations; manufacturing, delivering, possessing with intent to deliver, or otherwise possessing a controlled substance or drug paraphernalia; engaging in or threatening violence; possessing a weapon prohibited by state law;

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discharging a firearm in the apartment community; displaying or possessing a gun, knife, or other weapon in the common area in a way that may alarm others; storing anything in closets having gas appliances; tampering with utilities or telecommunications; bringing hazardous materials into the apartment community.

22. PARKING. We may regulate the time, manner, and place of parking cars, trucks, motorcycles, bicycles, boats, trailers, and recreational vehicles by anyone. Motorcycles or motorized bikes may not be parked inside an apartment unit or on sidewalks, under stairwells, or in handicapped parking areas. We may have unauthorized or illegally parked vehicles towed from the apartment community at your expense under the terms of this Lease Contract or by appropriate statute. A vehicle is unauthorized or illegally parked in the apartment community if it:

(1) has a flat tire or other condition rendering it inoperable; or
(2) is on jacks, blocks or has wheel(s) missing; or
(3) has no current license or no current inspection sticker; or
(4) takes up more than one parking space; or
(5) belongs to a resident or occupant who has surrendered or abandoned the apartment; or
(6) is parked in a marked handicap space without the legally required handicap insignia; or
(7) is parked in a space marked for manager, staff, or guest at the office; or
(8) blocks another vehicle from exiting; or
(9) is parked in a fire lane or designated "no parking" area; or
(10) is parked in a space marked for other resident(s) or unit(s); or
(11) is parked on the grass, sidewalk, or patio; or
(12) blocks garbage trucks from access to a dumpster.

23. RELEASE OF RESIDENT. Unless you're entitled to terminate this Lease Contract under paragraphs 10, 16, 23, 31, or 37, you won't be released from this Lease Contract for any reason—including but not limited to voluntary or involuntary school withdrawal or transfer, voluntary or involuntary job transfer, marriage, separation, divorce, reconciliation, loss of co-residents, loss of employment, bad health, or death.

23. MILITARY PERSONNEL CLAUSE. You may terminate the Lease Contract if you enlist or are drafted or commissioned in the U.S. Armed Forces. You also may terminate the Lease Contract if:

(1) you are (i) a member of the U.S. Armed Forces on active duty or (ii) a member of the National Guard called to active duty; and

(2) you are either (i) given change-of-station orders to permanently depart the local area, (ii) deployed with a military unit for 90 days or more, (iii) relieved or released from active duty, or (iv) ordered to report to a government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

After you deliver to us your written termination notice, the Lease Contract will be terminated under this military clause 30 days after the date on which your next rental payment is due. You must furnish us a copy of your permanent change-of-station orders, call-up orders, or deployment orders or letter. Military permission for base housing doesn't constitute a permanent change-of-station order. After your move out, we'll return your security deposit, less lawful deductions. If you or any co-resident are a dependent of a servicemember covered by the U.S. Servicemembers Civil Relief Act, this Lease Contract may not be terminated under this paragraph without applying to a court and showing that your ability to comply with the Lease Contract is materially affected by reason of the servicemember's military service. A co-resident who is not your spouse or dependent cannot terminate under this military clause. Unless you state otherwise in paragraph 10, you represent when signing this Lease Contract that: (i) you do not already have deployment or change-of-station orders; (ii) you will not be retiring from the military during the Lease Contract term; and (iii) the term of your enlistment or obligation will not end before the Lease Contract term ends. You waive all rights to terminate if you misrepresent the facts in the preceding sentence.

24. RESIDENT SAFETY AND PROPERTY LOSS. You and all occupants and guests must exercise due care for your own and others' safety and security, especially in the use of smoke detectors, keyed deadbolt locks, keyless bolting devices, window latches, and other safety or security devices. You agree to make every effort to follow the Security Guidelines in this Lease Contract.

Smoke Detectors. We'll furnish smoke detectors as required by statute, and we'll test them and provide working batteries when you first take possession. After that, you must pay for and replace batteries as needed, unless the law provides otherwise. We may replace dead or missing batteries at your expense, without prior notice to you. You must immediately report smoke-detector malfunctions to us. Neither you nor others may disable smoke detectors. If you disable or damage the smoke detector, or fail to replace a dead battery or report malfunctions to us, you will be liable to us for actual damages and others for any loss, damage, or fines from fire, smoke or water.

Casualty Loss. We're not liable to any resident, guest, or occupant for personal injury or damage or loss of personal property from any cause, including but not limited to: fire, smoke, rain, flood, water and pipe leaks, hail, ice, snow, lightning, wind, explosions, earthquake, interruption of utilities, theft, or vandalism unless otherwise required by law. Unless we instruct otherwise, you must—for 24 hours a day during freezing weather—(1) keep the apartment heated to at least 50 degrees; (2) keep cabinet and closet doors open; and (3) drip hot and cold water faucets. You'll be liable for damage to our and others' property if damage is caused by broken water pipes due to your violating these requirements. If you ask our representatives to perform services not contemplated in this Lease Contract, you will indemnify us and hold us harmless from all liability for those services, provided that we owe no legal duty to you under the applicable law.

Crime or Emergency. Dial 911 or immediately call local medical emergency, fire, or police personnel in case of accident, fire, smoke, or suspected criminal activity or other emergency involving imminent harm. You should then contact our representative. You won't treat any of our security measures as an express or implied warranty of security, or as a guarantee against crime or of reduced risk of crime. Unless otherwise provided by law, we're not liable to you or any guests or occupants for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism, or other crimes. We're not obliged to furnish security personnel, security lighting, security gates or fences, or other forms of security unless required by statute. We're not responsible for obtaining criminal-history checks on any residents, occupants, guests, or contractors in the apartment community. If you or any occupant or guest is affected by a crime, you must make a written report to our representative and to the appropriate local law-enforcement agency. You must also furnish us with the law-enforcement agency's incident report number upon request.

25. CONDITION OF THE PREMISES AND ALTERATIONS. Except for our duty to maintain in good and safe condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities, and except for conditions materially affecting the health or safety of ordinary persons, you accept the apartment, fixtures, and furniture as is. You'll be given an Inventory and Condition form on or before move-in. Within 5 days after move-in, you must note on the form all defects or damage and return it to our representative. Otherwise, everything will be considered to be in a clean, safe, and good working condition.

You must use customary diligence in maintaining the apartment and not damaging or littering the common areas. You must follow proper trash removal procedures. Unless authorized by statute or by us in writing, you must not perform any repairs, painting, wallpapering, carpeting, electrical changes, or otherwise alter our property. No holes or stickers are allowed inside or outside the apartment. But we'll permit a reasonable number of small nail holes for hanging pictures on sheetrock walls and in grooves of wood-paneled walls, unless our rules state otherwise. No water furniture, washing machines, additional phone or TV-cable outlets, alarm systems, or lock changes, additions, or rekeying is permitted unless statutorily allowed or we've consented in writing. You may install a satellite dish or antenna provided you sign our satellite dish or antenna lease addendum which complies with reasonable restrictions allowed by federal law. You agree not to alter, damage, or remove our property, including alarm systems, smoke detectors, furniture, telephone and cable TV wiring, screens, locks, and security devices. When you move in, we'll supply light bulbs for fixtures we furnish, including exterior fixtures operated from inside the apartment; after that, you'll replace them at your expense with bulbs of the same type and wattage. Your improvements to the apartment (whether or not we consent) become ours unless we agree otherwise in writing.

In addition to the requirements outlined in this Lease Contract, you are responsible for complying with the obligations imposed on you by applicable provisions of the building and housing codes materially affecting health and safety.

26. REQUESTS, REPAIRS, AND MALFUNCTIONS. IF YOU OR ANY OCCUPANT NEEDS TO SEND A NOTICE OR REQUEST—FOR EXAMPLE, FOR REPAIRS, INSTALLATIONS, SERVICES, OR SECURITY-RELATED MATTERS—IT MUST BE SIGNED AND IN WRITING TO OUR DESIGNATED REPRESENTATIVE (except in case of fire, smoke, gas, explosion, overflowing sewage, uncontrollable running water, electrical shorts, or crime in progress). Our written notes on your oral request do not constitute a written request from you.

Our complying with or responding to any oral request regarding security or non-security matters doesn't waive the strict requirement for written notices under this Lease Contract. You must promptly notify us in writing of water leaks; electrical problems; malfunctioning lights; broken or missing locks or latches; and other conditions that pose a hazard to property, health, or safety. We may change or install utility lines or equipment serving the apartment if the work is done reasonably without substantially increasing your utility costs. We may turn off equipment and interrupt utilities as needed to avoid property damage or to perform work. If utilities malfunction or are damaged by fire, water, or similar cause, you must notify our representative immediately. Air conditioning problems are not emergencies. If air conditioning or other equipment malfunctions, you must notify our representative as soon as possible on a business day. We'll act with customary diligence to make repairs and reconnections.

If the premises are damaged or destroyed by fire or other casualty to such an extent that your enjoyment of the premises is substantially impaired, you may immediately vacate and serve on us a written notice within 14 days thereafter, indicating your intent to terminate the Lease Contract. The Lease Contract would be terminated as of the day you vacated the premises. If we and you cannot agree as to the issue of habitability, the decision of the local building inspector will govern.

27. ANIMALS. *To the extent permitted by applicable law, no animals (including mammals, reptiles, birds, fish, rodents, and insects) are allowed, even temporarily, anywhere in the apartment or apartment community unless we've so authorized in writing.* If we allow an animal, you must sign a separate animal addendum, which may require additional deposits, rents, fees or other charges. An animal deposit is considered a general security deposit. You must remove an illegal animal within 24 hours of notice from us, or you will be considered in default of this Lease Contract. We will authorize a support animal for a disabled (handicapped) person. We may require a written statement from a qualified professional verifying the need for the support animal. We may not charge an animal deposit for a support animal. You must not feed stray or wild animals.

If you or any guest or occupant violates animal restrictions (with or without your knowledge), we may serve on you a written notice describing your violation and stating that the Lease Contract will terminate on a date not less than 30 days after you have received the notice if you do not cure the violation within 21 days. If you properly remedy the violation within 21 days, then the Lease Contract will not terminate. To the extent permitted by applicable law, if an animal has been in the apartment at any time during your term of occupancy (with or without our consent), we'll charge you for defleaing, deodorizing, and shampooing. Initial and daily animal-violation charges are liquidated damages for our time, inconvenience, and overhead (except for attorney's fees and litigation costs) in enforcing animal restrictions and rules.

28. **WHEN WE MAY ENTER.** You shall not unreasonably withhold consent for us to enter the apartment in order to inspect the apartment, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the apartment to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. We may enter the apartment without your consent in the event of an emergency. Unless impractical, we will give you 24 hours written notice of routine maintenance (not requested by you) to be performed in the apartment.

We will give you written notice no less than 48 hours before the application of pesticide in the apartment unless you agree to a shorter notice period. If you have requested us to apply pesticide in the apartment, we are not required to give you written notice. If you are concerned with specific pesticides, you must notify us in writing no less than 24 hours before the scheduled pesticide application.

You must notify us of any anticipated extended absence from your apartment of greater than 7 days. During this absence, we may enter the apartment at times reasonably necessary to protect the apartment. If you fail to give us such notice, we may recover actual damages from you.

29. **MULTIPLE RESIDENTS OR OCCUPANTS.** Each resident is jointly and severally liable for all lease obligations. If you or any guest or occupant violates the Lease Contract or rules, all residents are considered to have violated the Lease Contract. Notices and requests from any resident or occupant (including notices of lease termination, repair requests, and entry permissions) constitute notice from all residents. *Security-deposit refunds and deduction itemizations of multiple residents* will comply with paragraph 42.

Replacements

30. **REPLACEMENTS AND SUBLETTING.** Replacing a resident, subletting, or assignment is allowed only when we consent in writing. If departing or remaining residents find a replacement resident acceptable to us before moving out and we expressly consent to the replacement, subletting, or assignment, then:

(1) a reletting charge will not be due;
(2) a reasonable administrative (paperwork) and/or transfer fee will be due, and a rekeying fee will be due if rekeying is requested or required; and
(3) the departing and remaining residents will remain liable for all lease obligations for the rest of the original lease term.

Procedures for Replacement. If we approve a replacement resident, then, at our option: (1) the replacement resident must sign this Lease Contract with or without an increase in the total security deposit; or (2) the remaining and replacement residents must sign an entirely new Lease Contract. Unless we agree otherwise in writing, your security deposit will automatically transfer to the replacement resident as of the date we approve. The departing resident will no longer have a right to occupancy or a security deposit refund, but will remain liable for the remainder of the original lease term unless we agree otherwise in writing—even if a new Lease Contract is signed.

Responsibilities of Owner and Resident

31. **RESPONSIBILITIES OF OWNER.** We'll act with customary diligence to:

(1) keep common areas reasonably clean and in a structurally safe condition, subject to paragraph 25;
(2) maintain fixtures, furniture, hot water, heating and A/C equipment;
(3) substantially comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing; and
(4) make all reasonable repairs, subject to your obligation to pay for damages for which you are liable.

If we violate the above, the following remedies apply:

(a) you must make a written request for repair or remedy of the condition, and all rent must be current at the time;
(b) after receiving the request, we have a reasonable time to repair, considering the nature of the problem and the reasonable availability of materials, labor, and utilities;

If we fail to remedy the condition within a reasonable time, you may exercise any other remedies provided under Virginia law.

32. **DEFAULT BY RESIDENT.**
Default by Resident. You'll be in default if you or any guest or occupant violates any terms of this Lease Contract including but not limited to the following violations: (1) you don't pay rent or other amounts that you owe when due; (2) you or any guest or occupant violates the apartment rules, or fire, safety, health, or criminal laws, regardless of whether or where arrest or conviction occurs; (3) you abandon the apartment; (4) you give incorrect or false answers in a rental application; (5) you or any occupant is arrested, convicted, or given deferred adjudication for a felony offense involving actual or potential physical harm to a person, or involving possession, manufacture, or delivery of a controlled substance, marihuana, or drug paraphernalia under state statute; (6) any illegal drugs or paraphernalia are found in your apartment; or (7) you or any guest or occupant engages in any of the prohibited conduct described in Paragraph 20.

Under Virginia law and this Lease Agreement, we may terminate this tenancy in accordance with the following provisions:

A. Material Noncompliance by Your Failing to Pay Rent When Due. Your rent is due and payable on the 1st day of each calendar month. If you fail to pay such rent after we have served a 5-day material noncompliance notice for failure to pay rent, or pay or quit notice, as applicable, we may terminate this Lease Contract in accordance with applicable Virginia law.

B. Material Noncompliance by You Which Can Be Remedied Within 21 Days. If you commit a material noncompliance under this Lease Contract which can be remedied within 21 days, we may serve on you a material noncompliance notice stating that if you do not remedy the specified noncompliance(s) within 21 days from the date of such notice, we have the right to terminate this Lease Contract on a date that is not less than 30 days after your receipt of such material noncompliance notice. Notice may be by (1) personal delivery upon the tenant; or (2) if the tenant cannot be found, by delivery at the apartment to any family member occupant who is at least 16 years old, or (3) in the absence of such tenant or person, to post the same in some conspicuous place upon the apartment.

C. Repeat Violations. If you have been served with a prior written notice which required you to remedy a breach, and you remedied such breach, where you intentionally commit a subsequent breach of a like nature as the prior breach, we may serve on you a 30 day termination notice. Such notice must make reference to the prior breach of a like nature and state that the Lease Contract will terminate on a date not less than 30 days after your receipt of such notice for the reasons stated therein without allowing you an opportunity to remedy such subsequent breach.

D. Nonremediable Violations. If you commit a material noncompliance, we may serve on you a termination notice stating that the Lease Contract will terminate on a date that is not less than 30 days after your receipt of such notice for the reasons stated in such notice. If the noncompliance is not remedied within 21 days of the receipt of notice. If a breach of your obligations under the Virginia law, or the Lease Contract, involves or constitutes a criminal or willful act, which is not remediable and which poses a threat to health or safety, we may terminate the Lease Contract immediately by written notice to you.

E. Remediable Violations. If you commit a material noncompliance, we may serve on you a termination notice stating that the Lease Contract will terminate on a date that is not less than 30 days after your receipt of such notice for the reasons stated in such notice. If the noncompliance can be remedied by repair or payment of damages or otherwise and you adequately remedy the noncompliance within 21 days of the receipt of notice, the Lease Contract will not terminate. If you fail to maintain the apartment as required by applicable law or by this Lease Contract but the violation is remediable by repair, replacement or cleaning, and you fail to comply promptly in the case of emergency or within 14 days after written notice from us, we may enter the apartment and have the work done. We will submit an itemized bill for such work to you as rent on the next date when rent is due, or if the Lease Contract has terminated, for immediate payment.

F. Acceptance of Rent With Reservation. Unless we accept the rent with reservation and give a written notice to you within five business days of such acceptance, acceptance of periodic rent payments with knowledge of a material noncompliance by you constitutes a waiver of our right to terminate the Lease Contract. If we have given you written notice that the periodic rental payments have been accepted with reservation, we may accept full payment of all rental payments, damages and other fees and still be entitled to receive an order of possession terminating the Lease Contract. Subject to applicable law, any rental payment received after judgment and possession have been granted to us against you, but prior to eviction, will be accepted with reservation, and will be applied to the judgment amount, including the late charges, applicable costs and attorney's fees, but will not affect the pending eviction pursuant to the order of possession granted by a court of competent jurisdiction. Further, the acceptance of the said amount with reservation in no way creates a new landlord/tenant relationship with you.

G. Remedies Available to Us Upon Termination of Lease Contract. Upon termination of the Lease Contract, we may proceed to obtain possession of the apartment by the filing of an unlawful detainer summons in a court of competent jurisdiction, and in addition, seek a money judgment for any actual damages sustained as a result of your default and breach of the Lease Contract, as provided by Virginia law. We may also recover reasonable attorney's fees and cost of service of process. Upon termination of the Lease Contract, we may treat the security deposit as provided in other provisions of this Lease Contract, appropriate addenda hereto, and applicable Virginia law.

General Clauses

33. **MISCELLANEOUS.** Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us. Our representatives (including management personnel, employees, and agents) have no authority to waive, amend, or terminate this Lease Contract or any part of it, unless in writing, and no authority to make promises, representations, or agreements that impose security duties or other obligations on us or our representatives unless in writing. No action or omission of our representative will be considered a waiver of any subsequent violation, default, or time or place of performance. Our not enforcing or belatedly enforcing written-notice requirements, rental due dates, acceleration, liens, or other rights isn't a waiver under any circumstances. Written notice to or from our managers constitutes notice to or from us. Any person giving a notice under this Lease Contract should retain a copy of the memo, letter or fax that was given. Fax signatures are binding. All notices must be signed. To the extent allowed by law, notice to or from us may be made via email, including all notices required by Section 55-248.31 of the Code of Virginia or other law.

Exercising one remedy won't constitute an election or waiver of other remedies. Unless prohibited by law or the respective insurance policies, insurance subrogation is waived by all parties. All remedies are cumulative. No employee, agent, or management company is personally liable for any of our contractual, statutory, or other obligations merely by virtue of acting on our behalf. This Lease Contract binds subsequent owners. Neither an invalid clause nor the omission of initials on any page invalidates this Lease Contract. All notices and documents may be in English and, at our option, in any language that you read or speak. To the extent permitted by applicable law, all provisions regarding our non-liability and non-duty apply to our employees, agents, and management companies. This Lease Contract is subordinate or superior to existing and future recorded mortgages, at lender's option. All lease obligations must be performed in the county where the apartment is located.

WAIVER OF JURY TRIAL. To minimize legal expenses and, to the extent allowed by law, you and we agree that a trial of any lawsuit based on statute common law, and/or related to this Lease Contract shall be to a judge and not a jury.

All discretionary rights reserved for us within this Lease Contract or any accompanying addenda are at our sole and absolute discretion.

Obligation to Vacate. Resident shall vacate the Premises and removal all of Resident's personal property therefrom at the expiration of the lease term without further notice or demand from Owner.

FORCE MAJEURE: If we are prevented from completing performances of any obligations hereunder by an act of God, strikes, epidemics, war, acts of terrorism, riots, flood, fire, hurricane, tornado, sabotage, or other occurrence which is beyond the control of the parties, then we shall be excused from any further performance of obligations and undertakings hereunder, to the full extent allowed under applicable law.

Furthermore, if such an event damages the property to materially affect its habitability by some or all residents, we reserve the right to vacate any and all leases and you agree to excuse us from any further performance of obligations and undertakings hereunder, to the full extent allowed under applicable law.

34. **PAYMENTS.** Payment of all sums is an independent covenant. At our option and without notice, we may apply money received (other than sale proceeds under paragraph 12 or utility payments subject to governmental regulations) first to any of your unpaid obligations, then to current rent--regardless of notations on checks or money orders and regardless of when the obligations arose. All sums other than rent are due upon our demand. After the due date, we do not have to accept the rent or any other payments. If we have accepted without reservation rent payments that were materially noncompliant and have given you written notice of such acceptance, then we have waived our right to terminate the Lease Contract. If we have given you written notice that your rent payments have been accepted with reservation, then we may accept all rent payments and still be entitled to an order of possession terminating the rental agreement.

35. **ASSOCIATION MEMBERSHIP.** We represent that either: (1) we or (2) the management company that represents us, is at the time of signing this Lease Contract or a renewal of this Lease Contract, a member of both the National Apartment Association and any affiliated state and local apartment (multi-housing) associations for the area where the apartment is located.

Security Guidelines for Residents

36. **SECURITY GUIDELINES.** In cooperation with the National Apartment Association, we'd like to give you some important safety guidelines. We recommend that you follow these guidelines and use common sense in practicing safe conduct. Inform all other occupants in your dwelling, including any children you may have, about these guidelines.

PERSONAL SECURITY--WHILE INSIDE YOUR APARTMENT

1. Lock your doors and windows--even while you're inside.
2. Engage the keyless deadbolts on all doors while you're inside.
3. When answering the door, see who is there by looking through a window or peephole. If you don't know the person, first talk with him or her without opening the door. Don't open the door if you have any doubts.
4. If children (who are old enough to take care of themselves) are left alone in your apartment, tell them to use the keyless deadbolt and refuse to let anyone inside while you are gone--regardless of whether the person is a stranger or an apartment maintenance or management employee.
5. Don't put your name, address, or phone number on your key ring.
6. If you're concerned because you've lost your key or because someone you distrust has a key, ask the management to rekey the locks. You have a statutory right to have that done, as long as you pay for the rekeying.
7. Dial 911 for emergencies. If the 911 number does not operate in your area, keep phone numbers handy for the police, fire, and emergency medical services. If an emergency arises, call the appropriate governmental authorities first, then call the management.
8. Check your smoke detector monthly to make sure it is working properly and the batteries are still okay.
9. Check your doorlocks, window latches, and other devices regularly to be sure they are working properly.
10. If your doors or windows are unsecure due to break-ins or malfunctioning locks or latches, stay with friends or neighbors until the problem is fixed.
11. Immediately report to management--in writing, dated and signed--any needed repairs of locks, latches, doors, windows, smoke detectors, and alarm systems.
12. Immediately report to management--in writing, dated and signed--any malfunction of other safety devices outside your apartment, such as broken gate locks, burned-out lights in stairwells and parking lots, blocked passages, broken railings, etc.
13. Close curtains, blinds, and window shades at night.
14. Mark or engrave your driver's license number or other identification on valuable personal property.

PERSONAL SECURITY--WHILE OUTSIDE YOUR APARTMENT

15. Lock your doors while you're gone. Lock any doorhandle lock, keyed deadbolt lock, sliding door pin lock, sliding door handle latch, and sliding door bar that you have.
16. Leave a radio or TV playing softly while you're gone.
17. Close and latch your windows while you're gone, particularly when you're on vacation.
18. Tell your roommate or spouse where you're going and when you'll be back.
19. Don't walk alone at night. Don't allow your family to do so.
20. Don't hide a key under the doormat or a nearby flowerpot. These are the first places a burglar will look.
21. Don't give entry keys, codes or electronic gate cards to anyone.
22. Use lamp timers when you go out in the evening or go away on vacation. They can be purchased at most hardware stores.
23. Let the manager and your friends know if you'll be gone for an extended time. Ask your neighbors to watch your apartment since the management cannot assume that responsibility.
24. While on vacation, temporarily stop your newspaper and mail delivery, or have your mail and newspaper picked up daily by a friend.
25. Carry your door key in your hand, whether it is daylight or dark, when walking to your entry door. You are more vulnerable when looking for your keys at the door.

PERSONAL SECURITY--WHILE USING YOUR CAR

26. Lock your car doors while driving. Lock your car doors and roll up the windows when leaving your car parked.
27. Don't leave exposed items in your car, such as cassette tapes, wrapped packages, briefcases, or purses.
28. Don't leave your keys in the car.
29. Carry your key ring in your hand whenever you are walking to your car--whether it is daylight or dark and whether you are at home, school, work, or on vacation.
30. Always park in a well-lighted area. If possible, try to park your car in an off-street parking area rather than on the street.
31. Check the backseat before getting into your car.
32. Be careful when stopping at gas stations or automatic-teller machines at night--or anytime when you suspect danger.

PERSONAL SECURITY AWARENESS

No security system is failsafe. Even the best system can't prevent crime. Always act as if security systems don't exist since they are subject to malfunction, tampering, and human error. We disclaim any express or implied warranties of security. The best safety measures are the ones you perform as a matter of common sense and habit.

When Moving Out

37. **MOVE-OUT NOTICE.** Before moving out, you must give our representative advance written move-out notice as provided below. Your move-out notice will not release you from liability for the full term of the Lease Contract or renewal term. You will still be liable for the entire lease term if you move out early (paragraph 33) except under the military clause (paragraph 29). TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR MOVE-OUT NOTICE MUST COMPLY WITH EACH OF THE FOLLOWING:

- We must receive advance written notice of your move-out date. The advance notice must be at least the number of days of notice required in paragraph 3. Oral move-out notice will not be accepted and will not terminate your Lease Contract.
- Your move-out notice must not terminate the Lease Contract sooner than the end of the lease term or renewal period.

YOUR NOTICE IS NOT ACCEPTABLE IF IT DOES NOT COMPLY WITH ALL OF THE ABOVE. Please use our written move-out form. You must obtain from our representative written acknowledgment that we received your move-out notice. If we terminate the Lease Contract, we must give you the same advance notice, unless you are in default, in which case Section 32 shall govern.

38. **MOVE-OUT PROCEDURES.** The move-out date can't be changed unless we and you both agree in writing. You won't move out before the lease term or renewal period ends unless all rent for the entire lease term or renewal period is paid in full. *Early move-out may result in reletting charges under paragraph 11.* You're prohibited by law from applying any security deposit to rent. You won't stay beyond the date you are supposed to move out.

39. **CLEANING.** You must thoroughly clean the apartment, including doors, windows, furniture, bathroom, kitchen appliances, patios, balconies, garages, carports, and storage rooms. You must follow move-out cleaning instructions if they have been provided. If you don't clean adequately, you'll be liable for reasonable cleaning charges.

40. **MOVE-OUT INSPECTION.** You should meet with our representative for a move-out inspection. Our representative has no authority to bind or limit us regarding deductions for repairs, damages, or charges. Any statements or estimates by us or our representative are subject to our correction, modification, or disapproval before final refunding or accounting. If you wish to be present when we make the inspection, you must so advise us in writing, and then we will provide you with written notice of the time and date of our inspection of the apartment. You will have the right to be present at our inspection of the apartment for the purpose of determining the amount of security deposit to be returned. We will provide you with notice of the time and date of the inspection at least ten (10) days before the date of the inspection. The inspection will be made within three (3) days (excluding Saturdays, Sundays and holidays) before or after termination of occupancy and removal of all your personal effects. If you attend the inspection, we will upon completion of the inspection give you an itemized list of damages to the apartment known to exist at the time of the inspection. We suggest that you do accompany us during the inspection to help resolve any problems that may exist. Failure to do so will constitute a concurrence by you in our assessment of charges for damages or cleaning. After inspection by us, appropriate charges will be assessed by us for any missing items, damages or repairs to the apartment, or its contents (except for ordinary wear and tear).

41. **SECURITY DEPOSIT DEDUCTIONS AND OTHER CHARGES.** You'll be liable for the following charges to the extent permitted by applicable law, including but not limited to: unpaid rent; unpaid utilities; unreimbursed service charges; all repairs or damages, including stickers, scratches, tears, burns, stains, or unapproved holes; replacement cost of our property that was in or attached to the apartment and is missing; replacing dead or missing smoke-detector batteries; utilities for repairs or cleaning; trips to let in company representatives to remove your telephone or TV cable services or rental items (if you so request or have moved out); trips to open the apartment when you or any guest or occupant is missing a key; unreturned keys; missing or burned-out light bulbs; removing or rekeying unauthorized security devices or alarm systems; agreed reletting charges; packing, removing, or storing property removed or stored under paragraph 13; removing illegally parked vehicles; special trips for trash removal caused by parked vehicles blocking dumpsters; false security-alarm charges unless due to our negligence; animal-related charges under paragraphs 6 and 27; government fees or fines against us for violation (by you, your occupants, or guests) of local ordinances relating to smoke detectors, false alarms, recycling, or other matters; late-payment and returned-check charges; a charge (not to exceed $100); and other sums due under this Lease Contract.

To the extent permitted by applicable law, you'll be liable to us for: (1) charges for replacing all keys and access devices referenced in paragraph 5 if you fail to return them on or before your actual move-out date; and (2) a reletting fee if you have violated paragraph 11.

42. **DEPOSIT RETURN, SURRENDER, AND ABANDONMENT.**

Provided that you have satisfied each of the following conditions, we shall return your security deposit to you as provided in this lease:

(a) You must completely vacate the entire Premises at the expiration or other termination of this lease or when any subsequent month to month tenancy is terminated.
(b) You must pay all Rent required under the lease, up to and including the date of expiration or termination of the lease or month to month tenancy.
(c) You must thoroughly clean your apartment including all kitchen appliances (refrigerator, oven, range, dishwasher, baths, closets, storage areas, patios/balconies, etc.), so that your apartment and such appliances are in the same condition as they were in on the beginning date of the initial term of the lease, except for ordinary wear and tear.
(d) There must be no defects or damages to the apartment, caused by you, your family, guests, invitees, agents, pets or otherwise.
(e) You must not be in default at the expiration or termination of the lease or any subsequent month to month tenancy.
(f) You must provide us with a written copy of your forwarding address.

Upon your satisfaction of each of the conditions set forth above, but no later than forty-five (45) days after the expiration or termination of the lease or any subsequent month to month tenancy we will do one of the following:

(1) We will pay to you any security deposit you have paid to us (less any amounts that we have properly applied to your obligations under the lease during the term of the Lease or any subsequent month to month tenancy in accordance with the terms of the lease. Any accrued interest will only become due and payable if we have held your security deposit for more than 13 months after the date of the Lease Contract and you have continuously occupied the same apartment; or

(2) We will use good faith efforts to notify you in writing personally, or by certified mail at your last known address, of our intention to withhold and apply your security deposit then held by us toward (1) any damages or charges for which you are legally liable under the lease or as a result of your breaching the lease; and (2) defraying the cost of expenses we have incurred in connection with your failure to comply with the terms of this lease. Any deductions we make will be itemized in a written notice given to you within forty-five (45) days of the termination of tenancy and delivery of possession.

Within the 45-day period prescribed above, we will refund to you the balance of the security deposit (if any) including accrued interest to which you are entitled, less any amounts that we have properly applied to your obligations under the Lease pursuant to the terms of the lease.

You have surrendered the apartment when: (1) the move-out date has passed and no one is living in the apartment in our reasonable judgment; or (2) all apartment keys and access devices listed in paragraph 5 have been turned in where rent is paid--whichever date occurs first.

You have abandoned the apartment when all of the following have occurred: (1) everyone appears to have moved out in our reasonable judgment; (2) clothes, furniture and personal belongings have been substantially removed in our reasonable judgment; (3) you've been in default for non-payment of rent for 5 consecutive days or water, gas, or electric service for the apartment not connected in our name has been terminated; and (4) you've not given us written notice within seven days of our written notice to you, indicating that you intend to remain in occupancy of the premises. An apartment is also "abandoned" 10 days after the death of a sole resident.

To the extent permitted by applicable law, surrender, abandonment, and judicial eviction end your right of possession for all purposes and give us the immediate right to clean up, make repairs in, and relet the apartment; determine any security deposit deductions; and remove property left in the apartment (paragraph 15), but do not affect our mitigation obligations (paragraph 32) except in the case of abandonment under Virginia Code §55-248.33.

Signatures, Originals and Attachments

43. **ORIGINALS AND ATTACHMENTS.** This Lease Contract has been executed in multiple originals, with original signatures--one for you and one or more for us. Our rules and community policies, if any, will be attached to the Lease Contract and given to you at signing. When an Inventory and Condition form is completed, both you and we should retain a copy. The items checked below are attached to this Lease Contract and are binding even if not initialed or signed.

- ☒ Animal Addendum
- ☒ Inventory and Condition Form
- ☒ Mold Addendum
- ☒ Enclosed Garage Addendum, dated _____
- ☒ Community Policies Addendum, dated _____
- ☐ Lease Contract Guaranty (_____ guarantee, if more than one)
- ☐ Notice of Intent to Move Out Form
- ☒ Parking Permit or Sticker (quantity:_____)
- ☒ Satellite Dish or Antenna Addendum
- ☐ Asbestos Addendum (if asbestos is present)
- ☐ Lead Hazard Information and Disclosure Addendum (federal)
- ☒ Utility Addendum
- ☒ Remote Control, Card or Code Access Gate Addendum, dated _____
- ☒ Lease Contract Buy-Out Agreement
- ☐ Intrusion Alarm Addendum, dated _____
- ☐ Other _____
- ☐ Other _____

44. **SEVERABILITY.** If any provision of this lease is invalid or unenforceable to any extent, then that provision and the remainder of this lease shall continue in effect and be enforceable to the fullest extent permitted by law.

Aaron Hyoza, Erika Hyoza

© 2011, National Apartment Association, Inc. - 1/2011

11092011133206va11021150

You are legally bound by this document.
Read it carefully before signing.

Resident or Residents (all sign below)

Owner or Owner's Representative (signing on behalf of owner)

Address and phone number of owner's representative for notice purposes
2501 9th Road South
Suite 100
(703)271-8009

Name and address of locator service (if applicable)

Date form is filled out (same as on top of page 1) 11/09/2011

SPECIAL PROVISIONS (CONTINUED FROM PAGE 2). In addition to the terms set forth in paragraph 16 DELAY OF OCCUPANCY, you acknowledge the following: (1) You understand that Penrose Square and all of its amenities are currently under construction. (2) You understand upon move in that common area amenities may not be completed, such as but not limited to the clubhouse, swimming pools, courtyards, business center, and fitness center. (3) You understand that Management cannot guarantee the move in date set forth in paragraph 3 (if lease is signed prior to move in date) due to unforeseen delays. (4) You understand that management will not offer compensation for any unforeseen delays.

MCNAIR
ATTORNEYS

January 11, 2012

Erik P. Doerring
edoerring@mcnair.net
T (803) 799-9800
F (803) 753-3277

VIA EMAIL (emeyers@ehmconsulting.com) AND FIRST CLASS MAIL
Erika Meyers
2501 Ninth Street South, Apt. 211
Arlington, VA 22204

RE: International Paper Company v. SC State Energy Office,
Docket No. 11-ALJ-30-0192-CC

Dear Ms. Myyers:

Subpoenas were served upon you on December 15, 2011 in the above-captioned case requiring your appearance in a deposition in our offices scheduled to begin tomorrow, January 12, 2012, and for the trial of the case presently scheduled to begin on February 7, 2012. Copies of these subpoenas are attached for your reference.

The State Energy Office has filed a Motion to Dismiss in the case, which motion is still pending before the South Carolina Administrative Law Court. For purposes of this case, we will agree to continue your deposition scheduled to begin tomorrow, January 12, 2012, subject to your agreement herein to appear for your deposition at a subsequent and rescheduled date, time and place to be held at our offices in Columbia, South Carolina. You have already been tendered your required witness fees for your anticipated deposition appearance. The Petitioner will also pay for your reasonable costs off travel, hotel, and meals to attend the rescheduled deposition, and will provide you with at least 14 days written notice prior to the rescheduled deposition date.

In the event you do not appear for any rescheduled deposition date under the terms of this agreement, you agree to reimburse Petitioner for all costs and expenses paid or incurred under this agreement, including any travel costs paid or advanced, and all costs and expenses to enforce this agreement including reasonable attorneys fees.

The trial of the case presently remains scheduled for trial in Columbia before the South Carolina Administrative Law Court on February 7, 2012 and you remain subject to this subpoena requiring your appearance, unless otherwise notified.

Please state your agreement to the terms of this letter by signing where stated below, email me a signed copy, and mail the original to the address stated

McNair Law Firm, P.A.
1221 Main Street
Suite 1700
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

McNAIR
ATTORNEYS

for me in this letter. Please contact me if you have any questions.

Sincerely,

McNAIR LAW FIRM, P.A.

Erik P. Doerring
Shareholder

EPD:jr

cc: Frank Potts, Esq.

I AGREE TO THE TERMS OF THIS LETTER:

Erika Meyers

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Appellant/Petitioner, vs. SC State Energy Office Respondent.	Docket No.: 11-ALJ-30-0192-CC SUBPOENA

TO: Erika Myers
122 Fox Meadow Lane
Hopkins, SC 29061

YOU ARE COMMANDED TO:

X Appear and testify in the above captioned case at the place, date and time shown below; and/or

__ Produce the following items, at the place, date and time shown below:

Date and Location of Hearing:	Party Requesting Subpoena:
Thur., Jan. 12, 2012, and Fri., Jan. 13, 2012 Date	International Paper Company, Petitioner Name
McNair Law Firm, PA 1221 Main Street, 18th Floor Columbia, SC 29201 Location	c/o Jeffrey T. Allen, Esq. McNair Law Firm, PA Post Office Box 11390 Columbia, SC 29211 Address
9:00 am Time of appearance	(803) 799-9800 Telephone

I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH ALC RULE 22(A).

ISSUING ATTORNEY'S SIGNATURE AND TITLE (INDICATE WHETHER ATTORNEY FOR PETITIONER, RESPONDENT, OR OTHER):

Jeffrey T. Allen, Esquire, McNair Law Firm, PA, PO Box 11390, Columbia, SC 29211, (803) 799-9800

_____ X Petitioner _____ Respondent _____ Other (specify) _____

S.C. Bar #: 72096 Date of Issue: December 15, 2011

COLUMBIA 1063089v1

STATE OF SOUTH CAROLINA
COUNTY RICHLAND

AFFIDAVIT OF SERVICE
DOCKET# 11-ALJ-30-0192-CC
ADMINISTRATIVE LAW COURT

INTERNATIONAL PAPER COMPANY

Plaintiff (S)

S. C. STATE ENERGY OFFICE

Defendant (S)
The undersigned, **Claude O. Gillion, III,** being duly sworn, says he served the

DEPOSITION SUBPOENA + CHECK Docket# **11-ALJ-30-0192-CC**

In this action on the person of: **ERIKA MYERS**

By delivering same to: **XXX** Served personally **ERIKA MYERS**

( ) _____, A person of age and discretion residing at address of person to be served

( ) _____ the _____
(person served, if corporate or business, at it's place of business)

And leaving with them one copy of same at **122 FOX MEADOW LANE**

HOPKINS, SOUTH CCAROLINA 29061 on the **15th** Day of **DECEMBER**

A.D. 20 **11** at **12:25** A.M. / P.M. and the deponent knows the person so served to be the person mentioned and described in the pleadings served, and the deponent is not a party to, nor interested in the action.

Claude O. Gillion, III

Claude O. Gillion, III Process Server
Gillion's Process Service
P.O. Box 25292
Columbia, South Carolina 29224

Sworn to before me this

15th Day of **DECEMBER** A.D. 20 **11**

(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires November 3, 2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Appellant/Petitioner, vs. SC State Energy Office Respondent.	Docket No.: 11-ALJ-30-0192-CC SUBPOENA

TO: Erika Myers
122 Fox Meadow Lane
Hopkins, SC 29061

YOU ARE COMMANDED TO:

X Appear and testify in the above captioned case at the place, date and time shown below; and/or

___ Produce the following items, at the place, date and time shown below:

Date and Location of Hearing:	Party Requesting Subpoena:
Tues. Feb. 7, 2012 Date	International Paper Company, Petitioner Name
SC Administrative Law Court 1205 Pendleton Street, Suite 224 Edgar A. Brown Building Columbia, SC 29201 *Location*	c/o Jeffrey T. Allen, Esq. McNair Law Firm, PA Post Office Box 11390 Columbia, SC 29211 Address
10:00 am Time of appearance	(803) 799-9800 Telephone

I CERTIFIY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH ALC RULE 22(A).

ISSUING ATTORNEY'S SIGNATURE AND TITLE (INDICATE WHETHER ATTORNEY FOR PETITIONER, RESPONDENT, OR OTHER):

Jeffrey T. Allen, Esquire, McNair Law Firm, PA, PO Box 11390, Columbia, SC 29211, (803) 799-9800

_____ X Petitioner _____ Respondent _____ Other (specify) _____

S.C. Bar #: 72096 Date of Issue: December 15, 2011

COLUMBIA 1063089v1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

International Paper Company Petitioner, v. State Energy Office Respondent.	)	Docket No. 11-ALJ-30-0192-CC AFFIDAVIT OF ASHLIE LANCASTER

Ashlie Lancaster, first being duly sworn, deposes and says as follows:

1. I have been employed by the State of South Carolina Budget and Control Board, State Energy Office [the "Office"] as the Deputy Director/Director of the Office since August 2009.

2. Throughout the term of my employment as Deputy Director/Director of the Office, I was the direct supervisor of Erika Myers who was employed as the Renewable Energy Manager.

3. During the latter part of the calendar year 2010 I was advised by Erika that she had been advised by the International Paper Company ["IPC"] that they intended to submit an application for a tax credit pursuant to the S.C. Code Ann. § 12-6-3620.

4. I subsequently learned that the tax credit sought by IPC, if granted, could result in a credit against State taxes of many millions of dollars.

5. Since Erika had been involved in some of the policy and legislative discussions regarding the promulgation of the statute (§12-6-3620) and since it was her job to administer the

program, I relied upon her to provide guidance and advice with regard to any decisions to be made by me on behalf of the Office with regard to the statute.

6. During January and February of 2011, Erika reported to me the status of her efforts to understand and review the January 28, 2011 application for the tax credit by the International Paper Company.

7. My understanding of the primary challenges Erika was having during this period was two-fold. She had no particular expertise with regard to the constituent materials and recovery process with respect to the kraft paper-making process and was having to rely upon what she was told by International Paper. Secondly, she had requested but had not received a great deal of information about the expenditures for equipment made by International Paper and the reasons therefor.

8. Erika was concerned that the law required the Office to make its determination by March 1st and that, even if International Paper was fully responsive to her requests for information, she did not believe a final determination could be made by that date.

9. An email (which was ultimately dated March 1, 2011) was drafted to International Paper (copy attached as Exhibit "A"). The purpose of the email was an attempt by the Office to indicate that while it understood that the law (§12-6-3620) required a decision by March 1, 2011 of the amount of any qualifying tax credit, the Office could not make any such determination by that date due to a lack of sufficient information from International Paper and a better understanding of the process for which the credit was requested.

10. As a result, the email was sent by me in an effort to demonstrate the good faith of the Office and its preliminary attempts to meet the statutory deadline. The email was not and

was never intended to be a final determination or decision nor even a partial determination or decision. No amount of credit was approved nor was any intended to be approved by the email.

11. The transmittal email that accompanied the request for additional information to Robert Shands of International Paper referred to the "detailed review" of allowable credits and it ended with the following two sentences:

> Please review this information and provide the SCEO with the requested documentation as soon as possible so that we may move forward with processing your application. In addition, we have notified the South Carolina Department of Revenue of your pending application.

12. Following transmittal of the request for additional information by the Office to International Paper, no further information was received by the Office from International Paper until this litigation was initiated on March 25, 2011.

13. Prior to the receipt of the documents provided by discovery as a result of the current matter, International Paper did not disclose to the State Energy Office that hundreds and hundreds of pages of detailed explanations and descriptions existed about the projects (a total of approximately 46 projects) for which credit was being sought.

14. The above-referenced documents (called "Epads"), a sample (one of approximately 46 projects comprising over 1775 pages of information which were not previously provided) of which is attached hereto as Exhibit "B" would have provided the majority of the information requested but would also have disclosed a great deal of information including serious questions about whether any of the application of International Paper was ever intended by the Legislature to be eligible for the statutory tax credit.

15. While the documents provided pursuant to discovery do not answer all questions or provide all the information previously requested of International Paper by the Office, they are

sufficient for the Office to now make a final decision/determination regarding the credit, if any, to which IPC is entitled pursuant to the S.C. Code Ann. §12-6-3620.

16. With the information currently provided by the International Paper Company to the State Energy Office it is expected that the Office can make its final decision/determination within 30 days of being permitted to proceedFURTHER AFFIANT SAYETH NOT.

ASHLIE LANCASTER

January 10, 2012,
Columbia, South Carolina

SWORN TO AND subscribed before me
this 10th day of January 2012.

Notary Public of South Carolina

My Commission Expires: 8/15/21

EXHIBIT A

From: Lancaster, Ashlie [mailto:ALancaster@energy.sc.gov]
Sent: Tuesday, March 01, 2011 8:07 AM
To: Robert E Shands; Tracy L Bolger
Cc: Myers, Erika
Subject: International Paper - Biomass Resource Credit

March 1, 2011

Mr. Robert Shands
State Tax Manager
International Paper Company
6400 Poplar Avenue
c/o Tax Department
Memphis, TN 38197

Dear Mr. Shands,

Please find attached a detailed review by the South Carolina Energy Office (SCEO) in conjunction with the Budget and Control Board's Office of General Counsel of allowable credits requested by International Paper under SC Code 12-6-3620, known as the Biomass Resource Credit. Also attached are letters of concurrence from the South Carolina Department of Agriculture and the South Carolina Institute for Energy Studies with whom the law allows consultation regarding applicable credits.

Please review this information and provide the SCEO with the requested documentation as soon as possible so that we may move forward with processing your application. In addition, we have notified the South Carolina Department of Revenue of your pending application.

If you have any questions, please call me at 803-737-9822.

Sincerely,

Ashlie Lancaster
Director

Ashlie Lancaster
SC Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
803-737-9822

RE: Application for Biomass Resource Credit for International Paper Company, Fed EI No. 13-0872805

Upon review of the application, the South Carolina Energy Office (SCEO) has determined the following allowable credits included in the request submitted by International Paper for tax credits for ***biomass equipment*** that is used to create heat, power, steam, electricity or some other form of energy for commercial use. . As a "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels, credits are only allowable for equipment that is directly in contact with biomass energy production equipment.

Additionally, allowable credits are for the ***creation of*** new biomass generation, and therefore the percentage of new steam capacity of each facility less the additional steam produced by energy efficiency improvements as noted below will be applied to calculate allowable credits. ***International Paper must provide documentation that shows the percentage of new steam production from biomass energy that directly resulted from the investments at the Georgetown Mill and Eastover Mill.***

The following details by project number which portions of the tax credit application are allowable. Please note the follow-up documentation required prior to tax credit approval.

GEORGETOWN MILL

A. 025908C695C GT Wood Yard Reconfiguration

Understanding that the reconfiguration of the wood yard was essential to take in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

B. 025908H624C EEI 6 Warm Water Supply to DI Units

As the demineralized water is essential to steam production, the percentage of costs that correlates to the percentage of DI water used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

C. 025909A423C KAMYR/Pine DRC Conversion

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 025909A580C KAMYR Wash Heater Replacement

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the

percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 025909A687C No. 1 Lime Kiln Trunion & Drive Gear Upgrade
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

F. 025909H758C EE17-Lime Kiln Multi Fuel Burner Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

G. 025910A050C #3 Causticizer Replacement
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

H. 025910G008C Greenhouse Gas Monitoring
Based on the information provided, the EPA requirement for monitoring greenhouse gas emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the EPA. These expenses will therefore not be included in the tax credit assessment.

I. 025910G035C Excess Emission Reduction
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the US Court of Appeals. These expenses will therefore not be included in the tax credit assessment.

J. 025910G915C CEMS Upgrade for No. 2 Recovery Boiler
Based on the information provided, the regulatory requirement for monitoring emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the International Paper permit. These expenses will therefore not be included in the tax credit assessment.

K. 025910H786C EE17 – GT Kamyr Wash Transition Screen
As the continuous digester and wash transition screen are important components of the pulping process and provide feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 025909G319C Bulk Fuel Oil Reconfiguration
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

M. 025910H340C EE17-RB Advanced Sootblower Controls
This technology is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

N. 025910A059C Infrastructure Improvements
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

O. 025910A048C #3 BC Heater Replacement
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 025910A678C RB Flooring Phase IV
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

Q. 025910G112C Infrastructure Improvements Phase II
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

R. 025910A062C RB2/PB Scrubber Structural Steel Repair
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

S. 025910A776C RB Flooring Phase V
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

T. 025910A108C GT Infrastructure Improvements Phase I
This project is not directly related to the increased production of power from biomass energy, and is considered a maintenance improvement. These expenses will therefore not be included in the tax credit assessment.

EASTOVER MILL
A.076908A386C No. 1 Evaporator 2nd Effect Heater Replacement
This project is not directly related to the increased production of power from biomass energy, and is considered an energy efficiency improvement that reduces energy consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

B. 076908H729C EE16 – No. 1 and No. 2 Recovery Boiler Shatter Jet Upgrade
This project is not directly related to the increased production of power from biomass energy, and is a maintenance procedure and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

C. 076909A678C K2 IV Arms and Digester Cone
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

D. 076910A002C Evap Condensate Modifications 3rd, 4th, 5th Effect
As the evaporator is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

E. 076910A028C No. 2 Chipper Disk Replacement
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide documentation that verifies the percentage of pulping chips that goes into the black liquor recovery boilers. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

F. 076910A039C #2 RB PPT Drag Scraper Drive System (East Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide***

invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.

G. 076910A136C #2 Debarking Drum
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

H. 076910A137C Portal Crane Wheel Installation
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

I. 076910A138C #2 RB PPT Drag Scraper (West Chamber)
The expenses incurred from this improvement to Recovery Boiler No. 2 are allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

J. 076910A368C No. 1 Sand Separator
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

K. 076910A740C West Portal Crane Gentry Drive Controls
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

L. 076910A746C Sodium Analyzer
As the reduction of sodium levels in water is essential to steam production, the percentage of costs that correlates to the percentage of water impacted by this analyzer used in the recovery boilers is allowable. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

M. 076910A780C LCI Drive Phases 1 & 2 Boiler Feedwater Pump
As water is essential to steam production, the percentage of costs that correlates to the feedwater pump is allowable, ONLY for the #1 recovery boiler. ***Please provide documentation that verifies this percentage. Also provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

N. 076910A782C #2-1 Unclarified White Liquor Pump VF Drive
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

O. 076910A783C #2 Digester Outlet Device VF Drive
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

P. 076910A792C K1 & K2 Digester Outlet Device Scraper Arms

As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

Q. 076910A806C Lime Kiln Safety Platforms for 2-2 Conveyor and #1, #2 Lime Crushers
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

R. 076910A988C K2 Steaming Vessel Screw
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

S. 076910A993C #2 WL Causticizer Standpipe
No portion of the project costs included in the chemical recovery process past the recovery boiler stage will be permitted since green liquor and white liquor do not meet the definition of 'biomass resource' and are considered inorganic chemicals. These expenses will therefore not be included in the tax credit assessment.

T. 076910A996C K1 Low Solids Flow Meter
As the continuous digester is an important component of the pulping process and provides feedstock to the black liquor recovery boiler, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is

allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

U. 076910A998C TRS Incinerator Reliability
Based on the information provided, the regulatory requirement for reducing emissions was not directly related to the increased biomass energy production of the facility and was an existing requirement of the permit. These expenses will therefore not be included in the tax credit assessment.

V. 076910G999C Woodyard Portal Crane Barriers
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

W. 076910H045C EE17 - #1 Evap Product Liquor Flash Tank Modification
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

X. 076910H659C EE17 – No. 1 RB Fouling Monitoring System and Supervisory Sootblowing
This technology is not directly related to the increased production of power from biomass energy and is considered an energy efficiency improvement that reduces steam consumption. These expenses will therefore not be included in the tax credit assessment. ***Subtract these and other energy efficiency improvements from your calculation for increased steam production from qualified biomass energy equipment upgrades.***

Y. 076910H992C EE17 - #1 Chipper #1 Transfer Conveyor Spillage Improvement Project
As the reconfiguration of the wood yard was essential to taking in additional pulping chips, a percentage of the cost in this project code that correlates to the percentage of feedstock from the continuous digester that goes to the black liquor recovery boiler is allowable. ***Please provide invoices, receipts, cancelled checks and/or other supporting documentation for all items included in this project number.***

State of South Carolina
Department of Agriculture

Hugh E. Weathers
Commissioner

Wade Hampton Office Building
P.O. Box 11280
Columbia, S.C. 29211

Telephone: (803) 734-2190
Fax: (803) 734-2192
E-Mail: hweathe@scda.sc.gov

February 25, 2011

Ms. Ashlie Lancaster
Director
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Lancaster:

We have reviewed the International Paper application for biomass resource credits and the opinion of the Energy Office relative to the qualifications for those credits. While the Department's technical expertise is limited in this area, we find no substantive reason to object to the Energy Office's conclusion on this matter.

If we can provide additional information or assistance, please contact us.

Sincerely,

Larry J. Boyleston
Deputy Commissioner

CLEMSON
SOUTH CAROLINA INSTITUTE
FOR ENERGY STUDIES

200 Dillard Building • 400 Klugh Avenue • Clemson, SC 29634
Telephone: 864-656-2267 • Fax: 864-656-0142
http://www.clemson.edu/scies

February 25, 2011

Ms. Erika Myers
Manager, Renewable Energy Programs
South Carolina Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

Dear Ms. Myers:

This letter is to inform you that I have reviewed the application for biomass resource credit submitted by International Paper (Fed EI No. 13-0872805) and the opinion of your General Counsel regarding that application. I concur with the opinion as written.

Should you require additional information, please contact me.

Sincerely,

Robert Leitner

Robert Leitner
Director

EXHIBIT B

Project Summary — **Project Number: 076910A746C**

Project Title:	Sodium Analyzer		
PI:	2 - High Priority		
Funding Being Requested?	Full Funding	**Budgeted Project:**	Budgeted
Preliminary Funding #:		**Tot. Investment Commitment (USD in 000's)**	73.7
Division	Converting & Specialty	**Facility**	Eastover
Department	Utilities	**Process Area**	Water Treatment

Executive Summary

Project Objectives

This project will replace the Orion 1811EL sodium analyzers with Hach 9245 sodium analyzers. These analyzers have become obsolete and parts are no longer available. Sodium analyzers are required by policy to ensure the integrity of the steam path.

Sodium analyzer are required to remain in compliance with the corporate steam path protection policies. The current analyzers have problems with stability and memory. The wet sections of these obsolete analyzers are failing. Parts are impossible to find. Four of the nine sodium analyzers have already been replaced.

Technology

Three of Eastoever's nine sodium analyzers have been replaced with Hach 9245 sodium analyzers. The #1 power boiler sodium analyzer was replaced first with a Orion 2111XP analyzers. There were start up issues with the Orion 2111XP analyzers, so when other analyzers needed to be replaced the Hach 9245 was installed. There have been no issues with the Hach 9245. Since there are already 3 Hach analyzers onsite and they have operated reliably, the remaining five will be replaced with the Hach 9245 models to standardize the analyzers and have parts that will spare nearly all of the analyzers.

Financial
Capital: $ 73,700
Associated Expense: $0
Cost Reduction: $0

Low Cost Country Sourcing (LCCS)
The sodium analyzers will be purchased through Beck Sales and Engineering Co. Beck sales and Engineering supplied the three Hach 9245 sodium analyzers currently installed.

Environmental
This project will not increase production rates, or result in any increased air emissions. This project will not result in increased capacity, rather will ensure the corporate policies guiding steam path protection are followed. The chemicals used in the sodium analyzers are already in use on site by the pre-existing sodium analyzers.

Reliability

The reliability guideline G1401-3 has been completed and is in the "Operations, Maintenance, and Reliability Strategies" section.

Project Schedule
The sodium anlayzers have 4-6 week delivery. Once onsite the sodium analyzers can be installed. There is no outage required for installation.

Asset Retirements
As a result of this project five sodium analyzers will be retired. Three of the sodium analyzers installed in 1984 with asset #223902 are fully depreciated - $0 book value. Therefore, the acquistion value will be reduced by $19,152, ($6,384/each) but no financial impact. The other two sodium analyzers were installed in 1991 with asset 225836. The acquistion value on this asset will be reduced by $15,898; ($7,949/each) resulting in a write off of $1,256 of the book value.

Storeroom Spares
The Orion 1811EL spare parts will be removed from the storeroom. The Hach 9245 spart parts we be put into the storeroom. These parts will spare eight of the nine sodium analyzers.

Endorsements and Approvals

Approval process has completed! Approval process has completed!

Tier	E/A	Title Name	Status	MM/DD/YYYY
1	A	Mike Bridgers/Printing & Communications Papers/IPAPER	Approved by Mike Bridgers/Printing & Communications Papers/IPAPER	07/06/2010 12:49 PM CDT
1	A	Haley Schirmer/Printing & Communications Papers/IPAPER	Approved by Haley Schirmer/Printing & Communications Papers/IPAPER	06/11/2010 07:45 AM CDT
Attach Financial Shell				
1	E	Brian Fender/Printing & Communications Papers/IPAPER	Endorsed by Brian Fender/Printing & Communications Papers/IPAPER	06/22/2010 06:23 AM CDT
This project is in the 2010 plan.				
1	E	John W Baker/Printing & Communications Papers/IPAPER	Pending Endorsement	
1	E	ePAD Technology/Technology/IPAPER	Pending Endorsement	
1	E	Greg Arling/Printing & Communications Papers/IPAPER	Endorsed by Greg Arling/Printing & Communications Papers/IPAPER	06/22/2010 11:58 AM CDT
What are the pros/cons of changing the project scope to also replace the 1 remaining Orion analyzer with a Hach unit so that all 9 analyzers are like-kind? What are the experiences of other mills with these Hach units compared to alternative units?				
2	A	Rick Hurst/Printing & Communications Papers/IPAPER	Approved by Rick Hurst/Printing & Communications Papers/IPAPER	07/06/2010 01:31 PM CDT
2	A	Howard Bickley/Printing & Communications Papers/IPAPER	Approved by Howard Bickley/Printing & Communications	07/08/2010 06:21 AM CDT

			Papers/IPAPER	
2	A	Tom Morris/Printing & Communications Papers/IPAPER	Approved by Tom Morris/Printing & Communications Papers/IPAPER	07/12/2010 07:59 AM CDT
2	E	Nicki Slusser/Home & Office Papers/IPAPER	Pending Endorsement	
3	A	Halima A Moses/EHS/IPAPER	Approved by Halima A Moses/EHS/IPAPER	07/12/2010 01:32 PM CDT
4	A	Susan E Hunter/Printing & Communications Papers/IPAPER	Approved by Susan E Hunter/Printing & Communications Papers/IPAPER	07/19/2010 07:20 AM CDT
5	A	Clay R Ellis/Commercial Printing & Imaging/IPAPER	Approved by Clay R Ellis/Commercial Printing & Imaging/IPAPER	07/30/2010 08:20 AM CDT
5	A	Steve B Oswalt/Printing & Communications Papers/IPAPER	Approved by Steve B Oswalt/Printing & Communications Papers/IPAPER	07/19/2010 08:25 AM CDT
5	E	Marcia G Gertson/Printing & Communications Papers/IPAPER	Endorsed by Marcia G Gertson/Printing & Communications Papers/IPAPER	07/26/2010 02:48 PM CDT
6	A	Nicki Slusser/Home & Office Papers/IPAPER	Approved by Nicki Slusser/Home & Office Papers/IPAPER	08/02/2010 08:16 AM CDT
6	E	LGC EFAD/IT/IPAPER	Pending Endorsement	

Projected Results

Basis for Projected Results

Project Balanced Scorecard (CB-1)

STATEMENT OF OWNERSHIP & METRICS
(Project Scorecard)

	At Startup		Startup + 1 yr		Startup + 3 yrs	
	Predicted	Actual	Predicted	Actual	Predicted	Actual
Business Metrics (fill in as needed):						
Financial Objectives (mandatory):						
Book Earnings ($)	-1000		-2000		-2000	
ROI (%)	-1.03		-3.27		-3.66	
IRR (%)						
NPV ($)	-70,000		-63,000		-56,000	
Marketing Objectives:						
Units Sold						
Market Share (%)						
Unit Price Average ($)						

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Market Growth Rate (%)						
Comments/Discussion: (Explain Variances)						
Project Metrics (as needed):						
Total Fixed Capital ($)	73,700					
Safety: TIR (large projects)						
LWIR (large projects)						
Start-up Date (mm/dd/yy)	9/30/2010					
Comments/Discussion: (Explain Variances)						
Manufacturing Metrics (as needed):						
Ramp Up (to 100%; mm/dd/yy)						
Production Rate (units & time)						
Utility Savings ($)						
Wood Price ($/Ton)						
Recovery (ex. Tons, MBF, etc.)						
+/- Headcount						
Comments/Discussion: (Explain Variances)						

Project Owner	Rick Hurst
Project Manager	Haley Schirmer
Business Leader/Marketing Mgr	
EPC Leader	
Manufacturing Leader	

Financial Summary

This project will require a capital expediture of $73,700

Asset Retirement, Lease Cancellation, etc.,:

As a result of this project five sodium analyzers will be retired. Three of the sodium analyzers installed in 1984 with asset #223902 are fully depreciated - $0 book value. Therefore, the acquistion value will be reduced by $19,152, ($6,384/each) but no financial impact. The other two sodium analyzers were installed in 1991 with asset 225836. The acquistion value on this asset will be reduced by $15,898, ($7,949/each) resulting in a write off of $1,256 of the book value.

IP_000173

	NPV	IRR	ROI	Avg Net Income/Loss	Payback Years	PI
USD (000)	-50.2	-24.95%	-3.77%	-2.2	0.00	2.00

Financial Shell Attachment
076910a746c Sodium Analyzer.xls

Business Analysis

Show Proof of Need

Sodium analyzers are required by policy to be in good working order. Steam path protection policy requires that sodium levels be at a minimum. Build of contaminants in the steam path can cause loss of heat transfer in the boilers, stress corrosion cracking, or pitting in the turbines leading to failures. The more contaminants in the steam path, more acid cleaning will be required during outages, leading to more cost in chemicals and longer shut downs.

The current sodium analyzers have become obsolete. Maintenance is having a difficult time finding parts. These analyzers are having problems with stability and memory. The wet sections are beginning to fail. These analyzers need to be replaced in order to ensure reliable sodium detection system and have parts available when repairs are necessary.

Impact on Existing Products

Execution Analysis

Cost Estimate Summary

Scope and Estimate Include:

1. Purchase equipment from Hach sodium analyzers from Back Sales and Engineering.
2. IP E&I maintenance to install with assistance from a Hach field service representative.
3. Detailed Cost Estimate Attached : /epad/cmsappvd.nsf/0/A35F4B95FB4638DC8625743A006F4F14/$file/ATTIUSH4.xlsx

Total Installed Cost	(+/- 50%)	(+/- 25%)	(+/- 10%)	Est. Avg. Annual Savings
USD (000)	0.0	0.0	73.7	0.0

Cost Category	USD (000)
Civil	0.0
Equipment	49.8
Building Materials	0.0
Piping	0.0
Electrical	0.0
Instruments	0.0
Steel	0.0

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Miscellaneous	0.0
Labor	17.1
Project Indirect	0.0
Preliminary Engineering (Code P or I)	0.0
Detailed Engineering	0.0
Project Management	0.0
Contingencies & Escalation	6.8
Total Installed Cost	**73.7**

Master Schedule

	FEL1 Submitted	FEL1 Approved	FEL2 Submitted	FEL2 Approved	CIP Submitted	CIP Approved	Startup	100% Performance
Planned					08/02/2010	08/30/2010	09/30/2010	
Actual								

Team Structure

Project Originator:	Brian Fender/Printing & Communications Papers/IPAPER
Project Owner:	Howard Bickley/Printing & Communications Papers/IPAPER
	Rick Hurst/Printing & Communications Papers/IPAPER
	Mike Bridgers/Printing & Communications Papers/IPAPER
	Haley Schirmer/Printing & Communications Papers/IPAPER
	Joe Bianchi/Printing & Communications Papers/IPAPER

Business Analysis Details

Strategic Fit

The corporate steam path protection policy requires that sodium analyzer are installed and maintained in proper working order. In order to maintain the integrity of the steam systems, reliable sodium analyzers need to be in place.

Proof of Need

Impact on Existing Products

Technical Analysis Details

REGULATORY ANALYSIS

Health and Safety Requirements and Strategies

General	Y/N
Do plans include necessary skills and equipment training for operations and maintenance personnel prior to start-up?	n/a
Is the writing of safe operating and maintenance procedures incorporated into the proposal?	n/a
Is the writing of ZES lockout procedures incorporated into the proposal?	n/a
Does the design include provisions for seasonal temperature changes(i.e. , heat tracing, insulation)?	n/a
Are there adequate provisions for safe equipment maintenance (i.e. , clearances, lifting beams, accessibility)?	n/a
Does the design include safe access for tanks, chests and other confined spaces (e.g., bag house)?	n/a
Does system design facilitate housekeeping, and minimize dust accumulation?	n/a
Have appropriate traffic controls been provided to separate pedestrian and industrial truck traffic?	n/a
Ergonomics	**Y/N**
Were reach distances considered when determining the placement and location of controls, displays, valves, shelving, etc. ?	n/a
Are controls and displays designed, labeled and positioned according to population stereotypes (i.e. red=stop) and in a manner which minimizes error and maximizes accuracy?	n/a
Have work areas been designed such that production/maintenance tasks can be completed without prolonged awkward postures?	n/a
Have manual material handling activities been evaluated and designed to limit or minimize excessive weights, pushing, pulling, twisting, kneeling, and repetitive activities?	n/a
Have upper extremity repetitive tasks(i.e. sorting, packaging activities, keying, etc.) been minimized?	n/a
Have environmental factors such as lighting, glare, heat generation, cold exposure and vibration been considered?	n/a

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Process Safety Management or EPA Risk Management Program	**Y/N**
(This section applies to U.S. facilities although other countries may have similar requirements for highly hazardous chemicals)	
If new chemicals or gases will be introduced into the process have the following been addressed: Have the requirements of the PSM standard been met for any process that involves chemicals at or above the threshold Quantities listed in Appendix A of 1910.119 or involves a flammable liquid or gas on-site, in one location, in a quantity of 10,000 lbs. or more?	n/a
Have the requirements of the EPA Risk Management Program been met for any process that involves chemicals at or above the threshold quantities in Table 1 of 40 CFR 68.130 of the RMP?	n/a
Fire Prevention & Protection	**Y/N**
Have the provisions of the Property Conservation Manual Chapter B3, New Projects, been met?	n/a
Where necessary, does the proposed project include:	
Sprinklers and /or standpipes?	n/a
Fire pumps and/or additional underground mains?	n/a
Fire proofing or fire-stops for cable entrances into rack rooms, control rooms, and power centers?	n/a
Rated fire doors, fire barriers?	n/a
Special protective systems (i.e., explosion suppression systems for dust handling, carbon dioxide systems for computer rooms, deluge systems, etc.)?	n/a
Flammable liquid storage rooms built in accordance with NFPA 30, Factory Mutual Guidelines, 1910.106 or other national standards?	n/a
Fire detection alarm and monitoring systems(i.e., flammable, gas, smoke, etc.)	n/a
Walkways, Stairs, Ladders, Platforms	**Y/N**

Are nonskid surfaces included in design for walk areas?	n/a
Are fixed industrial stairs designed in accordance with 29 CFR 1910.24 or the appropriate national standard?	n/a
Are fixed ladders equipped with cages and landing platforms?	n/a
Is sufficient safe clearance allowed for aisles and passageways?	n/a
Are standard railings provided for open sided floors, holes, platforms, and runways?	n/a
Electrical System Design	**Y/N**
Does design include the grounding of permanent equipment and building structures?	n/a
Will ground fault circuit interrupters be provided on equipment used in outdoor and wet locations?	n/a
Is approved equipment specified for use in "Hazardous Locations" ?	n/a
Does design include adequate lighting levels per ANSI 11.1	n/a
Have provisions been made for labeling of electrical equipment?	n/a
Do all power disconnecting devices have ZES lockout capability and are they identified and labeled?	n/a
Have field push-buttons with "jog" capabilities been provided for all rotating equipment to facilitate lockout verification?	n/a
Equipment Guarding	**Y/N**
Are guards designed to prevent access to moving parts or to point of operation hazards	n/a
Are emergency stop buttons, rope switches, or safety interlocks provided where needed?	n/a
Are gates provided where required to limit access to walkways, platforms, and work areas during normal operations?	n/a
Piping Systems, Pressure Vessels, & Tanks	**Y/N**

Is the design of piping and valves specific for the application and of proper material?	n/a
Is the number and metallurgy of hangers adequate?	n/a
Are adequate isolation and drain valves provided to assure ZES lockout and does each have lockout capability?	n/a
Have seal water drains been provided for all pumps?	n/a
Are pressure vessels protected, certified, labeled and equipped with properly sized relief valves that discharge to a safe location?	n/a
Do all new tanks placed in service and modifications or changes to existing tanks meet the requirements of P-4006?	n/a
Has insulation been provided for steam and hot water pipes or other hot surfaces where required?	n/a
Emergency Equipment & Building Design	**Y/N**
Are eyewashes/showers provided at chemical handling areas?	y
Are there an adequate number of emergency exits within specified travel distances	y
Are emergency exit signs, means of egress marking and emergency lighting provided?	y
Chemical, Noise, Radiation, Laser Hazards	**Y/N**
If new equipment will substantially increase noise levels in the workplace or community have engineering controls been applied to reduce the noise levels?	n/a
Are ventilation system(s) or other controls provided to control employee exposures to hazardous chemicals?	n/a
Are area gas detection monitors (e.g. , carbon monoxide, hydrogen sulfide, chlorine, chlorine dioxide) included where needed for detection of upset conditions?	n/a
Has an evaluation of the toxicity and physical hazards of new chemicals been included?	n/a
Are new chemical tanks/vessels labeled with the hazard communication warnings and chemical contents?	n/a

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Have ionizing radiation devices or sources been included on the facility's license?	n/a
Are all laser systems rated at a class of IIIA or less?	n/a
Are ultraviolet, microwave and infrared sources properly guarded and labeled?	n/a
Have provisions for the PPE and respirator storage been incorporated into the proposal?	n/a
Demolition or Renovation	**Y/N**
Does the proposed project involve demolition or renovation involving the removal or disturbance of:	
Asbestos insulation, surfacing material, or asbestos containing materials?	n
Lead based paint?	n
PCB's?	n
Mercury(e.g. , lights, switches, manometers)?	n

Operating, Maintenance and Reliability Strategies
There are three of these analyzers currently installed onsite. There will be no change to the operating, maintenance, and reliability strategies.

/epad/cmsapvd.nsf/0/991F01B9ABEA58658625743A006F4F33/$file/Eastover Reliability Checklist.doc

Master Schedule

Execution Analysis Details

Scope and Cost Estimate
1. Purchase equipment from Hach sodium analyzers from Beck Sales and Engineering.
2. IP E&I maintenance to install with assistance from a Hach field service representative.

Implementation Strategies
1. Execution Plan

a. Construction Management Involvement in FEL 3 - Mike Thornburg (Utilities E&I Maintenance)
b. Master Schedule - Analyzers will be installed as appropriate by Utilities E&I maintenance
c. Projected Labor Requirements - Utilities E&I Maintenance
d. Bridge Plans - n/a
e. Tie In List, Sequence and Schedule - n/a
f. Major Project Execution Risks and Mitigation / Contingency Plans - n/a
g. Constructability Review Findings -none

2. Construction Management Plan
   a. Construction Management - Mike Thornburg
   b. Organization / Roles and Responsibilities
   c. Labor Strategy - E&I Maintenance
   d. Contractor and Contract Types - IP personnel with a Hach representative
   e. Labor Resource Plans - IP personnel
   f. Work Package Breakdown - scope aligns with construction plan
   g. Project Controls - SAP

Start Up and Operation Strategies
There will be no change to the exsting startup and operating strategies for the sodium analyzers.

EHS Requirements and Plans
Details:

Water/Wastewater	Y/N
Does the proposed project:	
Require a new permit or modified wastewater permit/license?	N
Increase overall water usage?	N
Require a new or modified water access/supply license surface or groundwater withdrawal)?	N
Increase process wastewater flow?	N
Increase sanitary wastewater flow?	N
Result in a new wastewater source?	NN
Require a new or modified compliance sampling location?	N
Increase pollutant loadings to the wastewater treatment system (e.g., BOD, TSS, pH, metals) ?	N
Impact SARA 313 chemicals being discharged?	N
Alter the site's drinking water requirements?	N

Require back-flow prevention valves for potable water?	N
Discussion:	
Storm Water	**Y/N**
Require a new or modified permit?	N
Involve construction that affects more than 1 acre or land?	N
Redirect storm water flow patterns?	N
Create a new storm water outfall?	N
Require new or modified storm water control measures?	N
Require changes or upgrades to the Storm Water Pollution Prevention Plan?	NN
Discussion:	
Air	**Y/N**
Has the PSD Applicability Determination Guidance Document checklist been reviewed for this project?	Y
Have the conclusions of the PSD evaluation been documented in the applicable sections of the CIP?	Y
Require a new permit or permit modification?	N
Create new emissions sources or modify existing emission sources?	N
Involve the relocation of an existing emission source?	N
Potentially change the composition or rate of emissions from existing sources?	N
Potentially change the quantity of methanol being collected and controlled for MACT at pulp mills?	N
Impact the quantity of SARA 313 chemicals being treated or released?	N
Impact fuel firing rate or NOx emissions from a boiler >250 mmBtu/hr in a NOx SIP state?	N
Increase the potential hours of operation for existing sources?	N
Debottleneck any portion of the process?	N
Result in any pollutant reductions?	N
Require modification of any pollution control equipment?	N
Create the capability for increased production or emissions?	N
Create the capability for increased production rates of other manufacturing processes elsewhere in the plant?	N

Add new CFC containing equipment or modify existing CFC containing equipment?	N
Require the permitting agency to make an exemption determination?	N
Estimated time needed to obtain a permit or exemption approval.	N/A
Discussion: There are no air emission, debottlenecking or permitting issues associated with this project.	
Solid or Hazardous Waste	**Y/N**
Require a new permit or a permit modification?	N
Create a new solid or hazardous (S/H) waste?	N
Alter the composition or increase the quality of an exiting S/H waste?	N
Reduce the generation rate of an existing S/H water source?	N
Result in construction activities which generate hazardous waste?	N
Change the site's RCRA hazardous waste generation status?	N
Generate construction debris for disposal?	Y
Produce hazardous waste during construction?	N
Adequately address measures for handling, storage and disposal of raw materials, product, process intermediates, waste, emissions, or effluents generated during construction?	Y
Discussion: Retired sodium analyzers must be cleaned or residual reagent and disposed of properly.	
Wetlands	**Y/N**
Involve new earthwork?	N
Impact existing water bodies?	N
Require a wetlands determination?	N
Require a wetlands permit?	N
Discussion:	
Asbestos & PCB's	**Y/N**
Involve the removal of materials or items containing asbestos or PCB's	N
Discussion:	

IP_000183

Spill Prevention	Y/N
Involve the installation/removal of above ground or underground tanks or containers?	N
Involve the installation/removal of above ground or underground petroleum storage tanks or oil filled equipment?	N
Require the installation of spill control measures?	N
Require a new or modified Spill Prevention Countermeasure and Control Plan?	N
Require a new or modified Facility Response Plan?	N
Discussion:	

Pollution Prevention	Y/N
Reduce the use of chemicals in the process which result in pollutant releases to the environment?	N
If yes, quantify projected reductions.	N/A
Reduce the release of pollutants to the environment?	N
If yes, quantify projected reductions.	N/A
Discussion:	
Increase the quantity of SARA312 hazardous substances stored?	N
Involve construction or modifications in pulping or chemical recovery areas that may result in spills of black liquor, soap, or turpentine?	N

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 12-ALJ-30-0086-CC

International Paper Company, Incorporated,

Petitioner,

v.

State Energy Office,

Respondent.

MOTION HEARING

****

Wednesday, October 17, 2012

9:58 a.m. - 11:25 a.m.

The hearing before the Honorable Ralph K. Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 17th day of October 2012, before Diane M. Hendricks, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

Erik P. Doerring, Esquire
Jeffrey T. Allen, Esquire
McNair Law Firm, PA
1221 Main Street, Suite 1800
Columbia, South Carolina 29201
Attorneys for the Petitioner

Frank B. Potts, Esquire
Keith C. McCook, Esquire
South Carolina Budget and Control Board
Office of General Counsel
1201 Main Street, Suite 410
Columbia, South Carolina 29201
Attorneys for the Respondent

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EXHIBITS

Respondent's Exhibit Number One. 6, 34
(Respondent's Exhibit Number One was retained by the Court.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

PROCEEDINGS

THE COURT: This is a hearing in the Matter of International Paper Company, Inc. vs. South Carolina State Energy Office. The Docket Number is 12-ALJ-30-0086-CC. We will be hearing several motions. I thought that I'd hear the Budget and Control Board's motions first. So -- because that's the motion to dismiss the case. Mr. Potts, you may proceed.

MR. POTTS: Your Honor, looking around the courtroom, I subpoenaed a witness to be here at 10:00 this morning, and I don't see the witness.

THE COURT: All right.

MR. DOERRING: The subpoena was -- we were not served with a subpoena in this case.

THE COURT: He said he -- well, do you want to explain that?

MR. POTTS: Your Honor, I guess I'm just unaware that I served opposing party with the subpoena.

THE COURT: When you say you subpoenaed a witness, who?

MR. POTTS: Oh. Who is the witness?

THE COURT: Yeah.

MR. POTTS: Oh. The subpoena's been filed with the

Court, I think.
THE COURT: Well, I don't have it.
MR. POTTS: It should have been dropped to opposing counsel's office. But it's Mr. First. It's the people who transcribed the depositions of what went on.
THE COURT: Okay.
MR. POTTS: I'll be happy to explain why, if the Court would like?
THE COURT: Yeah. I'll tell you what. Before you even explain, his testimony would be relevant to the motion to dismiss or one of the others?
MR. POTTS: Actually, one of the others, Your Honor.
THE COURT: Do you want to just go ahead and proceed and let's deal with that down the road?
MR. POTTS: Sure.
THE COURT: All right.
MR. POTTS: That's good.
THE COURT: Okay.
BY MR. POTTS: Your Honor, here is a notebook which you'll find --
THE COURT: You hand it to her.
MR. POTTS: -- its use will be obvious a little bit letter. But I wanted to give counsel a copy.
THE COURT: Okay.

MR. DOERRING: Your Honor, I haven't seen what Mr. Potts has provided.
THE COURT: Do you want to look at it before we proceed or --
MR. DOERRING: Just a moment, Your Honor. This appears to be a three-ring binder with a 13-page memorandum in support of a motion to quash, and a protective order. It than also appears to contain --
THE COURT: Well, I can figure out what it appears to be.
MR. DOERRING: Yes, Your Honor. The point being is that I never received this document until it was being handed to me today. It wasn't --
THE COURT: Well --
MR. DOERRING: -- appended to their motion to dismiss.
THE COURT: Well, if it doesn't have any submissions, then it's not unusual for an attorney to walk into the courtroom and hand me a trial brief. So do you have a position that you wish to --
MR. DOERRING: Well, I understand, Your Honor. If there are matters addressed -- and, of course, the Respondent's motion to dismiss was a

single-page motion with nothing attached. The Respondent's counsel is handing you up a memorandum in support.

THE COURT: Okay.

MR. DOERRING: I haven't had the opportunity to view it if there's matters in the case and things like that that haven't been raised to our attention.

THE COURT: Right. Well, let's hear his argument first. Then after that I'll hear -- if he raises a new matter, you can certainly -- we can address that after this hearing too. So --

MR. DOERRING: That will be satisfactory, Your Honor.

THE COURT: Are you filing these, or do you wish to file these?

MR. POTTS: I would like to do so, Your Honor.

THE COURT: All right. You want it marked as an exhibit.

(Respondent's Exhibit Number One was marked for identification purposes.)

MR. POTTS: Your Honor, I'm about to venture into an area in which I don't claim to have any expertise. But I have I think sufficient expertise to represent to the Court that I

believe my position is correct.

THE COURT: All right.

MR. POTTS: One of the things is regardless of this Court's decision, that case is not going to end.

THE COURT: It's not going to end?

MR. POTTS: Yes, sir.

THE COURT: Well, I'm pretty confident on that no matter what I do. I don't think it's going to end with this Court no matter what happens.

MR. POTTS: That's correct. And, Your Honor, I only state -- I hope I continue to state what I think is the obvious. That you would sit there and say "Isn't that obvious" too in what I'm about to tell you. But I can represent to you that the motion was filed to ensure the client that whatever is decided, we won't be in a position two or three years from now by having someone like Judge Pleicones look up and say, "What gives you the idea that the Court had subject matter jurisdiction?" And not have it correct and to start over. As a result, the issue has to be raised. And I don't think there's a more knowledgeable court to rule on this decision. We understand that. For the

Court to have jurisdiction under Section 1-23-600, there must be a contested case. A contested case is involved only if the law mandates a hearing. There's no statute or regulation that mandates the State Energy Office to hold a hearing. And International Paper Company's brief admits as much. That leaves Article 1, Section 22. Article 1, Section 22 does not apply for two reasons. First, there is no constitutionally protected due process interest in a tax credit. The authority for this appears in our brief.

THE COURT: There's not constitutionally protected interest in a tax credit. But Article 1, Section 22 sets forth involving private rights.

MR. POTTS: Exactly, Your Honor.

THE COURT: So what is a private right?

MR. POTTS: That's been determined by the Court. And if you look at the case of -- most re -- as a matter of fact, I think it's the most recent case. Which one is that?

MR. McCOOK: Ambulatory Surgery.

MR. POTTS: Yeah. Thank you. If you look at Ambulatory Surgery at 699 S.E. 2d 146.

THE COURT: Is that in your handout or your exhibit

now?

MR. POTTS: Yes, Your Honor. It is. The South Carolina cite is not evident. This is the hearing denied October 6th, 2010.

THE COURT: Give me just one more second. All right. Give me the --

MR. POTTS: 699 S.E. 2d 146.

THE COURT: I messed up on something. I'm on Westlaw. All right. 699 --

MR. POTTS: S.E. 2d 146.

THE COURT: All right. I'm there.

MR. POTTS: Your Honor, if you will look at page --

THE COURT: I'm on Westlaw, so...

MR. POTTS: Under -- it comes under our (2) under Discussion A what I'm about to refer to. The last paragraph of Part A talks about the reasons that we more thoroughly explain we agree with the circuit court's findings that Surgery Centers could not establish a right to a quote, contested case, end quote, hearing, under the RPA, and did not have the requisite property interest to invoke our state's constitutional due process protections. And then if you skip a little bit down, the second paragraph (b) says, "Significantly, Surgery

Centers failed to set forth any specific argument establishing that the Commission's actions fell within the ambit of criteria required for a quote, contested case." Although they reference the term in their brief, Surgery Centers do not identify the necessary South Carolina or Federal law that would warrant their entitlement to quote, a contested case hearing. And they cite Triska. And then say recognizing that a quote, contested case, end quote, does not exist where there is no requirement deriving from South Carolina or Federal law that there be an opportunity for a hearing. The Court goes on, and I don't want to read the whole thing. But it goes on through the last paragraph of (b), and then you go to (c). We do not believe you're required to promulgate regulations. And it goes on. Your Honor, the bottom line is, the Court is saying you have to have a constitutional right, a due process right to a hearing. And that is an adversarial hearing. In other words, there has to be a significant property interest requiring constitutional protection. And the cases all say that tax

credits do not rise to that level, because you have no property interest in a tax credit. As a matter of fact, tax credits are a matter of grace. They are not -- you're not given property, period. And searching for cases that do that, if you run a search of tax credit denial and any number of searches, the maximum is ten cases in all states, all cases, all federal. And they all say -- we've cited the cases. We've cited the important cases in our brief. That say, guess what? No property. You don't get that. Now, even if the Court found -- do you want me to continue, or --

THE COURT: I'm researching while you're talking at the same time.

MR. POTTS: I just never argued with -- in front of you. I don't know if you want me to pause or not.

THE COURT: Go ahead.

MR. POTTS: Okay. Even if there were such an interest, Article 1, Section 22 only applies to judicial, a quasi-judicial decision of an administrative agency. Now, I know the Court has ruled and it's the law of the case, but --

THE COURT: Can I just back you up a little?

MR. POTTS: Sure.
THE COURT: While you were talking, I was pulling up Article 1, Section 22. We're talking about property interest and its rulings on whether someone has -- individuals have a property interest in a tax credit. But the Section 22 says "affecting private rights." So I think what you're doing here, you're taking the cases and you're saying they don't have a property interest because they don't have a right to the credit. And then deductibility following the point that if you don't have the right to the credit, you can't have a private right. Is that where you're going?
MR. POTTS: In essence, yes.
THE COURT: All right.
MR. POTTS: But let me go a bit further on that. That's the difference between having a hope that I'll get something from the government by sending them a letter saying, "Dear Mr. President: I would like you to tell the EPA to come by my home and take the mold out." And somebody -- let's assume there's a law that says they can do it, it can be done. That the EPA is authorized, if in their discretion, they

decide to do it. I want you to please do it. I've got a hope and expectation this man is going to do it for me, and he doesn't. So I sue him for deprivation of my constitutional rights. The Court goes on to say, excuse me. You have no constitutional right to have state or federal government do that for you. In explaining the provision, the South Carolina Constitution, I'm quoting again from Ambulatory Surgery. They state -- since I don't have pages on here, I can't tell you what pages it's on.

THE COURT: Just the section. That's all.

MR. POTTS: "In explaining this provision, we have stated in recognition of the increasing number of governmental powers delegated to administrative agencies, South Carolina Constitution Article 1, Section 22, was added to the 1895 Constitution in 1970 as safeguard for the protection of the liberty and property of citizens." It cites "Although our appellate courts have not always used the term 'due process rights,' when discussing Article 1, Section 22, we have consistently indicated that the protections provided under this section are

the equivalent of those afforded by the Due Process Clause of our State and Federal Constitutions." And I'm omitting citations again. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. The Fundamental" -- and it goes on. The fundamental requirements of Due Process Clause. Your Honor, what the court is doing here is saying you have to have a protected interest, liberty or property. You cannot have an expectation. Anybody who doesn't get what they want from government, doesn't get a tax credit that they think they qualify for, doesn't have a right to say, "I had a constitutional right to get the tax cut." And this case clearly says that.

THE COURT: All right.

MR. POTTS: It elevates it beyond a simple, just because you don't like what the government did, they breached your constitutional right just because they haven't given you what you thought

you were going to get from them, you may not have constitutional issue to present. Now, what they're saying in that case is, show us the due process interest that you have that's recognized by State and Federal Constitution. And they're analogizing to the Federal Constitution saying we're not going to sit here and listen to these under the Constitution when everybody said I don't like. I don't like that you haven't given me my expectation. I think you're wrong in making that decision you did. I think that if you only allow the hunting of 600 alligators, it's absolutely horrendous. I think it should have been 650. I have expectations that I would be able to hunt alligators this year, and I didn't get that opportunity. You've breached my constitutional right.

The fact of the matter is in this particular case, I'm sure you can find one somewhere, but there's probably no other agency with as little regulation and as much discretion as the State Energy Office. You won't find --

THE COURT: Well, technically, that statute says you should have no regulations under --

MR. POTTS: It's forbidden.
THE COURT: Yeah.
MR. POTTS: It actually forbids regulations. That is the opposite of having limited regulatory authority. It says "You shall not be a regulatory agency." And as a matter of fact, when you look down through what the Energy Office can do, it cannot regulate, period. It does not regulate. But it does certify. It does say this, we think meets our Board of Legislatures energy criteria.
THE COURT: You don't think certification is regulation?
MR. POTTS: Absolutely not. As a matter of fact --
THE COURT: All right. Let me ask you about that. You've got the water quality -- DHEC does water quality certification. Would you say that that's not regulation?
MR. POTTS: Your Honor, I'm not going to represent to you what the DHEC statutes are, because I haven't studied them.
THE COURT: Okay.
MR. POTTS: But I can say --
THE COURT: I'll give you that much.
MR. POTTS: No. I can say this: DHEC is loaded

with statutes saying, here's what you do if you're not satisfied with this decision. Here's what you can do if you're not satisfied with this decision. But DHEC and all its parts are a heavily regulatory agency. And they have the powers of regulation. They get to tell people what they may or may not do. They set the standards. They say this is what you must do. Whereas the State Energy Office does not have the authority to tell a single person what they must do. You either get their certification or you don't.

For instance, I go into Lowe's and the federal government states that it doesn't matter who it is. It says if you buy a refrigerator or a stove or something else with little a energy sticker on it, Energy-whatever they call.

MR. McCOOK: Star.

MR. POTTS: Star. And thank you.

THE COURT: Energy star rating.

MR. POTTS: We're going to give you a $20 tax credit. Or I go in there and I buy a refrigerator, I haul it out of Lowe's, and I submit. I'm saying, "This refrigerator meets all criteria for an energy tax credit." But I

didn't get one. You have what? Violated my constitutional rights. I have an expectation that I'll get 20 bucks from you because I know, or let's just say somebody put the sticker on it. Does that mean I get my $20? Those are not constitutional issues.

And the fact of the matter is, the State Energy Office has -- you will not find another agency in South Carolina that's been told you cannot regulate it. And they've been told that in this case. And it's precipitately, they were told you can't regulate, and they were stuck back to the time it was formed in the Budget Control Board, which was a plethora of odds and ends. And there's certainly no executive authority there. I mean, executive authority, but it's not inside their agency.

THE COURT: Well, we'll debate another day, at least the entire agency.

MR. POTTS: I know. I know. But they placed it within. They did not place it subject to. That's another interesting little thing. They didn't say, "Shall report to." It said, "We're just going to put you over here." That's all they did was put you there, put us there.

Because we weren't a regulatory agency. We had no -- you can't -- if you look at that statute, they can't even tell people in the building, turn off the lights. They can't say lights will be turned off at night. They don't have the power. But they can walk up and say to you, we don't like the fact that you don't turn off your lights at night, and we would really like you to do so. And we would be happy to certify as turning off your lights as a good energy practice. But we appeal. We don't like that. And furthermore, even though we have the statute to appeal, we think you're depriving us of a constitutional right to leave our lights on. Well, you're not being deprived of anything. You didn't regulate it. You can't tell me. I don't want to beat a dead horse.

THE COURT: Proceed.

MR. POTTS: The legislature has not given the State Energy Office any authority to adjudicate private rights or any other rights. They can't control any party's tax liability. They have nothing to do with that. Rather, they exercise very broad discretionary authority regarding the application of the tax code.

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And I think -- I don't think I included it. But the Kurschner case talks about -- excuse me, Your Honor. I didn't think we'd get into it to this extent. But --

MR. McCOOK: Green tab.

MR. POTTS: Thank you.

THE COURT: Give me a second. I'll be there.

MR. POTTS: I'm sorry. It's -- do you prefer the South Carolina cite?

THE COURT: I don't care. I'm on Westlaw.

MR. POTTS: 376 S.C. 165.

MR. McCOOK: S.E. 2d.

MR. POTTS: I'm sorry. S.E. 2d. No. S.C.

THE COURT: Yeah. South Carolina. We don't have an S.C. 2d yet.

MR. POTTS: But if we keep going, we're going to get there.

THE COURT: Yeah. All right. I'm there. I'm familiar with Kurschner. Actually, I was familiar with the other case too.

MR. POTTS: Holding that in determining the process which is due, a court will consider the private interest affected by the proceeding, the risk of error created by the chosen procedure, and the countervailing governmental interest

supporting challenged procedure.

THE COURT: Hold on. You're going too fast.

MR. POTTS: I'm sorry.

THE COURT: And I'm not there yet. Private interest?

MR. POTTS: Well, let me start a different one. Specifically, the decision to deny the Kurcshner's application to subdivide their land was an exercise of discretionary authority, as opposed to adjudicatory power. And that State Energy Office does not -- the legislature expressly granted this --

THE COURT: Where are you at? What section?

MR. POTTS: Actually, 8.72 of South Carolina.

THE COURT: All right.

MR. POTTS: The middle --

THE COURT: Oh, yeah. I see it.

MR. POTTS: "The legislature expressly granted this discretionary authority in the area of local planning to the Commission." That's exactly what has happened here, except it's been done at the State Energy Office. It has been given great discretionary authority. Some people would say too much. But the fact of the matter is, that's what they've got.

It even says in the statute that the State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. It doesn't have to. If you want, you can talk to them too. That's discretionary.

And third, and this goes back to Kurschner. Even if I -- the International Paper Company has a property interest protected by Article 1, Section 22, the process due may not trigger the requirement for a contested case. And this is the point made. Not every depravation of a property interest or as a trial-type hearing. Now, this going back, we don't think there's even any property interest in it, at least as the courts have ruled thus far.

THE COURT: Actually, that little theory goes further back to where you're at. You can go back to -- actually further back you can go back to Hewitt vs. Helms back in the '60s and get theory. But go ahead. Not every -- there are many levels of due process, and not all levels require a hearing. So I'm familiar with that theory.

MR. POTTS: That just goes to show my ignorance in one sense. But I was looking for tax credits specifically. I was trying -- what I was doing was I was saying, is there -- you know, is there -- are there cases dealing with tax credits, and whether those are considered promulgated.

As a matter of fact, if you'll look at the first case we cited, as I said, I pulled something like 20 cases total. I mean, it was just a real opacity. Because apparently, people are not arguing that or have not proposed that that is the case.

THE COURT: Did you said opacity of cases or a plethora?

MR. POTTS: I don't know what I was saying. It was a plethora of something and it's opacity in this case.

THE COURT: Oh, okay.

MR. POTTS: I'll give you an example so the Court can -- I've got to find the brief, because it's in the brief, Your Honor. For instance, this case is pretty close to being on point. And it's about the environmental tax credit. 909 F. Supp. 606. It's called the DeHarder

Investment Company case. And it's a 1995 case. And what -- and as a matter of fact, if you will go to page in particular 613, I think that's where you'll find where they talk about the threshold requirement for successful due process claims is a deprivation of a property interest. It goes on. It says, and I'm sort of skipping some here. In other words, property is what is securely and durably yours under the state or federal law as distinct from what you hold subject to so many conditions as to make your interest meager, transitory or uncertain. In the absence of the underlying property interest, the Due Process Clause does not require states to obey their own procedural rules. And this happened to be a case by the tax credit that an investor thought he was entitled to. But the agency in Indiana said no. And it's very close to being on point in this case. In another case cited in the brief --

MR. McCOOK: Uh-huh.

MR. POTTS: Oh, it's not cited?

MR. McCOOK: (Shakes head.)

MR. POTTS: It's a case that's not cited, which Mr.

McCook has kindly handed me. He knows -- I wanted him to argue this, Your Honor, but he would not do it. All right. The Barrington Cove Limited Partnership vs. Rhode Island Housing. And this is 246 F. 3d 1. And I'm just going to quote a sentence from it.

THE COURT: Let me get there real quick. Let me get the page number.

BYMR. POTTS: I'm sorry. I'm having trouble finding it. It looks like page six, Your Honor. About the fifth paragraph, page six, the end of the fifth paragraph is what I was going to quote to you.

BYTHE COURT: The only thing about six, is there's all kinds of sixes in this case. I'll get down there. I'm pretty well there.

BYMR. POTTS: Your Honor, if you search for "legitimate claim."

BYTHE COURT: There you go. I'm already there.

BYMR. POTTS: It simply says, "Thus, under the governing regulatory scheme, Barrington," which is where I graduated from high school, "never acquired a legitimate claim of entitled, supplemental federal income tax credits." And our brief, which we've provided to you,

will -- it's called in your notebook "Memorandum in Support of Motion to Dismiss." And if you didn't get one, I'd appreciate you telling me, because I intended for you to have one. There are more cases cited on the same issue.

THE COURT: All right.

MR. POTTS: The bottom line is, they don't have a right under the Constitution. Now, if you find that --

THE COURT: All right. So we got -- under your order we've got the bottom line is that it's not a contested case, and it's not an Article 1, Section 22 right. Therefore, there was no requirement for hearing below. So at this point we would be hearing the appeal. Is that -- of the matter?

MR. POTTS: Well, I think you still have the constitutional right to have the case heard. You still have to -- you can't -- just because I don't get my $20 back, does not give me a constitutional right to bring a case, and to bring a case to this court. That's what I think the supreme court has been saying, and they particularly said it in the Anthony case.

Where this -- you have to have such an interest that it rises to the level of a due process right. It's not something that's incidental. It's not something that just one -- every person gets to go and complain and say I have a constitutional right to this. You didn't give me this. I have a constitutional right. That's what the court is saying. We're not going to have every -- everybody coming in and saying, "Hey, I didn't get this. Guess what? If you can't find any other authority for it, I'll take the Constitution, Article 1, Section 22. Give me a hearing. And give me -- as a matter of fact, make that a full-blown hearing too. I want to hear their evidence in this."

THE COURT: What I was getting at, all right, if we follow that line of thought, there is no hearing. But there is a decision made by the State Energy Office, and then there's 1-23-600(D) --

MR. POTTS: Yes, sir.

THE COURT: -- where it addresses appeals and a decision. And you're saying that even though there may not be a right to a testimonial-type hearing, that there still would be no right to

appeal the decision made by a state entity?

MR. POTTS: Exactly.

THE COURT: And under what theory would that be?

MR. POTTS: The first sentence of the -- an administrative law judge also shall preside over appeals from final decisions of what? Contested cases. And this is not a contested case, period. The decision made by the State Energy Office is not a contested case, not a decision from a contested case, period. You haven't got one. That's the thing in this case. There is no statutory right. It doesn't talk about a hearing of any kind whatsoever. Now, the court has made it the law of a case that we can call it decision, if you want. But that really -- what if they just haven't even ruled? What if they just said, "We've got your application. Thank you very much. Goodbye." You wouldn't have anything. You'd have the fact that they didn't do what the statute said. So what do you do about it? Well, you might go try and mandate, you might try a writ of certiorari, but you don't go to the Administrative Law Court and say, "Guess what? Order them to do it." Because the

Administrative Law Court hasn't got the statutory or constitutional authority. Even if they have a property interest protected by Article 1, Section 22, which I don't think with any stretch of the imagination they do, the process may not trigger for a contested case. Not every depravational property requires a trial or hearing. I don't want to get into that because you have to first show you've got a protected property interest. Under the Constitution, you can't do that. They just don't exist. And the only thing you can do is make it up and say, "Well, we think something like this should be." So where do we stop it? Do we cut it off at five million, six million, seven million? Or do we say, Nah. We're going to take that five dollars. Anything that's got the right change from a state agency. Anybody who thinks they're been overcharged for a new title for their car. Guess what? If they won't refund the money, you've got a constitutional interest. That's -- no. I think that this is all covered in our brief, the cases related to this.

Your Honor, I think everybody acknowledges this

is not part of the executive branch. I mean, if there's any doubt about that, I'd be happy to go over it.

THE COURT: I can't speak to what anybody acknowledges.

MR. POTTS: I'm sorry, Your Honor. Let me then --

THE COURT: Or what everybody else may acknowledge.

MR. POTTS: I'm sorry, Judge.

THE COURT: That's fine. I'm just telling you I can't.

MR. POTTS: Judge, I apologize. Because I know there's a lot more on that side of the bench than on this side of the bench.

THE COURT: That's fine.

MR. POTTS: Very simply, Your Honor, under 1-23-600, "An administrative law judge will preside over all hearings of contested cases as defined in Section 1-23-505 or Article 1, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the of the executive branch of government as defined in Section 1-30-10."

THE COURT: Well, I'm familiar -- I looked at 1-30-10. I recognize that the Budget and Control Board is not listed under there.

MR. POTTS: Actually, more importantly, the State Energy Office is not listed there.
THE COURT: Yeah.
MR. POTTS: I mean, that -- because you can say while it rests with the Budget Control Board, I grant you that it is maybe -- but the fact of the matter is it's the State Energy Office that is -- an entity's been placed there. It's simply not an executive agency. I mean, it's one of the very few that remain, the one or two that remain at this point until the statute's changed. But it is there. And it just doesn't fit there.
THE COURT: All right.
MR. POTTS: That was --
THE COURT: I recognize all that.
MR. POTTS: Okay. I'm sorry. I thought I was preaching to the choir, and I didn't intend to do that. Oh, and I -- except for some of the changes in the statute, but not changes that affect your decision, I think the issue before has essentially been cited by Judge Kittrell.
THE COURT: Well, I will tell you on that any decisions of another administrative law judge is not binding.

MR. POTTS: Okay. And I didn't mean to imply anything by that.
THE COURT: Yeah.
MR. POTTS: As I say I'm -- do you want the cite, the case?
THE COURT: Anything that Judge Kittrell did as far as his reasoning, I would like to know about.
MR. POTTS: That's what I was thinking, Your Honor.
THE COURT: But --
MR. POTTS: I understand.
THE COURT: Okay.
MR. POTTS: But the case is Liberty Investments, Incorporated v. the South Carolina State Housing Finance and Development Authority. The Docket Number was 98-ALJ-XX-0385. The Westlaw cite is 1998 Westlaw 954800.
THE COURT: Okay.
MR. POTTS: And in that case, that was a decision by sua sponte on jurisdiction. And I --
THE COURT: What was the reasoning that he gave, or what did it deal with?
MR. POTTS: They asked for -- this is the same type of thing. It's very close and sort of an analogy of this case. This is where they wanted reservation under a housing tax credit

program. And they wouldn't give them one. They denied the request for it.

THE COURT: All right. They said the Court didn't have subject matter jurisdiction?

MR. POTTS: Yes, Your Honor.

THE COURT: Okay. In that case was it a penalty contested that he did? He said --

MR. POTTS: No. It's sua sponte. He raised the issue.

THE COURT: Okay. All right.

MR. POTTS: Thank you, Your Honor.

THE COURT: Did you wish Respondent's -- we've got Respondent's --

COURT REPORTER: Yes.

THE COURT: This is Petitioner's I think. No. It's Respondent's. Excuse me. You're right. Did you wish to have it admitted into evidence?

MR. POTTS: I was only bringing it to the attention of the Court, Your Hoor.

THE COURT: Okay.

MR. POTTS: I wanted to provide you with a copy. That, I was.

THE COURT: Yeah. That.

MR. POTTS: I'm sorry. Yes.

THE COURT: Any objection?

MR. DOERRING: No.
THE COURT: All right. It's admitted.
(Respondent's Exhibit Number One was admitted into evidence.)
BY MR. DOERRING: Thank you, Your Honor. This is Erik Doerring for the Petitioner, International Paper, and we'll respond to the motion to dismiss by the Respondent in this case. Which raises an issue of whether the Court has jurisdiction in these proceedings. I have just been reviewing Respondent's memorandum, which he provided in support of the motion to dismiss. And in recently reviewing the memorandum, Your Honor, it appears to raise one issue.
That the court does not have jurisdiction under the Constitution, appellate jurisdiction, if you will, sitting in its role under Article 1, Section 22. We have -- International Paper contends that the Court has two independent bases for jurisdiction in this case. One, sitting in its appellate function, which Respondent seems to address in his memorandum. Other, this court has to know the jurisdiction. And I wish to address that. Interesting, that

de novo jurisdiction that we've argued, principal in our memorandum, is not addressed at all save except for a brief conclusory memorandum, or footnote, rather, at the end of Respondent's memorandum. They don't even address this issue. And briefly all they say is, and I quote under footnote four, at the last page of the memorandum, "Although several statutes which rely upon the certification of the SEO were previously subject to the jurisdiction of the Department of Revenue, some have since been amended as in the case of Section 12-6-3620. However, once the legislature reposed the decisions to certify certain expenditures to the discretion of the State Energy Office, any such decision ceased to result in a 'dispute with the Department of Revenue'." That's a very profound statement, Your Honor.

MR. POTTS: I would ask that he finish the sentence he's reading if he's going to quote me.

MR. DOERRING: "As is required to invoked the South Carolina Revenues Procedures Act."

Section 12-6-3920, Your Honor, was enacted originally in 2006. This is the statute we're

focusing on here. It was a very limited statute at the time, Your Honor. It was a credit for methane gas from a landfill from manufacturing facilities. The State Energy Office had no role. It wasn't even mentioned. The South Carolina Department of Revenue administers that statute, as it does all of our state tax statutes under contract law, particularly the tax credit sections.

In the 2007 amendments, the statute was changed substantially, rewritten, quite frankly. And it changed, provided the credit, an equipment credit for equipment that uses biomass as a fuel to create energy for commercial use. In these amendments, 2007, the State Energy Office was added. It was also added, Your Honor, at that time throughout other companion credit provisions in and around this section. And particularly, and relevant to the Court, and I have provided support with a letter, and I also e-mailed it to Ms. Fair, containing copies of these statutes, in particular this one at issue. Three particular provisions were added affecting the State Energy Office and its relationship with the South Carolina Department

of Revenue.

THE COURT: Let me pull that up.

MR. DOERRING: Yes, sir. It was an email --

THE COURT: I've got it.

MR. DOERRING: Yes, Your Honor.

THE COURT: I've just got to pull it up. All right. Go ahead.

MR. DOERRING: All right. The first page of the attachment to my letter is a copy of Section 12-6-3630, Your Honor, on the bottom part of this page 87.

THE COURT: Oh. 6-3630 --

MR. DOERRING: I'm sorry. 12-6-3620, Your Honor, (A) in the middle, I believe the second sentence. It provides that "Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office." A brand-new section, a brand-new language, for the first time. Below tracking this, Your Honor, and the duties of State Energy, if you go down to (D)(1), Your Honor --

THE COURT: I already have that.

MR. POTTS: "A taxpayer must submit a request for credit to the State Energy Office by January

31st for all qualifying equipment placed in service in the previous calendar year, and the State Energy must notify the taxpayer that it qualifies for the credit."

THE COURT: I'm sorry. I thought you were going somewhere else. Is it (D)(1)?

MR. DOERRING: (D)(1), Your Honor. And I quote after the first introductory clause, "A taxpayer must submit a request for credit," mandatory, "to the State Energy Office by January 31st."

THE COURT: I see it.

MR. DOERRING: Yes, Your Honor. "For all qualifying equipment placed in service in the previous calendar year, and the State Energy must notify the taxpayer that it qualifies for the credit and the amount of the credit allocated to the taxpayer by March 1st of that year." There's a sentence then added specifically by the General Assembly, Your Honor, and a very important one at the bottom. "The Department of Revenue may require any documentation that it deems necessary to administer the credit." There's an interaction between these two executive agencies and the state government

specifically in the statue. Now, this statute, however, has a statutory scheme to it. For instance --

THE COURT: Most statutes do.

MR. DOERRING: In this one a very particular one. It involves a credit only for corporate taxpayers applicable on corporate income taxes and license fees. It does not apply to individuals, number one. And to qualify for the credit, most corporate taxpayers have to have that in by December 31st. They're required to ascertain all the equipment they placed in service during that tax year, and they have a month, a month from the end of their tax year to file by January 31st an application for this credit with the State Energy Office. The State Energy Office then has even less time, the month of February by March 1st, to certify that credit to the taxpayer, to notify the taxpayer, and as we've shown in our information, they also notify the Department of Revenue. Why? Because the taxpayer, under our laws, must file its corporate income tax return two weeks' later, March 15. There's a very strict and limited

time period that is set forth, an action in filing this involving the taxpayer, the State Energy Office, and the Department of Revenue. All interrelated.

They tell the General Assemblies to utilize this, to look at the relationships of all three of them together in the statute. And the statute itself, the role of the State Energy Office is to certify the credit to the taxpayer, it must notify the taxpayer. It, as we've shown, notifies the Department of Revenue, and quite appropriately. The Department of Revenue is the one that receives the tax returns, has to see if the credit has been claimed. It is charged with administering the statute. The State Energy Office is an executive body in South Carolina state government. This is McLeod vs. Edwards. Our supreme court has already established that. It is a principal state agency whose purpose, the State Energy Office, is a statuary office created within and under the Budget and Control Board Department. The principal purpose of the State Energy Office is it's an energy planning office for our state. It's to develop and

enhance our renewable resources in our state. It has no regulatory authority.

THE COURT: What was the case you cited a while ago?

MR. DOERRING: It's in our brief, Your Honor. McLeod vs. Edwards.

THE COURT: I just need the cite.

MR. DOERRING: I apologize, Your Honor. It's 236 S.E. 2d 406 296 S.C. 75, State of South Carolina ex rel. Daniel R. McLeod --

THE COURT: I got it.

MR. DOERRING: -- vs. Edwards. And I quote. "The Board is comprised of the Governor, the State Treasurer, the Comptroller General, the Chairman of the State Finance Committee, and the Chairman of the Ways and Means Committee of the House," all ex officio numbers. "It is the executive body dealing primarily with fiscal affairs of State government." While our State Energy Office is a statutorily created office within the Budget and Control Board, our Department of Revenue is the statutory department of State government that administers our tax statutes all under Title 12. They issue regulations, rulings, recommends tax legislation, conducts audits, and issues

determinations. It is our State agency and State government that is responsible for administering our tax laws. However, under this statute, there is a great degree of coordination in our action between the State Energy Office and the Department of Revenue, as you would expect, where a State agency is performing an important certification function under this statute.

As we've shown in our brief, our memorandum, rather, Your Honor, there is joint development in the development of the tax credit form itself between the State Energy Office and the Department of Revenue. Indeed, when they developed the forms, they both posted forms simultaneously on their own websites. There's communications between the State Energy Office and the Department of Revenue regarding the interpretations of the statute, requirements of the tax credits. The Department of Revenue, of course, and it is the body so far that has issued interpretive rulings. So as you would expect, the Department is issuing the rulings, and State Energy and the Department of Revenue are coordinating. And this is only the

information we found in limited discovery in this case. As we continue discovery, if the case proceeds forward, we expect to find a great deal more of interaction. Those two agencies are working hand in glove dealing with this credit process. And you would hope that is the way it is; you would hope there's a great deal of coordination between the State Energy Office where they're performing the certification function so that our Department of Revenue can effectively administer its statute.

Now, as I've provided to you, the statutes in front of you, Your Honor, 12-6-3620 is not the only tax credit statute where the State Energy Office, or indeed other State offices perform a certification for the Department of Revenue. This is not a new concept. Certification of state agencies is, in fact, a specific function that our General Assembly has used in tax credit statutes for some time with the Department of Revenue. Indeed, if you would go, Your Honor, to page 89, there's approximately five pages.

THE COURT: Five?

MR. DOERRING: Yeah. Bottom right-hand corner, it says "page 89," Your Honor.
THE COURT: I've got 63 pages in this.
MR. DOERRING: It is -- I'm referring to the number in the lower right-hand corner, Your Honor.
THE COURT: Okay.
MR. DOERRING: It's the 12-6-3631.
THE COURT: Six-what?
MR. DOERRING: Thirty-one, Your Honor.
THE COURT: 12-6-31?
MR. DOERRING: 12-6-3631. I apologize.
THE COURT: All right.
MR. DOERRING: This is the biodiesel expenditures tax credit, a companion credit to the tax credit statute here before the Court, 12-6-3620, Your Honor. If you'll go to Section E -- excuse me. D as in Dog, Your Honor, you will find similar, if not identical language in this tax code statute, since this is the one before the Court. For instance, Section D, "Expenditures qualifying for a tax credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute

for Energy Studies on standards for certification."

(E)(1), Your Honor, contains the same language we just reviewed in 12-6-3620(D). "A taxpayer must submit a request for the credit with the State Energy Office by January 31st," here "for qualifying research expenses incurred in the previous calendar year, and the State Energy Office must notify the taxpayer that the submitted expenditures qualify for the credit and the amount."

Also in identical language the bottom of the section. "The Department of Revenue may require any documentation that it deems necessary to administer the credit." A companion and identical statute. But that's not the end of their responsibility under these tax credit statutes.

I would lastly, as far as these tax credit statutes, Your Honor, draw the court's attention to 12-6-3600, which is going to be on page 115. 116 and 115. I apologize. It's 83 to 85. Excuse me, Your Honor. On the lower right hand, 83 to 85.

THE COURT: It doesn't matter. I'm there.

MR. DOERRING: Okay. 12-6-3600 is the credit for ethanol and biodiesel facilities. And if you will go to Section (B)(5), this section added around the same time period contains some other language and different from what's in our statute. "The amount of a credit granted pursuant to Section --"

THE COURT: What's that? You said 12-6 --

MR. DOERRING: Excuse me. It's (C). I apologize. (C)(5). "The amount of a credit granted pursuant to this section based on new production, must be approved by the State Energy Office based on the ethanol or biodiesel production records as may be necessary to reasonably determine the level of new production."

Going down to (E), "The State Energy shall prescribe." This is in the statute. "An application form and procedures for claiming credits under this section." This is not a discretionary agency of State government, Your Honor. This is a government exercising statutory regulatory requirements.

Finally, and very importantly, (F). "For purposes of ascertaining the correctness of a

credit allowed in this section, the State Energy Office or the department may examine or cause to have examined by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon these matters."

Your Honor, they are an administrative tax agency under the statute. And they're being given those specific powers. This is not an isolated State office abstractively reviewing credit applications. Our General Assembly has provided them with a significant amount of rights throughout these credit statutes, including the ones at issue, that we would urge the Court to consider and construe harmoniously. Now, another --

THE COURT: I'm familiar with the principals of statutory construction construed harmoniously. But I'm not familiar with the principals of statutory construction where I find that there may be interaction and cooperation with various State agencies, and therefore, I would take the requisites under the statute granting due process hearings and apply them from one State agency to another. Because State agencies

interact with each other. So where am I going to get there on that theory?

MR. DOERRING: Well, as we're -- as --

THE COURT: I can construe the statutes harmoniously, but --

MR. DOERRING: Well, what we're urging the Court to consider, Your Honor, in exercising this de novo jurisdiction, is what the State --

THE COURT: Well, I got that construed to get there to exercise it.

MR. DOERRING: Yes, sir. Is what the State Energy Office is doing under the statute is in its certification function under the statute. It is performing a function on behalf of our Department of Revenue, a necessary and integral function of our Department of Revenue. That's why they're inserted here with our Department of Revenue. They're not acting abstractly. They have to perform a credit certification. A credit certification goes to the taxpayer, it goes to -- it notifies the Department of Revenue, a form goes out, 15 days later it appears on a tax return. It's a necessary integral part of this tax, the operation of this tax statute. Without State Energy,

without State Energy, you don't have this credit. You don't have this credit process. And it is necessary in order for the taxpayer to use it to file it and claim it on its taxes. It's functional, really, Your Honor, is what we're urging the Court. It's process-related. And it's a jurisdictional concept, about the statutory process that we're urging on the Court to consider.

The other aspect of it is, you've got an interesting position here. For instance, we've cited another tax credit statute which involves the job development credits, which are in 12-10-80. And those are job-based credits that are given to companies that create jobs in the state. It's an economic development incentive. And to obtain those credits under 12-10-80, an entity of State government called the Coordinating Council for Economic Development, you must apply to the coordinating council, and the coordinating council shall certify to the Department of Revenue the maximum job development credit for each qualifying business. This is under 12-10-80(E).

There has been a significant amount of

litigation, Your Honor, involving that credit statute before this Court and the Court of Appeals. And we have provided the Court with two of these decisions, the ESA Services case and the Blackball case. Both versus the Department of Revenue. Now, in those cases, the Coordinating Council for Economic Development fully certified the credits. In fact, they said, "You're entitled to 100 percent of the credits claimed," agreeing with the company. The Department of Revenue then came in after the fact and audited, audited the credit claims, and said, "No, they're not entitled to it. We're the administrative agency in South Carolina. You can't claim these credits." They issued a decision, they went through the court, the Administrative Law Court disagreed with the Department of Revenue, agreeing with the certification of Coordinating Council. Those decisions were both affirmed by a Court of Appeals. Now, jurisdiction in that case is under the RPA where the State agency certifying the credit, fully certifying it, certified the credit, and, of course, went on the returns and claimed it with the Department

of Revenue. Here we have the State agency not certifying the credit. There's no ability to claim it on a tax return, Your Honor. There's no certification. They can't get into the process that way. So with the Court having jurisdiction under the RPA, in that again certification function, where the State agency certifies the credit, it would be an anomaly for the Court not to have jurisdiction where they don't certify the credit, which is where it occurs here. We should be back in the same place, which is before this court.

Our Revenue Procedures Act is fairly specific. It says that all our State tax disputes are to be decided by the Revenue Procedures Act. There is a clear and expressed intent of our General Assembly for this to occur. And we are urging the Court to consider that intent of the General Assembly and the Revenue Procedures Act to exercise jurisdiction in the State Energy Office acting in its credit certification function.

Now, alternatively, we already -- the Court has appellate jurisdiction.

THE COURT: I understand that.

MR. DOERRING: Yes, Your Honor. That the Court has appellate jurisdiction. Number one, as we indicated in McLeod vs. Edwards, the Budget and Control Board is an executive body in South Carolina, and the State Energy Office is created under that. It's an office by statute. They are an administrative or executive agency performing an administrative function under this tax law. This is an important certification function, and it involves an administrative decision by the State Energy Office. The language of the tax statute, Your Honor, is not discretionary, by the way, in terms of -- it says costs incurred by a taxpayer qualifying for credit allowed must be certified. And to obtain a credit, a taxpayer must submit an application for a credit. And State Energy must notify the taxpayer. These are not discretionary acts necessarily. These are things that -- the statutory language is obligatory, and it doesn't say if the State Energy doesn't act, we have another alternative, that International Paper can bypass them and go to the Department of Revenue. It cannot. There is a mandated State

administrative agency in the statute. Now, this is a contested case. It's a proceeding involving legal rights, duties and privileges under Article 1, Section 22. Now, Article 1, Section 22 involved administrative decision affecting quote, unquote, property rights. No other state, Your Honor, has a section or an Article 1, Section 22 like we do in South Carolina. Decisions of other states are irrelevant. The definition of property rights under Article 1, Section 22, by the way, is also much broader here than it is federal. Private rights are not necessarily constitutional rights, as that statute is. Indeed, with the Ambulatory decision, in looking at what are property rights, the Ambulatory decision is a rate-setting case, Your Honor. And the court there said that there were no property rights in a rate schedule. Just under the brief review of their memorandum, clearly this a proceeding involving legal rights, duties, or privileges. It's the certification function that we would like to focus the Court on, because again, in construing your jurisdiction here, in light of

even the RPA, the mandate of -- the preference perhaps of the General Assembly, that tax disputes are to be decided before this court, the Court I believe can still exercise its appellate jurisdiction here, because this is a contested case. It involves private rights that are at issue in this case. Now, the step is if you're sitting in your appellate jurisdiction hearing this case and we're entitled to notice, opportunity to be heard in an administrative hearing, as is already in our brief, we haven't had that right yet. We haven't had that opportunity to be heard by the State Energy Office.

THE COURT: If -- I'll have to go back and look at the acts and all those. If I'm sitting in the appellate capacity and I recognize that if you didn't have your due process rights, the proper procedure would be to remand that, so that that would occur first.

MR. DOERRING: Correct, Your Honor. If we haven't had a decision. However --

THE COURT: Because I noticed in your argument with this court, if it has appellate capacity, that it takes a unique position of going ahead and

hear it as a contested case, which would put me in an interesting position of who would you appeal to in our court.

MR. DOERRING: I understand, Your Honor.

THE COURT: I probably would have assigned that appeal to myself, and just go ahead and do it all at the same time.

MR. DOERRING: The other issue is do we have the hearing to you, or is it remanded back to the agency. But --

THE COURT: Well, I mean, if we're appellate, we don't hear it. So it would have to be remanded back.

MR. DOERRING: And the issue with Garris is that they recognize that -- this cite is Ross vs. Medical University of South Carolina. This is, Your Honor --

THE COURT: I'm familiar with that one.

MR. DOERRING: There's -- it's an impartial administrative hearing, partiality, where there's already been review, contested hearings which --

THE COURT: In Garris they hadn't done that. They had a procedure that didn't accomplish that.

MR. DOERRING: Correct. And --

THE COURT: So I assume that what the court was requiring Garris, is that, okay, I'm going to remand it and you're going to have to develop another procedure, another approach.

MR. DOERRING: Another approach.

THE COURT: And that would be somewhat akin to what would happen here is -- well, it wouldn't be another -- well, it would be another approach because there was no hearing. But there would be -- no. The approach would be to have a hearing.

MR. DOERRING: Correct, Your Honor.

THE COURT: And they'd have to go to an impartial hearing officer.

MR. DOERRING: And that then is our concern. We are concerned if it is going to be remanded back to the State Energy Office or the Budget Control Board, given the contentious proceedings already, counsel for Respondent has indicated in the first comments of the record this case is going to trial, evidently. We are concerned there's, as I say, a lack of impartiality, if we were to go back to the State Energy Office. I would ask for the Court to consider, if it is considering a remand, that it remand to the

Department of Revenue, the agency charged with administering the statute. It's an interesting approach. And we're also asking to bring the Department of Revenue into the proceedings. it is charged with administering the statute.

THE COURT: That is an interesting approach. I'll agree with you on that.

MR. DOERRING: The alternative would be is to -- for us to find somebody impartial or ordering somebody else in State government to provide us a hearing or in any fashion the Court deems appropriate.

THE COURT: You don't believe Mr. Potts could be an impartial hearing officer? That's rhetorical.

MR. DOERRING: Mr. Potts and I are both advocates, Your Honor. But that is our position, Your Honor. It's more explained and elaborated in our brief and our memorandum. We -- depending on how the Court is -- intends to rule, we may reserve the right to go back and further review case --

BYTHE COURT: I have no clarity as to how I'm going to rule at all right now. This case is almost like a law school examination. I told my staff that earlier.

BYMR. DOERRING: Do you wish to proceed with the other, the discovery-related motions, Your Honor, or do you feel it appropriate to take the time to consider this important motion, and then proceed thereafter?

THE COURT: I'm leaning toward -- I'll hear from you, Mr. Potts. But I'm leaning toward deciding on this issue first.

MR. POTTS: I'm prepared to go into discovery, Your Honor.

THE COURT: Well, I recognize you're prepared. I'm saying do you want to go ahead?

MR. POTTS: I have --

THE COURT: You're actually taking a position that's adverse to me deciding that. Because your position is that I don't have jurisdiction.

MR. POTTS: I do have a witness here who is under a subpoena duces tecum, and if he's got material, that would save us both a lot of time. And I'd like to dispose of his issue so the witness can go. And then, Your Honor, I'd be happy to leave it up to you at that point, and not go into discovery to those issues, because those are going to be a little bit lengthy. Not overly, but a little bit.

THE COURT: Well, could he not --
MR. DOERRING: Well, Your Honor, this -- if I may respond, sir.
THE COURT: Yeah.
MR. DOERRING: This I believe is the subpoena that Mr. Potts referenced at the beginning of the hearing for argument on the motion.
THE COURT: Yeah.
MR. DOERRING: And --
THE COURT: I see the witness is here, whoever that person is.
MR. POTTS: Mr. First is here, Your Honor.
MR. DOERRING: I was not served with the subpoena. And if the subpoena was filed with this court, as the rules require, I'm required to be served. And if I'm not, that subpoena is defective. And that is the first question that needs to be decided. Because I am stating on the record I have not been served with a subpoena.
THE COURT: Hold on just one moment. I thought I had that filed away somewhere else, but --
MR. POTTS: Your Honor --
THE COURT: Hold on. Let me just get the rule.
MR. POTTS: I'm sorry.

MR. DOERRING: The rule is Rule 5, Your Honor.
Administrative Law Court Rule 5.
THE COURT: Okay. I was going to subpoenas.
MR. DOERRING: "Any document, pleading, motion, brief, memorandum, or other paper filed with the Court that be served on all parties to the proceeding."
THE COURT: That's an interesting argument. Go ahead.
MR. DOERRING: And I believe we've also had this issue come up, Your Honor, in other proceedings before this Court.
THE COURT: Uh-huh.
MR. DOERRING: And those subpoenas were withdrawn.
THE COURT: All right. I think I can short-circuit that. If the individuals here are capable of producing documents, why don't you just receive those documents today, and then --
MR. DOERRING: Your Honor, more broadly, we would have an objection to the subpoena in addition to not being served. Now we're being notified.
THE COURT: Yeah.
MR. DOERRING: Not only have we not been served, today at this hearing we're now being notified.
THE COURT: The bottom line is I'm going to address

all of this later. I'd rather address the motion to dismiss now. What you do with the individual that's here today is your business.

MR. DOERRING: Well, Your Honor --

THE COURT: He subpoenaed. If the individual is still, even if -- the subpoena is for a hearing. I don't hear the case. If I don't have the witness respond to the subpoena for the sake of this hearing, he can still interact with the individual. That has nothing to do with the determination that I would make.

MR. DOERRING: Yes, Your Honor. My concern, if this is what I think it may be, is I believe that Mr. Potts may have subpoenaed the court reporter or the court reporting agency who transcribed the deposition proceedings of Erika Myers. And that Mr. Potts may be subpoenaing for production today the non-transcribed audible tapes of that deposition proceeding. And we don't believe he's entitled to that. We don't believe anybody's entitled, pending an order of the Court. And he's used a subpoena.

THE COURT: The courts have allowed audible tapes in attorney grievance matters to ascertain the behavior that occurred in hearings.

MR. DOERRING: Yes, Your Honor.
THE COURT: But I --
MR. DOERRING: If I may approach?
THE COURT: Well, you don't need to approach, because I'm not going to hear the discovery motions today, which means I will not be hearing the -- allowing the introduction of any tapes today regarding that issue. So I hate to be so -- what's your name?
MR. FIRST: My name is David First.
THE COURT: First?
MR. FIRST: F-I-R-S-T.
THE COURT: All right. I hate that Mr. First may have been inconvenienced --
MR. DOERRING: But I just don't understand that he's not required to produce anything --
BYTHE COURT: That's what I said a while ago.
MR. DOERRING: Thank you, Your Honor.
THE COURT: If he produces anything to Mr. Potts, he can do so certainly voluntarily, but he's not going to be able to reply to the Court, so therefore, I'm not involved in this matter. Or I'm not involved in this matter, because the Court is not going to be compelling him to do anything today.

MR. DOERRING: I understand, Your Honor.
THE COURT: All right.
MR. POTTS: Would you like a brief rebuttal to --
THE COURT: Well, if I'm not going to be doing anything --
MR. POTTS: No. I'm talking about the motion to dismiss.
THE COURT: Oh. Yeah. I'll allow you to do that.
MR. POTTS: Thank you.
THE COURT: I thought you were going to argue -- I always tell lawyers if you're winning, the only thing you can do is lose when you start arguing at that point in time.
MR. POTTS: I caught on.
THE COURT: Yeah.
MR. POTTS: Your Honor, I've been told by Keith to hit the points. I'll make it very brief, Your Honor. Your Honor, it's a constitutional issue when they said it was the executive body that the Budget and Control Board was. The fact doesn't change that statuary list, 130 or whatever. It's just not an executive department that's covered by the Administrative Procedures Act. That's the whole point. I think interactions between agencies happens

every day, particularly with the Budget and Control Board. It happens all the time. It's not a function of -- I guess I don't know how to say the State Energy Office is not -- it's not performing anything except what it's mandated to do, not what the Department of Revenue is mandated to do. But the fact of the matter is State statutes with regard to the Department of Revenue in here are very specific. And they -- you could list probably 50 more. But let's say in essence these are by the Department of Revenue. I don't see their name on any of the pleadings before this Court. He talks about consider the intent. Well, the fact of the matter was, if they wanted the intent, they would have made it subject to tax disputes. They would not have said, the department means the Department of Revenue and this is what we're covering, and this is exactly what we're covering, and nothing else. He doesn't like the way Article 1, Section 22 is interpreted. But the fact of the matter is the Supreme Court has recently spoken to the issue, and said this is how we're looking at it. Article 1, Section 22 may have said -- and

it's evolving. And they even mention in that case that this is an evolving --

THE COURT: Yeah. That's what makes me nervous, when they're evolving.

MR. POTTS: It happens a lot, too.

THE COURT: Yeah. Especially after it evolves after it leaves my court.

MR. POTTS: I understand. But --

THE COURT: I see an "R" right below the caption. But go ahead.

MR. POTTS: The reality of this one is, they are, if nothing else, giving a little hint where they're going in the future. And the fact is, they're not going to let some guy who doesn't like something come in and say, "Guess what? The Constitution." Now you've got a hearing. Because you want to have that person sitting there complaining about it in this court. That's I think an important point there we're making. Not everybody gets to say, "I've got a constitutional issue. I get to sit and talk and have it heard by the court." I think certification is constitutional. Most people don't. As a matter of fact --

THE COURT: Say that again.

MR. POTTS: I said most people don't.
THE COURT: No. What did you say preceding that?
MR. POTTS: I said certification is a constitutional issue. And I'm saying most people don't, including tax credit cases. It's not. And the fact of the matter is, he hasn't presented you with the first tax credit case of somebody that said certification. This is a constitutional issue. Not the first case, despite the length of his brief. Mine is I think three or four pages, three and a half. His is much, much longer, and doesn't have a single case saying here's what I found as a constitutional issue. He says you can't look at other states. Well, the Supreme Court is disagreeing with him. They say, look at the federal system. And you've been cited federal court cases saying this is not -- tax credits are not a constitutional issue.
And I did not say that this case is going to trial. I said this case is not going to end here. This is not going to be the end of the case. He may decide he wants to go for a writ of mandamus, he wants to go for a writ of certiorari. He may want to try something else

in circuit court. That's doesn't mean -- but that doesn't mean it's going to trial. And he talked about by some creative work on your part. We can bring Revenue in this thing. Just pick up the phone and invite them. I'm sure they'll be happy to hear from us. They try to stay as far away as they can. I can tell you that. Thank you, Your Honor.

THE COURT: I appreciate it.

MR. DOERRING: Your Honor, if I may --

THE COURT: On any new matter he's raised --

MR. DOERRING: No. Just responding, strictly. And, in fact, only request, having just received his memorandum, we would like an opportunity to respond.

THE COURT: I said that at first in the beginning of the hearing.

MR. DOERRING: If it would please the Court, ten days.

THE COURT: All right. I'm okay with that.

MR. DOERRING: Thank you, Your Honor.

THE COURT: This case has gone on for quite a while anyways.

MR. DOERRING: And, Your Honor, if I can make the motion now to continue the trial.

THE COURT: Yeah. That's somewhat obvious, isn't it? Any opposition to that?
MR. POTTS: No objection, Your Honor.
THE COURT: In that case, the hearing date is continued.
MR. DOERRING: Thank you, Your Honor.
MR. POTTS: Your Honor, can we also supplement our brief?
THE COURT: Yes. Well, if you supplement it with new argument, then I'm going to be --
MR. POTTS: New citations or anything like that.
THE COURT: Okay.
MR. POTTS: Just a little difference in the argument.
THE COURT: All right. Any objection?
MR. POTTS: Does he -- does counsel -- excuse me. Does the State Energy Office intend to supplement after our submission?
THE COURT: I would say both of you within ten days of the date of this hearing. What does ten days fall on?
MR. DOERRING: The following Monday, Your Honor.
THE COURT: Yeah.
MR. DOERRING: What would that date be, please?
THE COURT: The 29th.

MR. DOERRING: Thank you.

THE COURT: All right. With that said, this hearing is adjourned.

(There being nothing further, the hearing adjourned at 11:25 a.m.)

The South Carolina Energy Office (SCEO) has made its final determination on allowable credits for the January 31, 2011 application filed by International Paper Company (IP) pursuant to the *S.C. Code Ann.* § 12-6-3620. This determination is based on an analysis of the claimed expenses for which a credit was requested in comparison to the eligibility requirements detailed in the statute. Each claimed expense along with supporting documentation subsequently provided by IP during the discovery process was compared to the statute and SCEO policy (attached) to determine the amount of allowable credit, if any. Additionally, the SCEO consulted with the Department of Agriculture regarding this final determination.

A detailed categorization of expenses submitted by IP and the application of SCEO policy in determining eligibility follows. Tables of expenses with an identification of the mill and location within the process from which the expense is derived are provided with an assessment of each expense in light of SCEO policy.

In addition to the required compliance with the statutory language, including definitions, the State Energy Office applied three key tests as one part of its assessment to determine whether your particular expenditures qualified for the 25% tax credit and these tests are as follows:

> Test 1. Since the only equipment that uses biomass resources as its primary fuel source[1] is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. § 12-6-3620 (A), eligible equipment must "create" energy using a "fuel consisting of no less than ninety percent biomass resource."
>
> Test 2. None of the chemical recovery process is eligible. (Green liquor processing to white liquor and the associated lime kiln processes). Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.
>
> Test 3. Those expenditures that do not produce or demonstrably contribute to an increased output of energy do not qualify for the incentive. § 12-6-3620 (A), eligible equipment must "create heat, power, steam, electricity, or another form of energy for commercial use."

Summary

Evaluation of the items submitted for certification by the Georgetown SC mill, using the criteria listed in the SC Energy Office policy result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00. The total amount submitted for certification by the Georgetown mill was $17,783,924.

[1] The "black liquor" fuel utilized by International Paper at its Eastover and Georgetown mills (which is injected into the Thomlinson recovery boilers for burning) does not meet the mandatory definition of a 90% "biomass resource" under the State statute. Regardless of that fact, a three part test was also utilized to determine if the expenditures would qualify if the "black liquor" met the statutory definition since International Paper has previously represented that the fuel utilized (the "black liquor") does meet the statutory definition.

Evaluation of the items submitted for certification by the Eastover SC mill, using the criteria listed in the SC Energy Office policy, result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00. The total amount submitted for certification by the Eastover mill was $3,690,729.

Section 1 Georgetown Mill expenditures

Georgetown Mill - Wood Yard Projects

The wood yard projects all fail the first test and the third test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 1. Georgetown wood yard projects.

Area of Mill	Descriptions	Project number	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Log handling	Surveillance Cameras Dist. Ctrl System & PLCs Gaitronix Comm. system Knuckle Boom Crane	025908C695C	$628,979	Fail	N/A	Fail
Debarking	Debarking Drums Bark Drum Collection Belt Bark Hog Discharge Conveyor Bark Drum in feed conveyor Bark Drum Discharge Conveyor	025908C695C	$1,226,881	Fail	N/A	Fail
Chipper	Chipper building Chipper feed conveyor New Carthage Chipper (Metso) Chipper Surge hopper Surge hopper	025908C695C	$630,421	Fail	N/A	Fail

	conveyor Chipper Control Station Chip Silo Platform					
		Total	$2,486,281.00			

Project 025908C695C Wood Yard Projects.

> *"The objective of this project is to reduce manufacturing costs by increasing the capacity of the GT woodyard to process longwood through one processing line while shutting down one random length and one shortwood handling line. Savings in wood, labor, and repair costs will translate into a **$13/finished ton reduction** in GT's production costs. "*

Additionally from the epad document:

> *"There are several additional factors that effect energy, specifically bark, related to project. The new woodyard will process more longwood and therefore this will lead to more bark. However, the new woodyard will be more efficient with less white wood going to the bark pile. In addition, the elimination of the flume will result in drier bark being sent to the bark boiler which will improve the boiler's efficiency. To capture these impacts, an energy balance was performed by Technology. The result was that the mill will need to purchase approximately 9000 tons/year of additional bark to maintain steam production."*

Georgetown Mill – Digester projects

The digester area projects all fail the first test and the third test criteria. The digester is not fueled by 90% biomass resource and does not create energy. It is used to create a uniform wood project for the purpose of paper-making. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 2 Georgetown Digester related projects

Description	Epad document for project	Requested Certification $	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Replace DRC system with modern DCS system	025909A423C	990,137	Fail	N/A	Fail
Wash heater replacement	025909A580C	394,580	Fail	N/A	Fail
Replacement of wash zone extraction screen	025910H786C	202,632	Fail	N/A	Fail
Key Element Survey (KES) improvements	025910A059C	59,079	Fail	N/A	Fail

#3 Bottom Circulation Heater Replacement	025910A048C	214,968	Fail	N/A	Fail
	Total	$1,861,396			

Project 025909A423C, Replace DRC system with modern DCS system.

> ***"Impact on Existing Products***
> *There will be no impact on existing products if the DRC system is replaced. The impact of not replacing the DRC system would be to continue to operate with an obsolete system and risk I/O hardware failure which could adversely affect production.*
> ***EHS Requirements and Plans***
> *Debottleneck any portion of the process? N*
> *Result in any pollutant reductions? N*
> *Require modification of any pollution control equipment? N"*

Project 025909A580C,

> *"The objective of this project is to maintain original design performance of the KAMYR Digester wash liquor heater by restoring original process configuration. The current heat exchanger tubes and shell are original to the KAMYR digester. Throughout the course of their 25 year service life, metal erosion and corrosion have progressed to the present condition where complete replacement is required. Replacing the Wash Heater will reduce the maintenance efforts and costs of unscheduled downtime resulting from the poor material used in the original design."*

Project 025910H786C

> *"Since 2006, the Georgetown Kamyr digester production has increased by 75 TPD in order to supply a greater demand for pine fiber due to the EDGE grade transformation. Because the existing wash screens are not capable of additional extraction, this modification will provide a benefit to the pine fiberline filtrate balance by permitting more cold blow to be used within the digester wash zone, reducing the amount of cold blow filtrate bypassing the digester to the evaporators."*

Project 025910A059C, Key Element Survey (KES) improvements. This project created expenses for safety improvements related to findings of a safety audit in 2009. Specific items included operator platforms, piping insulation and digester electrical infrastructure Improvements. The documentation makes a clear business and worker safety case for these improvements. There is not any energy production from biomass in the equipment detailed in this project.

Project 025910A048C, #3 Bottom Circulation Heater Replacements.

> ***"Project Objectives and Financials***
> *The objective of this project is to improve the reliability of the GT KAMYR Digester Bottom Circulation liquor heat exchangers to reduce the maintenance efforts and costs of unscheduled downtime resulting*

from tube leak plugging. The current heat exchangers are original to the KAMYR digester, and through the course of their 27 year service life, weld seam leaks requiring mechanical tube plugs and shell deterioration have progressed to the present condition where replacement is required."

Georgetown Mill – Recovery Boiler Projects

With the exception of the Regenerative Thermal Oxidation portion of the Excess Emission Reduction project, the recovery boiler projects meet test 1 as cited in the policy but fail test 3 as detailed below. Regenerative Thermal Oxidation also fails test 1

While all of the projects have an element of reliability and availability improvements, the individual projects do not explicitly claim to provide an increase in production as individual projects. Such projects taken together and when closely coupled to the production of energy from biomass could be expected to increase the availability of time for boiler operation. The increase in recovery boiler steam production from 2009 to 2010 was 4.1% as shown in Section 3. Compared to the average steam production data from 11 years of operation the increase in recovery boiler output was 2.7%. Both pieces of data support a net increase burning of black liquor (biomass) to produce energy in 2010. However, a direct correlation between the individual project and the increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, none of the $6,101,736 claimed in Table 3 as expenses qualify for the 25% South Carolina biomass to energy tax credit.

Table 3 Recovery boiler related projects at Georgetown

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Greenhouse Gas Monitoring	0259 10G008C	$184,342	Pass	N/A	Fail
Excess Emission Reduction (Regenerative Thermal Oxidation)	025910G035C	$2,151,096	Fail	N/A	Fail
Excess Emission Reduction (Other)	025910G035C	$1,486,439	Pass	N/A	Fail
CEMS Upgrade	025910G915C	$93,427	Pass	N/A	Fail
Advanced Sootblower controls RB1 & RB2	025910H340C	$807,211	Pass	N/A	Fail

Infrastructure Improvements Recovery boiler floor drains	025910A059C	$146,669	Pass	N/A	Fail
Recovery Boiler Flooring Ph. IV	025910A678C	$419,370	Pass	N/A	Fail
Infrastructure Improvements Phase II	0259100112C	$46,759	Pass	N/A	Fail
Precipitator and Scrubber structural steel repair	025910A062C	$541,982	Pass	N/A	Fail
Recovery Boiler Flooring Ph. V	0259 10A776C	$224,441	Pass	N/A	Fail
	Total	$$6,101,736.006,101,736			

Project 025910G008C, Green house gas monitoring. This was an expenditure based on an EPA rule for continued operation of the recovery boiler under federal law. The executive summary makes this quite clear:

> ***"Project Objectives and Financials***
> *The EPA has finalized rules requiring sites with more than 25,000 tons of greenhouse gas emissions to begin tracking those emissions in January 2010 and report them annually starting in March 2011. In order to comply with this rule, the Georgetown mill will install more accurate fuel measurements for the recovery boilers, lime kilns, power boilers and RTO to be used in the reporting of GHG emissions. A stack flowrate monitor will also be installed as part of the power boiler continuous emission monitoring system for determining CO2 emissions. A Greenhouse Gas Monitoring Plan will be developed which will describe how greenhouse gas emissions will be monitored, measured and/or calculated. This is a must do project for 2010 in order to fully comply with the regulations."*

Project 025910G035C, Excess Emission Reductions.

> ***"Project Objectives and Financials***
> *The US Court of Appeals issued a mandate on October 15, 2009 which vacated the Startup, Shutdown and Malfunction (SSM) provisions of 40 CFR 63.6(f)(1) and 40 CFR 63.(h)()1). Emissions that occur during periods of SSM will no longer be "exempt" from the hazardous air pollutant emission standard. Facilities are required to comply with the air standard at all times (even during periods of SSM) and failure to comply will be a violation of the emission standard. EPA has indicated they will use enforcement discretion for events that results from startup, shutdown or malfunction."*

Project 025910G915C, Continuous Emission Monitoring System for the No. 2 Recovery Boiler.

> ***"Project Objectives and Financials***
> *This project will upgrade the Continuous Emission Monitoring System for the No. 2 Recovery Boiler by installing a carbon monoxide analyzer and stack flow meter to the existing TRS CEMS. Implementing this project at this time is required to ensure continued compliance with existing permit limits on No. 2 Recovery Boiler."*

Project 025910H340C, Recovery Boiler Advanced Sootblower Controls.

> ***"Project Objectives and Financials***
> *The objective of this project is to reduce 430# sootblowing steam consumption on the Georgetown No. 1 & No. 2 Recovery Boilers by installing an Intelligent Sootblowing (ISB) control system.* ***Total Installed Cost of this project is $821,500 with annual savings of $812,000, providing a simple ROI of 99%."***

Project 025910A059C, Recovery boiler floor drains infrastructure improvements.

> *"- improved floor drain system in the power boiler and recovery boiler area to address trip hazards and issues with chemical drips / spills that could damage equipment or endanger personnel."*

Project 025910A678C, Recovery Boiler flooring Phase IV.

> ***"Project Objectives and Financials***
> *The RB Flooring Project includes replacement of 2,338 square feet of concrete floor slabs. These floors have eroded in such a way and at such a high rate that they pose an infrastructure risk and safety hazard. These areas are located on the 6th floor, 10.5 floor, and 8th floor of the Recovery Boiler Building."*

Project 0259100112C, Infrastructure improvements Phase II.

> *"This project is the first phase of an effort to address "like-kind" items from the 2009 audit."Like-kind" items are items similar to those identified in the previous audit that could pose hazard to employees. The items identified in the 2009 audit can be grouped by general category; Guarding, Walking Surfaces, Electrical, Housekeeping, Insulation, Personnel Alarms, etc.. The objective of this project is to group together common "like-kind" items and addresses the highest priority items by modification or upgrade."*

Project 025910A062C, Scrubber and Precipitator structural steel repairs.

> *"This project will repair or replace structural members to restore the support structure integrity to its original design. In addition, the duct transition section is in poor condition and is also missing structural support members. Due to its condition and the missing support members, this transition section has shifted from its original position. Temporary support steel to support the transition section in its current position is included in this project."*

Project 0259 10A776C, Recovery Boiler Flooring Ph. V.

> *"This floor has been under erosion and chemical attack from atmosphere, steam, and boiler salt cake, causing break-down into rocks and sand and leaving dangerous holes. In addition, this slab has worn down much thinner than design, preventing equipment or maintenance supplies from being placed on the floor. Holes in the concrete are so extensive that steel grating is required to be placed over the holes for employee protection. Sections of concrete fall from the bottom of the floor, posing an additional safety and equipment risk below."*

Georgetown Mill – Causticizer & Lime Kiln Projects

The causticizer and lime kiln projects all fail the three test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 4. No. 3 Causticizer & Lime Kiln Projects

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 3. Causticizer Replacement	025910A050C	$436,030	Fail	Fail	Fail
No 1 Lime Kiln Trunion and Drive	025909A687C	$2,224,549	Fail	Fail	Fail
		$35,617	Fail	Fail	Fail
		$24,821	Fail	Fail	Fail
		$338	Fail	Fail	Fail
Lime Kiln 1&2 Multi fuel burner	025909H758C	$ 1,444,500	Fail	Fail	Fail
Green house gas monitoring	025910G008C	$ 87,320	Fail	Fail	Fail
Bulk Fuel oil Reconfiguration	025909G319C	$3,063,330	Fail	Fail	Fail
	total	$7,316,505.00			

Project 025910A050C, No 3. Causticizer Replacement.

Project Objectives and Financials

The # 1, 2 and 3 Causticizer tanks were installed in the late 1960's. The #4 causticizer tank was added during the mill reconfiguration project in the early 1980's. In 2002, the foundation supporting the #2 causticizer failed and the tank settled, requiring it to be taken out of service, demolished and then replaced with new pilings, a foundation and a new tank.

This problem has now occurred with the #3 causticizer tank. The original wood pilings used have deteriorated over time and no longer adequately support the weight of the tank and it's contents. As these tanks flow by gravity from one to another due to a small elevation difference, the tank is no longer usable once it has settled. The #3 causticizer has been blanked off and taken out of service until it can be replaced.

Project 025909A687C, No 1 Lime Kiln Trunion and Drive.

"Project Objectives and Financials

The drive gear on the #1 lime kiln is in poor condition and needs to be replaced. Over the past two years, the inspection history reports have shown continued wear on this gear. The gear has already been flipped, so this option has been eliminated. Therefore, a new gear must be purchased and installed. Due to the long delivery time (≈ 40 weeks) for the gear and other equipment associated with this project, the gear has been purchased in 2009 and will be installed during the 2010 outage....There will not be any savings associated with this project. However, there is a tremendous opportunity for cost avoidance. Any significant downtime with the kiln would severely impact the mill's profitability. From a chemical (lime) standpoint, a two week outage would impact the mill by over $ 473,795 and a gear failure would require a significantly longer time to get the kiln back operational."

Project 025909H758C, Lime kilns 1 and 2 multi fuel burner.

"Project Objectives and Financials
The objective of this project is to install multi-fuel burners in both No. 1 and No. 2 lime kilns so that reburned lime can be produced in the most cost effective manner based on the price of fuels.
*Permission has been granted by the South Carolina Department of Health and Environmental Control (SCDHEC) to replace the existing burners with new burners during the March 2010 outage. These burners will have the capability to utilized either No. 6 fuel oil or natural gas at full kiln production rates **AND** can be retrofitted at a later date to burn petroleum coke. After the new burners are installed natural gas will be used on both No. 1 and No. 2 lime kilns."*

Project 025910G008C, Green house gas monitoring.

"Project Objectives and Financials
The EPA has finalized rules requiring sites with more than 25,000 tons of greenhouse gas emissions to begin tracking those emissions in January 2010 and report them annually starting in March 2011. In order to comply with this rule, the Georgetown mill will install more accurate fuel measurements for the recovery boilers, lime kilns, power boilers and RTO to be used in the reporting of GHG emissions. A stack flowrate monitor will also be installed as part of the power boiler continuous emission monitoring system for determining CO2 emissions. A Greenhouse Gas Monitoring Plan will be developed which will describe how greenhouse gas emissions will be monitored, measured and/or calculated. This is a must do project for 2010 in order to fully comply with the regulations."

Project 025909G319C, Bulk Fuel oil Reconfiguration.

"Since these tanks were originally constructed, the mill's fuel mix has changed significantly. A project team determined that the current bulk storage requirement for #6 high sulfur fuel oil should be 500,000 gallons. It was also determined that the existing 200,000 gallon #6 low sulfur fuel oil day tank has adequate capacity to sustain mill operations. Based on guidance from Factory Mutual, unloading directly at the existing day tanks is prohibited. As part of this project, a method for unloading #6 low sulfur fuel oil directly to the low sulfur day tank will be established. This is the minimal effective design for this project. The intent of this project is to demolish the existing 1.5 million gallon #6 high sulfur and low sulfur fuel oil bulk tanks. A new, much smaller 500,000 gallon tank will be erected to store #6 high sulfur fuel oil, as there is a need for more storage of high sulfur than low sulfur fuel oil to meet mill demands in times of fuel curtailment."

Georgetown Mill – Multiple areas

The deionized water supply for the recovery boiler is included in this project (53%) and should be considered as part of the recovery boiler (test 1). Additionally, the recovery of low level heat from the process cooling tower provides a means of reducing steam demand from power and recovery boilers; however, a direct correlation between the individual project and the increase in energy production could

not be established (test 3). As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive.

Table 6. Multiple areas for Georgetown

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Warm Water supply to Deionized water system	025908H624C	$18,006	Partial 53%	N/A	Fail

Project 025908H624C, Warm Water supply to Deionized water system.

"Project Objectives and Financials
Low make-up water temperature to the demineralizer trains was identified during the 2005 Energy Audit. The objective of this project is to raise the water feed to the demineralizers from an yearly average of 76oF to 90oF. By raising the water temperature the mill will reduce steam usage to heat up DI water in the deaerators by 8300 lbs 60# steam/hr, thus providing a cost savings of $212,000/yr."

Section 2 Eastover Mill expenditures

Eastover Mill - Wood Yard Projects

The wood yard projects all fail the first test and the third test criteria. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 7 Wood yard, debarking, and chipper projects

Description	Epad document for project	Requested Certification $	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Portal Crane Wheel Installation	076910A137C	$80,140	Fail	N/A	Fail
W. Portal Crane Gantry Drive Controls	076910A740C	$261,850 $357,596	Fail	N/A	Fail
Woodyard Crane Barriers	076910G999C	$19,369 $79,928	Fail	N/A	Fail
#2 Debarking Drum	076910A136C	$235,003	Fail	N/A	Fail
No 2 Chipper disk Repl.	076910A028C	$317,875	Fail	N/A	Fail
No 1 Chipper Spillage Imp.	076910H992C	$56,671	Fail	N/A	Fail
	Total	1,408,432			

Project 076910A137C, Portal Crane Wheel Installation.

> *"The Eastover Woodyard Portal Cranes were originally commissioned in 1991 as part of the mill's Phase 2 expansion. These very large structure cranes move on bridge wheels that ride on rails. Over time the flanges on the bridge wheels wear down and have to be replaced as part of normal repairs. However, newer technology includes a set of guide wheels mounted next to the bridge wheels. The guide wheels will ride against the rails and help the crane from riding strongly against the wheel flanges, which will help them last longer. This project proposes to install guide wheels on both the East and West Portal Cranes. Adding these guide wheels will improve the life and availability of the cranes."*

Project 076910A740C West portal crane gantry drive and controls.

> ***"Project Objectives and Financials***
> *This project will replace the West Portal Crane drives and associated controls with newer and supportable technology. The control system is relay based, and will be converted to PLC.* ***There will be no increase in chip production as a result of this project.*** *The West Portal Crane is a part of the long wood storage and handling in the Woodyard. The four drives for the Hoist and Gantry and the controls are the original 1990 design with ABB THYRAK direct current (DC) drives and motors. The drives have been categorized obsolete by OEM in the mid 1990's, and there are no new spare circuit boards available and there is*

limited technical expertise available to troubleshoot these drives. These conditions and the recent failures have depleted all of our spares and salvaged parts from the East Crane, such that when the next failure occurs we have no spare parts to use. It is therefore necessary to get these drives replaced with available, newer and supportable technology. The Portal Cranes handle hardwoods logs to support the 1450 TPD K2 digester. The crane availability and reliability are an important part of Eastover. The new drives will provide reliable operation that will minimize logtruck line-ups and delays. There will be no increase in chip production budget or target, however, we will increase availability and up-time."

Project 076910G999C Woodyard portal crane barriers.

"Project Objectives and Financials
This project objective is to install barriers to protect personnel from heavy equipment hazards around the portal cranes in the Eastover Woodyard. The scope is to install concrete barriers along the North side of the two portal cranes and substantial handrailing along the South side. This will provide visual barriers of the restricted areas around the portal crane and wood truck unloading operations. These visual barriers will be consistent with the recommendations from a February 2010 Corporate Health and Safety Communication."

Project 076910A136C # 2 debarking drum rebuild.

"The Eastover No. 2 Debarking Drum was originally commissioned in 1991 as part of the mill's Phase 2 expansion. Funding is requested to restore and extend the useful life of the No. 2 Debarking Drum. This project will replace the chime rings, drive gearbox, and discharge gate actuator. All of these are major components of the drum and have substantially long life. Replacing them will extend the useful life of the No. 2 Debarking Drum"

Project 076910A136C No 2 Chipper disc replacement.

"Project Objectives

This project will purchase and install a new Chipper Disc for the No. 2 log line. The current disc has experienced numerous cracks. The last four inspections of the disc have discovered progressively worse cracks. According to CEM Machine Inc., since the disc run out is low these cracks are due to fatigue and not impact. Several cracks have been found in the last two years, two of which were ground out and then re-occurred prior to the following inspection. CEM has recommended that we do a full inspection at least every three months. Subhash Pati was at Eastover for the January 14th, 2010 inspection of the disc. He agreed that the disc is fatigued and should be inspected every three months.

During the inspection in September 2009 a new crack had formed in pocket #3. The crack (shown below) extended past the insert hole to the keyway. Without repair this crack would have grown through the entire pocket. It is not recommended for these critical weld repairs to take place in the field. However, Eastover does not have a spare chipper disc. Therefore the crack was ground out in the field to a depth of 1" and 5/16" wide and weld repaired. This project will purchase and install a new 116" 15 knife, 8" thick right hand chipper disc from CEM Machine Inc."

Project 076910H992C Chipper spillage improvement.

"This project will install a new style shroud around the #1 Transfer conveyor feed end that will reduce the spillage. This will also allow the mill to shut down the mill air used to push these chips out from under the conveyor. This will be accomplished by installing a new Lift Tube system developed by Stanam Industries inc. The plugging issue may not be completely resolved with this new shroud, however the spillage when the chute does plug will be greatly minimized."

Eastover Mill – Digester Projects

The digester projects all fail the first test and the third test criteria. The digester is not fueled by 90% biomass resource and does not create energy. It is used to create a uniform wood project for the purpose of paper-making. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 8 Eastover Mill digester projects

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
Impregnation Vessel Arms and Digester Cone Replacements	076909A678C	$14.00	Fail	N/A	Fail
K2 Chip Chute Vent Stack Replacement	076910A039C	$375,919	Fail	N/A	Fail
No.1 Sand Separator	076910A368C	$98,209	Fail	N/A	Fail
No 2 digester outlet device Variable Freq drive	076910A783C	$112,383	Fail	N/A	Fail
K1 & K2 Digester Spare Outlet Device Scraper Arms	076910A792C	$93,100	Fail	N/A	Fail
		$217,800	Fail	N/A	Fail
K2 Steaming Vessel Screw Replacement	076910A988C	$201,184	Fail	N/A	Fail
K1 Low Solids Flow Meter Replacement	076910A996C	$27,455	Fail	N/A	Fail
	Total	$$1,126,064.00~~1,126,064~~			

Project 076909A678C, Impregnation Vessel Arms and Digester Cone Replacements.

> *"The outlet device scraper arm assembly in the K2 Impregnation Vessel must be replaced in 2009. This is due to extensive cracking in the arm to hub welds. The indications were inspected by Pat Morris and Jim Matson (IP Technology) during the Fall 2008 outage."*
>
> *"The digester cone will not be removed from the asset ledger since it will be saved for a future rebuild. The Impregnation Vessel outlet device arms have $9,300 left of depreciation, which will be accelerated over the next 6 months."*

Project 076910A039C, K2 Chip Chute Vent Stack Replacement.

> ***"Project Objectives and Financials***
> *This project will replace the 4' diameter by 147' tall vent stack on the K2 Digester Chip Chute Dump Tank. The stack is carbon steel from the original 1992 construction of the K2 Digester system. The stack is*

experiencing severe corrosion due to liquor and vapor releases from the K2 Digester system. The wall thickness of the stack is less than half of its original thickness. The top 10 feet of the stack was cut off due to extensive thinning in 2008. The replacement of this stack will mitigate the risk of a stack failure, which could result in significant safety, environmental and operational impacts."

Project 076910A368C, Number 1 Sand separator replacement.

"This capital project will modify the No. 1 Sand Separator that was installed in 1995 by changing the operation from a centrifugal force separator to a gravity separator. This will be accomplished by increasing the size of the inlet nozzle to slow the velocity of the incoming liquor to 3 feet per second. The new inlet nozzle will be constructed of 2205 duplex SS which matches the vessel metallurgy. The centrifugal action of the liquor and sand inside the Sand Separator is wearing it out. Weld overlay was installed inside the No. 1 Sand Separator to protect the shell from erosion. However this 2209 duplex weld overly is also wearing out very quickly. The modifications proposed in this project to the sand separator will reduce the velocity of the liquor to minimize this erosive condition.."

Project 076910A783C, No 2 digester outlet device Variable Freq drive.

"Project Objectives and Financials
This project is to replace the AC adjustable speed drive that controls the speed of the #2 digester outlet device. The current drive is an early 90's vintage drive that utilizes a mixture of analog and digital control cards. This drive has been obsolete for many years, parts are difficult to find and often have not been repaired properly. The drive is no longer supported by the manufacturer and technical assistance is nonexistent.
The #2 digester is a Kamyr 1450 tpd continuous feed digester. The outlet device breaks up the pulp plug as it leaves the digester so the pulp can be sent to the blow tank We cannot operate the digester without the outlet device and there is no spare drive or bypass available. This project will not increase production rates or result in any increased air emissions. This project will not result in increased capacity, rather it mitigates the risk of future failure."

Project 076910A792C, K1 & K2 Digester Spare Outlet Device Scraper Arms.

"Project Objectives and Financials
*This project will purchase capital spares for the **K1** and K2 Digester Outlet Device scraper arms.*
IP Technology and Andritz recommend having spare Digester scraper arms onsite due to their history of failure in our industry. There are no other IP mills that have the same size scraper arms as Eastover, and therefore utilizing a common spare is not an option."

Project 076910A988C, K2 Steaming Vessel Screw Replacement.

"Project Objectives and Financials
The K2 Digester Steaming Vessel screw must be replaced in 2010 due to repeat cracking in the journal to hub welds, and due to thinning of the flights on the screw..... This project will not increase production rates, or result in any increased air emissions. This project will not result in increased capacity, rather it mitigates the risk of future failure."

Project 076910A996C, K1 Low Solids Flow Meter Replacement.

"Project Objectives
This project will install a CiDRA SONARtrac flow monitoring system on the upper cooking extraction line to the #2 flash tank. The element in the existing magnetic flow meter becomes unreliable between 3-6

months after an outage. Scale builds up on the flow meter element making the readings unreliable. During outages the elements are acid cleaned. Three to six months after the outage the inaccurate readings of the magnetic flow meter are realized and the extraction of the upper cooking zone is operated manually. The unreliable flow measurements leads to improper extraction from the upper cooking zone leading to variability and inefficient washing.....This project will not increase production rates, or result in any increased air emissions. This project will not result in increased capacity, rather allows more reliable control of the process."

Eastover Mill – Evaporator

The evaporator area projects all fail the first test and the third test criteria. The evaporator is not fueled by 90% biomass resource and does not create energy. It is used to remove water added for the purpose of paper-making, an energy-consuming process. Additionally, this process includes the addition of white liquor which adulterates the biomass resource and now must be separated out. There should be no certification of these expenses under the policy statement in Appendix 1.

Table 9 Evaporator based projects for the Eastover Mill

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 1 Evaporator second effect heater replacement	076908A386C	$3,280	Fail	N/A	Fail
Evaporator condensate Modifications 3rd, 4th & 5th effect	076910A002C	$481,992	Fail	N/A	Fail
No 1 evaporator Product Liquor Flash Tank Modification	076910H045C	$21,700	Fail	N/A	Fail
	Total	$$506,972.00~~506,972~~			

Project 076908A386C, No 1 Evaporator second effect heater replacement.

"The business purpose of this project is to replace the existing No. 1 Evaporators Second Effect Heating Elements during the Spring 2009 Outage with elements of similar capacity and materials of construction. The existing elements have reached the end of their useful life..... This project will not increase production rates, or result in any increased air emissions. The number of heating elements inside the evaporator will be increased from 102 to 108 due to the change from bottomsteam entry to top steam entry. This will not result in increased capacity."

Project 076910A002C Evaporator condensate Modifications 3rd, 4th & 5th effect.

"The objective of this project is to eliminate the potential for sudden heating element damage in the third fourth and fifth effects of the No. 1 Evaporator set at Eastover as a result of steam/condensate hammer. To achieve this objective the condensate system for the third, fourth and fifth effects will be modified to meet current OEM design standards."

Project 076910H045C, No 1 evaporator Product Liquor Flash Tank Modification.

"Proposed changes are to modify internal flash hood design to decrease upward vapor velocity and upgrade the product liquor flash tank with a new manway insert assembly to prevent product liquor outlet pluggage. These changes will provide $72,000 per year in steam savings through improved flash steam recovery"

Eastover Mill – Recovery Boiler

With the exception of the TRS Incinerator Reliability project, the recovery boiler projects meet test 1 as cited in the policy but fail test 3 as detailed below. The No 1&2 Recovery Boiler Shatter Jet upgrade fails test 2 and 3 and the TRS Incinerator Reliability project fails test 1 and test 3.

The increase in recovery boiler steam production from 2009 to 2010 was 4.0% as shown in Section 3. Compared to the average steam production data from 11 years of operation the increase in recovery boiler output was 5.7%. Both pieces of data support a net increase burning of black liquor (biomass) to produce energy in 2010. However, a direct correlation between the individual project and the increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, none of the $649,261 claimed in Table 10 as expenses qualify for the 25% South Carolina biomass to energy tax credit.

Table 10 Recovery boiler projects for the Eastover Mill

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
No 1&2 Rec Boiler Shatter jet upgrade	076908H729C	$14,229 $14,293	Pass	Fail	Fail
No 2 RB East Chamber Drag Scrapper drive system	076910A138C	$148,556 $33,064	Pass	N/A	Fail
No 2 RB West Chamber Drag Scrapper drive system	076910A134C	$163,426 $27,006	Pass	N/A	Fail
TRS incinerator Reliability	076910A998C	$25,351 $4,829 $24,747 $5,432	Fail	N/A	Fail
Green House Gas Monitoring	076910G001C	$87,484 $26,032	Pass	N/A	Fail

No 1 RB Fouling monitoring system and supervisory Sootblowing	076910H659C	$74,808	Pass	N/A	Fail
	Total	$649,261			

Project 076908H729C, No 1&2 Rec Boiler Shatter jet upgrade.

"Project Objectives and Financials
The objective of this project is to reduce 160 psig steam used on the Recovery Boiler shatter jets. This project will retrofit the existing duckbill style shatter jets on both recovery boilers with Metso shatter jets and reduce steam usage from 2000 lbs/hr to 800 lbs/hr. There are four shatter jets on the No. 1 Recovery Boiler and four on the No. 2 Recovery Boiler. Total steam consumption will be reduced by 9600 lbs/hr for an annual energy savings of $220,100. The existing shatter jets have large 9/64" x 2- 1/16" nozzles and consume about 2000 lbs/hr each. The new shatter jets are Metso conical spray design with a 6 mm (0.236") diameter and will use 800 lbs/hr steam supply. These nozzles are venture style nozzles that provide a greater penetration into the smelt for better atomization. A smaller smelt particle size will improve dissolving tank operation in addition to reducing dissolving tank noise and vibration."

Projects 076910A138C and 076910A134C, No 2 RB (East and West) Chambers Drag Scrapper drive systems.

"Strategic Fit
The current Eastover mill operating strategy is for the Utilities area to support maximum digester production rates of 825 TPD pine on K1 and 1450 TPD hardwood on K2. This requires reliable operation of the No. 1 and No. 2 Recovery Boilers at maximum firing rates on a daily basis except for planned field days and annual outages. The primary objective of this project is to eliminate unplanned Drag Scraper system failures in the No. 2 Recovery Boiler Precipitator system to Support the mill strategy of operating the No. 2 Recovery Boiler at maximum firing rates on a daily basis except for planned field days and outages."

Project 076910A998C, TRS Incinerator Reliability.

"The following recommendations are made to improve the TRS Incinerator up time and reduce concentrated TRS gas venting....

1. *Additional Temperature Probe...*
2. *Louvered Combustion Air Damper...*
3. *Methanol Heat Exchanger...*
4. *CNCG Low Point Drain..."*

Project 076910G001C, Green House Gas Monitoring.

"Project Objectives and Financials
This project will modify existing mill equipment as practical and install new equipment as required to comply with regulatory requirements under the Greenhouse Gas Reporting Rule....
Production Impact: This project will not increase production rates or result in any increased air emissions....
Cost Estimate Summary

...Two of the planned replacements are expected to be done by re-using/relocating two existing mass flow meters previously used for green fuel credits"

Project 076910H659C, No 1 Recovery Boiler Fouling monitoring system and supervisory sootblowing.

"Project Objectives and Financials
The objective of this project is to reduce steam use for sootblower operation on the No. 1 Recovery Boiler from 25,900 lb/hr to 12,000 lb/hr. A 13,900 lb/hr reduction in steam use on the No. 1 Recovery Boiler is worth approximately $607,500 per year"

Eastover Mill – Causticizer, Lime Kiln, and Boiler feed water treatment.

This area of the mill has a total of 5 projects. The first three projects do not meet any of the test criteria. Two projects, the Sodium Analyzer and LCI Boiler water feed pump projects, partially meet the first test criteria. Boiler feed water goes to both recovery boilers and power boilers, but the epad document for sodium analyzer does not specify exactly how many of the 5 sodium analyzers are directly involved with the recovery boiler feed water. In a similar fashion the LCI boiler water feed pump drive is supporting both the No 1 RB and the No 1 Power Boiler. Steam output rates for these two boilers indicate approximately 55% of the feed water is sent to the recovery boiler; however, a direct correlation between the individual project and the increase in energy production could not be established (test 3). As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive.

Table 11 Causticizer, Lime Kiln and boiler water treatment projects.

Description	Epad document for project	Requested Certification	Test 1 RB & Turbines	Test 2 not GL/WL process	Test 3 Energy Prod.
WL Causticizer Stand Pipe	076910A993C	$114,529	Fail	Fail	Fail
Lime Kiln Safety Platforms	076910A806C	$47,222	Fail	Fail	Fail
Unclarified WL Pump VF Drive	076910A782C	$94,025	Fail	Fail	Fail
Sodium Analyzer	076910A746C	$52,788	Partial 55%	N/A	Fail
LCI Drive Boiler water feed pump	076910A780C	$394,608	Partial 55%	N/A	Fail
	Total	$703,172			

Project 076910A993C, White liquor Causticizer Stand Pipe.

"Project Objectives and Financials
The objective of this project is to replace the existing white liquor causticizer standpipe that has experienced significant thinning of the standpipe shell due to erosion by the white liquor process. The project will reduce the height of the existing standpipe to allow the process to enter at the top of the standpipe as opposed to the existing side entry. In addition, an external removable elbow will be used for the process inlet piping to provide easier replacement of the elbow as thinning occurs due to the erosion."

Project 076910A806C, Lime Kiln Safety Platforms.

"Project Objectives and Financials
Platforms are required around the 2-2 Lime Conveyor and the No.1 and No.2 Lime Crushers in the Utilities Areas. This equipment has been identified as a must do considering the operator access that is frequently required to maintain this equipment and the limited accessibility."

Project 076910A782C, Unclarified White Liquor Pump Variable Frequency Drive.

"Project Objectives and Financials
The #2-1 and 2-2 Unclarified White Liquor pumps supply white liquor through the pressure filters and into the white liquor storage tank, where it is pumped to the digesters. They are operated by variable speed AC drives that are no longer supported. Any production loss in this process cannot be recovered. The objective of this project is to replace the #2-1 and 2-2 Unclarified White Liquor Pump electric drives, which have reached the end of their useful life. These drives are late 80's vintage and have been obsoleted by the manufacturer. There are no new replacement parts available and the repaired circuit boards have proven to be unreliable. Technical support is nonexistent. These obsolete drives have the potential to limit pulp production. This project should have no significant impact to annual pulp production. The purpose of the project is to avoid future risk of failure."

Project 076910A746C, Sodium Analyzer.

"Project Objectives
This project will replace the Orion 1811EL sodium analyzers with Hach 9245 sodium analyzers. These analyzers have become obsolete and parts are no longer available. Sodium analyzers are required by policy to ensure the integrity of the steam path. Sodium analyzer are required to remain in compliance with the corporate steam path protection policies. The current analyzers have problems with stability and memory. The wet sections of these obsolete analyzers are failing. Parts are impossible to find. Four of the nine sodium analyzers have already been replaced."

Project 076910A780C, LCI Drive Boiler water feed pump.

"Project Objectives and Financials
The #1 Boiler Feedwater Pump supplies water to the #1 power boiler and the #1 recovery boiler. The pump is driven by a 3500 horsepower motor that is controlled by a GE LCI drive. The LCI drive on the #1 feedwater pump is a 1983 vintage drive, with the original control cards. The drive control cards have been obsolete for years. The majority of our spares are cards that have been removed from other mill's LCI drives that were updated. GE field support for this vintage drive is poor. There have been 4 incidents with this drive in 2009. The most recent card failure caused over 3 hours of mill downtime. The #2 Boiler Feedwater Pump supplies water to the #2 power boiler and the #2 recovery boiler. The pump is driven by a 5000 horsepower motor that is controlled by a GE LCI drive. The LCI drive on the #2 feedwater pump is a

1988 vintage drive, with the original control cards. The drive control cards are obsolete. We have a limited number of spares for this drive. GE field support for this vintage drive is poor."

Section 3 Energy from recovery boilers 2000 to 2010 for Georgetown and Eastover Mills

Table 12 summarizes the production of energy from the recovery boilers at the Georgetown mill. The Georgetown mill increased the amount of steam from the recovery boilers by 4.05% from 2009 to 2010. Over the 11 years of data the year 2010 was 2.7% higher than the 11 year average. The source of this data is from the PDF document "Georgetown fuel summary 2000-2010" table on page 4 (bates number IP_001148).

Table 12 Steam production from Georgetown recovery boilers by year.

Year	Decatherms	Percentage of deviation from 11 year average
2000	6,236,500	-0.7%
2001	6,354,600	1.2%
2002	6,172,700	-1.7%
2003	6,193,800	-1.4%
2004	6,251,300	-0.4%
2005	6,245,200	-0.5%
2006	6,329,400	0.8%
2007	6,489,500	3.4%
2008	6,150,400	-2.0%
2009	6,196,800	-1.3%
2010	6,448,000	2.7%
11 yr average	6,278,927	

Table 13 summarizes the production of energy from the recovery boilers at the Georgetown mill. The increase in steam production from 2009 to 2010 was 4.0%. The increase compared to the 11 year average was 5.7%. The source of this data is from the PDF document "Eastover fuel summary 2000-2010" table on page 7 (bates number IP_001129).

Table 13. Steam production from Eastover recovery boilers by year

Year	Decatherms	Percentage of deviation from 11 year average
2000	8,114,702	-7.2%
2001	7,981,723	-8.7%
2002	8,550,007	-2.2%
2003	8,600,682	-1.6%
2004	8,949,986	2.4%
2005	8,679,054	-0.7%
2006	9,041,634	3.4%
2007	9,087,683	3.9%
2008	9,039,844	3.4%
2009	8,894,904	1.7%
2010	9,243,234	5.7%
11 yr average	8,743,950	

Appendix 1

Energy office policy for expenses to be certified against the South Carolina tax credit **SECTION 12-6-3620.** Purchase and installation of equipment to produce energy from biomass resources.

SC Energy Office Policy

The statute's intent is to foster additional energy creation from biomass fuels. This does not include maintenance of currently existing systems or sources but is extended to cognizable improvements to the amount of energy produced and the need for capital investment to achieve such results.

For example: A farmer who owns 200,000 acres decides to plant switch grass for the sole purpose of harvesting it for fuel in a furnace for the sole purpose of creating energy (for sale or commercial use). The necessary equipment and machinery (tractors, harvesters, trucks and the boiler and related equipment) will be purchased as a capital investment and 100% of its use will be devoted to the production of energy from the planted switch grass, including its transportation from the farm to the energy facility.
Policy: Only the boilers, furnaces, turbines and transformers are eligible for the credit. The equipment must use "biomass resources as its primary fuel source" and none of the other equipment used by the farmer would do so.

For example: A paper company builds a mill that buys timber and timber products for the making of paper. As a part of its paper-making process, the mill mixes the wood chips it buys or grinds from purchased timber with chemicals and water. After extracting certain elements from the chips, the mill then re-constitutes and separates the added water, chemicals and wood chips by use of a process that also results in the production of energy. This is done by further treatment of the fluid remaining following the extraction of the elements needed for paper making and results in the fluid containing the remaining wood products being burned in a "recovery boiler". This "recovery boiler" burns the product (called black liquor) separating it into steam, ash and chemicals. The steam is used to produce energy and the chemicals are thereafter re-cycled for further re-uses in the paper-making process. The paper mill seeks tax credits for alterations and replacements to its woodyard, chippers, conveyors, digesters and all other parts of the process of extracting the added water and chemicals from the wood chips both before and after it has created the energy. This request also includes a request for the tax incentive to be applied to the chemical revitalization process.
Policy: Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. The equipment used for paper-making (such as the digester) or is powered by other than biomass resources is not eligible—nor is the equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes regardless how it is powered. None of the chemical recovery process is eligible.

For example: As in the preceding example except that the mill upgrades, maintains or expands its existing equipment.
Policy: The mill is entitled to credit for expenditures to the boiler and turbines which are reasonably necessary to an increased production of energy (assuming additional energy is produced) and according to the percentage of energy increase. If a new recovery boiler is purchased for $10,000,000 and it replaces another boiler and because of the new boiler 50% more energy is produced, the mill would be entitled to

certification of a credit of 25% of $5,000,000. Those expenditures that do not produce or demonstrably contribute to an increased output of energy do not qualify for the incentive.

-----Original Message-----
From: Lancaster, Ashlie [mailto:ALancaster@energy.sc.gov]
Sent: 03/01/2012 4:14 PM
To: Tracy L Bolger
Subject: RE: International Paper Company 2011 SC Biomass Credit Application

March 1, 2012

To: Tracy Bolger
International Paper Company
State Income Tax Analyst
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197

Thank you for submitting International Paper (IP) Company's application for a Biomass Resource Credit under S.C. Code Ann. § 12-6-3620. Please note that only equipment and installation costs for equipment that creates energy from a fuel consisting of 90% biomass resource are eligible for the requested credit. An analysis of the claimed expenses for which a credit was requested in comparison to the eligibility requirements detailed in the law was conducted using the following three test criteria to determine the amount of allowable credit, if any.

Three key tests stated in the policy were used in this assessment:
Test 1. Since the only equipment that uses biomass resources as its primary fuel source is the recovery boiler and turbines, the only equipment that is eligible for the tax credit are those pieces of equipment. § 12-6-3620 (A), eligible equipment must "create" energy using a "fuel consisting of no less than ninety percent biomass resource."
Test 2. None of the chemical recovery process is eligible. (Green liquor processing to white liquor and the associated lime kiln processes). Equipment used primarily for the reversal of the adulteration of the biomass resource for paper-making purposes is not eligible.
Test 3. Those expenditures that do not produce or demonstrably contribute to an increased output of energy do not qualify for the incentive. § 12-6-3620 (A), eligible equipment must "create heat, power, steam, electricity, or another form of energy for commercial use."

Based on these test criteria, only claimed expenses for the recovery boilers and turbines could be considered for the credit. However, a direct correlation between the individual projects and an increase in energy production could not be established. As indicated by SC Energy Office policy, equipment that does not demonstrably contribute to an increased output of energy does not qualify for the incentive. Therefore, evaluation of the items submitted for certification by IP, using the criteria listed in the SC Energy Office policy result in a determination to certify total expenses of $0.00. The 25% tax credit on this amount is $0.00.

Sincerely,

Ashlie Lancaster
SC Energy Office
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201
803-737-9822

STATE ENERGY OFFICE

APPLICATION FOR BIOMASS RESOURCE CREDIT

Under Code Section 12-6-3620

SC SCH. ETC-50
(UPDATED 1/2012)
2012

Name as Shown on Tax Return

International Paper Company

Fed EI No.
13-0872805

Mailing Address

6400 Poplar Ave. c/o Tax Department

STREET

Memphis	**Shelby**	**TN**	**38197**
CITY	COUNTY	STATE	ZIP

Contact Person
Robert Shands

Contact Person's Title
State Tax Manager

Telephone Number
(901)-419-4508

Physical Address

700 S Kaminski Street
4001 Mccords Ferry Road

STREET

Georgetown	**Georgetown**	**SC**	**29442**
Eastover	**Richland**	**SC**	**29044**
CITY	COUNTY	STATE	ZIP

Fax Number
(901)-214-0856

( )

Email

1. Has the taxpayer applied for and/or received the biomass resource credit under S.C. Code 12-6-3620 in prior tax years? If yes, please list the tax years and the amount of the credit received.

   Applied for credit in 2010

2. Give a description of the project including:
   - what the energy will be used for;
   - duration the equipment is expected to be used at the facility;
   - name and location of company installing the equipment;
   - name and location(s) where the equipment will be installed; and
   - type of biomass feedstock
   - did the facility maintain an average of 90 percent biomass feedstock over the tax year?

   Be as specific as possible and attach additional pages if necessary.

   The energy will be used primarily by the mills for their own use. Excess energy generation may be sold to 3rd parties or other offsite International Paper Facilities. The primary biomass feed stock is logs, wood chips and bark from hard and soft wood trees. The improvements requested were used to produce energy, heat, or steam from 90% biomass. See attached for further explanation of the biomass process.

3. List purchase price of equipment and installation costs needed to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of at least 90% biomass resource. Include:
   - name, type, and cost of the equipment;
   - manufacturer of equipment;

- length of warranty for equipment (if applicable);
- what state or country the equipment will be purchased from;
- for electricity production how many MW capacity the system will produce and on average how many kWh will produce per year. For thermal energy how many therms the system will produce and on average how many decatherms the system will produce per year. For any equipment that is displacing electricity or thermal energy, how many units of energy is it displacing;
- cost for labor and installation charges;
- cost for shipping; and
- other relevant costs (if applicable).

Attach documentation such as invoices, paid receipts, and spreadsheets. Be as specific as possible and attach additional pages if necessary. The SC Energy Office maintains the right to schedule a site visit prior to approval.

See attached equipment listing.

For assistance with this form, contact the State Energy Office at (803) 737-8030.

1/30/12
Date

Christopher E. Brucks
Signature of Officer (or other appropriate official)

Christopher E. Brucks
Print Officer's Name

Assistant Tax Officer
Title

Mail To: State Energy Office
ATTN: Renewable Energy
1200 Senate Street
408 Wade Hampton Building
Columbia, SC 29201

NOTE: All claims generated between January 1, 2011 and December 31, 2011 must be received by **January 31, 2012**. The State Energy Office will send the Department of Revenue the maximum amount the taxpayer may claim. The State Energy Office will then notify each taxpayer of the maximum amount of credit allowed. Any unused part of the actual credit amount can be carried forward for up to 15 years.

General Information

Section 12-6-3620. For taxable years beginning after 2007, and ending before taxable year 2020, there is allowed a credit against the income tax imposed pursuant to Section 12-6-530 or license fees imposed pursuant to Section 12-20-50, or both, for twenty-five percent of the costs incurred by a taxpayer for the purchase and installation of equipment used to create heat, power, steam, electricity, or another form of energy for commercial use from a fuel consisting of no less than ninety percent biomass resource. Costs incurred by a taxpayer and qualifying for the credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certifying the costs incurred by the taxpayer. The credit may be claimed in the year in which the equipment is placed in service and may be claimed for all expenditures incurred for the purchase and installation of the equipment. A taxpayer may use up to six hundred fifty thousand dollars of credit for a single taxable year. The tax credit is nonrefundable but unused credits may be carried forward for fifteen years.

To obtain the maximum amount of credit available to a taxpayer, a taxpayer must submit a request for credit to the State Energy Office by January thirty-first for all qualifying equipment placed in service in the previous calendar year and the State Energy Office must notify the taxpayer that it qualifies for the credit and the amount of credit allocated to the taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

Attach the State Energy Office letter of certification or keep with your tax records if filing electronically.

NOTE: If a facility stops using biomass resources as at least 90% of its primary fuel source, any unused credit is suspended until the facility resumes using biomass resources as at least 90% of its fuel source. A suspension of unused credit does not extend the 15-year carryforward period.

Definitions:

A "biomass resource" is defined as noncommercial wood, by-products of wood processing, demolition debris containing wood, agricultural waste, animal waste, sewage, landfill gas, and other organic materials, not including fossil fuels.

A "commercial use" is a use intended to generate profit.

The State Energy Office reserves the right to request more information from the taxpayer if deemed necessary.

International Paper
Georgetown, South Carolina
EIN 13-0872805
2011 SC Biomass Credit Site Summary Memo

Organizational Information

Legal Entity: International Paper
Division(s): Converting, Specialty & Pulp

Introduction

This memo is divided into the following sections:

I. Site Overview
II. Qualified Projects
III. Capitalization of Equipment Costs

I. Site Overview

A. Corporate Overview

In 1937, the Georgetown Mill began operations in Georgetown, SC, on over 900 acres of land. The mill produces paper for the following products: Envelopes, Bristols (white and manila heavyweight paper for tags, file folders, and index), Pulp (often used for the absorbent material in baby diapers and personal care products), and market pulp.

B. Biomass Energy Making Process

Wood consists of two primary elements, lignin and cellulose. On average, a dry log consists of 55% lignin and 45% cellulose. Cellulose is the fiber component of wood. Lignin functions as the glue that holds cellulose together to form wood. Lignin is an excellent fuel which yields more energy when burned than cellulose. In order for lignin to be used as a fuel, it must be separated from the cellulose, concentrated and then burned.

International Paper's process of generating energy and paper from biomass resources begins with the delivery of wood chips or logs from third-party suppliers. Wood chips are typically ready for processing when received; however, logs must be converted into chips of a specific size. Logs are removed from delivery trucks using a portable crane. The crane then loads the logs onto a conveyor which transports the logs to the debarker. The debarker tumbles the logs in large drums to remove the bark. Next, the raw logs are sent through the chipper to form wood chips.

Wood chips are next separated into their two primary elements, lignin and cellulose. To accomplish the bifurcation of wood chips into its two components of lignin and cellulose the chips are cooked in a chemical solution in large vats called digesters. The digestion process can be either batch or continuous. The Georgetown mill uses both digestion processes. In continuous cooking, wood chips together with a pre-heated mixture of white liquor (a solution of sodium hydroxide (NaOH) and sodium sulphide (Na2S)) are added to the digester where they are cooked

at high pressure for 1 – 1.5 hours. After cooking, the wood chips are converted into a watery mixture of weak black liquor (lignin and cooking chemicals) and cellulose fiber. The hot solution is extracted into a low-pressure tank where flash steam is generated for re-use in the continuous digester. In batch cooking, the digester is filled with chips, covered with white liquor, and then heated under high pressure for up to 3.5 hours. After the batch cooking is complete, the contents are discharged into a blow tank.

After the wood chips have cooked the contents from the batch digestion blow tank and/or the continuous digester they are sent to the brown stock washers in order to begin the process of separating the lignin and cooking chemicals (weak black liquor) from the cellulose wood fiber. The brown stock washers consist of a series of spinning drums to extract the weak black liquor from the wood fibers. At this point in the process, the lignin and cooking liquids are sent to the evaporator and the cellulose wood fibers are sent to the bleaching process. The process of converting the cellulose wood fibers to paper continues through other equipment in the plant and is not further addressed herein.

Once the weak black liquor has been pumped through multiple evaporators, the liquid is concentrated from 15% solids to 50 - 75% solids to form strong black liquor. This concentrated black liquor is pumped to the recovery boiler where it is further concentrated, sprayed into the furnace, and burned. Feed water is pumped first to the economizers where it is heated by flue gas. The pre-heated water then enters the water circulation system of the boiler. When black liquor is burned, pre-heated water is converted into high pressure steam. The superheated steam flows from the recovery boiler to a turbine generator plant where electricity is generated for use within the mill. The bi-product steam is further recovered and sent as heat to the dryers and other mill manufacturing processes.

Finally, the ashes (smelt) from the burned black liquor are dissolved in weak lime wash from the lime kiln to create weak green liquor water and this solution is then pumped to the causticizer where it is mixed with lime from the lime kiln in order to facilitate the production of white liquor. The white liquor slurry is then pumped to the clarifier / Caustic Plant where the lime mud is separated from the white liquor. The recovered lime mud is sent to the lime kiln where it is regenerated and circulated back to the causticizer for the creation of new white liquor. The white liquor is sent back to the digesters as an essential part of the continuous cycle to separate the lignin and cellulose within wood chips.

II. Qualified Projects $7,474,977

A. Area 5 – Logs/Woodyard $3,937,759

The woodyard is the area of the mill where logs containing lignin (the raw material used to produce steam from biomass), are received from log trucks, sorted into hardwood and softwood, stored, and transported to the debarker. Starting in 2009, the Georgetown mill built a new woodyard that allows the processing of tree-length logs. By installing the new woodyard, Georgetown increased its wood processing capacity by eliminating the slashing step in the log preparation process. Slashing was necessary to cut the wood into smaller lengths to be able to fit in the debarker and chipper. The woodyard redesign also improved the quality of the woodchips being sent to the digester because the logs no longer have to travel through a water system before chipping. Some of the major

equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: new DCS/PLC controls, woodyard Gaitronx System, surveillance cameras, Log Unbinding, #3 Gate Scale, Woodyard Portal Crane upgrades.

i. The DCS/PLC (distributed control systems/programmable logic controllers) provides the HMI (human machine interface) between the operator in the control room and the equipment in the field such as motor starters for equipment and conveyors.
ii. The woodyard Gaitronx System is the operator communication system that allows interaction between all the employees in the woodyard.
iii. The surveillance cameras allow the control room based operator to monitor operations of the new tree-length handling system that they do not have a direct line of sight to from the control room.
iv. The log unbinding racks ensure the safe unbinding of larger roundwood being processed through the new woodyard by protecting the truck drivers if a log would try to escape the stanchions when the load is unbound.
v. Georgetown installed at Gate 3 two 70' scales to accommodate the longer trucks that are entering the mill.
vi. Since the 40 ton Portal Crane is the main source supplying the only chipper line in Georgetown, uptime is critical in maintaining chip inventories and reducing the need for purchased chips and offsite storage of wood thus improving the wood handling for the digester and the biomass energy process. The controls and motors used for travel on the crane contribute to the mechanical failures due to the rough and uneven operations caused by the numerous failures. The operation of the crane will be improved with the upgraded technology by better controlling the movements of the hoist, gantry and trolley motions.

B. Area 6 – Debarker $268,940

The debarker is an integral part of preparing the logs to separate the lignin (the raw material used to produce steam from biomass) from the wood fibers. The debarker removes bark from whole logs to prepare them for the wood chipper. An improved debarker was necessary to be able to remove bark from tree-length logs. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: debarking drums, bark drum collection belt, bark hog discharge conveyor, bark hog Jeffery 66, and a bark drum infeed conveyor.

i. The debarking drum is a large rotating drum where the logs "tumble" inside to strip bark from the tree. The bark drum collection belt collects the bark that is stripped off the trees inside of the barking drum. The bark falls through slots in the barking drum and collects on this belt. If the bark is not removed by this conveyor then the barking drum will fill up with bark which will stop the barking drum from working effectively. Ultimately this bark ends up as a fuel in the Power Boilers.
ii. The bark drum infeed conveyor transfers whole tree logs into the debarking drum. The debarking drum is mounted horizontally so that logs have to be feed into the debarking drum from the side. Overhead cranes cannot load logs directly into a side fed debarking drum so the bark drum infeed conveyor,

which is comprised of external hydraulic cylinders attached to internal steel plates, pushes the whole trees into the barking drum. Without the bark drum infeed conveyor no wood could be fed into the debarking drum.

iii. As a result of feeding whole trees to the debarking drum and removing bark in the barking drum limbs, tops of trees and large slabs of bark are also removed. These bark slabs and limbs will plug up the bark conveying systems and bark feed systems to the Power Boilers so bark hogs are used to grind up these large pieces of wood and bark. A Jeffery 66 bark hog uses a system of rotating and stationary hammers to grind up these large pieces of wood.

iv. A conveyor belt conveys bark to the Jeffery 66 bark hog and a different conveyor conveys the bark away from the Jeffery 66 bark hog. Without this discharge conveyor we could not convey the Woodyard bark to the conveyors which take the bark to the Power Boilers.

C. **Area 7 – Chipper $33,227**

The chipper is an integral part of preparing the logs to separate the lignin (the raw material used to produce steam from biomass) from the wood fibers. The chipper reduces the tree-length logs to a consistent size that is easy for the digester to cook the wood so that the lignin can be extracted. An improved chipper was necessary to be able to process the tree-length logs. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: Chipper Building, Electric Ctr Chipper, Split Chipper Feed Conveyor, Chipper Surge Hopper, Chipper Control Station.

i. The chipper building houses the chipper and the motor which turns the chipper. Chipper motors are very large electrical devices and need to be protected from the elements.

ii. The Chipper electric center houses the electrical switchgear for the new woodyard. The electrical switchgear has to be contained in a locked and conditioned environment.

iii. The Split Chipper Feed conveyor conveys logs from the debarking drum to the chipper. Without this conveyor no logs could be chipped.

iv. A conveyor belt takes chips from the whole tree chipper and conveys the chips to the chip screens. Because the whole tree chipper can produce such a large quantity of chips they can overload the chipper discharge conveyor. The Chipper Surge Hopper levelizes the flow of chips from the chipper to the chipper discharge conveyor thus avoiding a condition where you can overfill the conveyor for short periods of time.

v. The Chipper Control Station is the operator station where the new Woodyard equipment is controlled from. Without this station the equipment could not be started, stopped or controlled.

D. **Area 8 – Digester $802,008**

The continuous digester is one of the most important components of the black liquor production process (separating lignin from the wood fibers). It provides the feedstock

(dissolved lignin) that is sent to the washers to be separated into black liquor and wood fiber. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: DCS\PLC controls, Kamyr Wash Transition Screen, Infrastructure Improvements, replacement of the #3 BC Heater and Kamyr Piping Upgrades.

i. The DCS/PLC (distributed control systems/programmable logic controllers) are the controls that manage the continuous digester equipment instrumentation and replaced an obsolete control system that was 26 years old.

ii. New Kamyr wash transition screens were installed to increase the surface area of the liquor extraction process. Implementing the new wash screen allows the hot cooking liquids to be extracted back to the flash heat system in the digester and the solids (lignin) to be sent to the evaporators with lower moisture content. The lower moisture content in the lignin means that a lower amount of processing will be necessary to burn it in the recovery boiler.

iii. The infrastructure improvements to the continuous digester include Kamyr piping insulation, and Kamyr electrical upgrades. The Kamyr electrical upgrades replaced the cable tray for the Kaymr digester. This cable tray supports the electrical control components for the digester and that with failure the Kaymr digester would shutdown.

iv. Replacement of the #3 BC (bottom circulation) Heater in the Kamyr continuous digester improved the digester's bottom circulation heat exchangers. The bottom circulation heat exchangers assist in heating the digester to the proper cooking temperature. Without adequate temperature in the digester the wood won't cook.

v. KAMYR digester piping upgrades to the A Blow-line, TC Line, and the BC Line will alleviate failures in these applications would cause digester downtime.

E. Area 12 – Recovery Boiler $1,621,775

The recovery boiler is the central piece of equipment for generating heat and steam from a 90% biomass resource. At least 99% of the fuel burned in the recovery boiler furnace is derived from black liquor produced through the processes noted in areas 1 through 11. The purpose of the recovery boiler is to burn black liquor for energy (heat, steam and ultimately electricity) production for use in other mill processes. The Georgetown mill has two recovery boilers. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: #1 & #2 Recovery Boiler Fuel Flow Meters, Recovery Boiler #1 & #2 Precipitator Controls, RTO rebuild, Recovery Boiler #1 & #2 Ducon Scrubber Nozzle Systems, Recovery Boiler #2 MoDo Scrubber Strainer, Recovery Boiler #1 & #2 Sootblower Controls, Recovery Boiler flooring 6th, 8th, 10th floors, Recovery Boiler KES items, and CEMS upgrade.

i. The greenhouse gas monitoring equipment was required to be installed by the EPA. If International Paper does not comply with the EPA, the government

will require the boilers to be shutdown and then IP would be required to generate power from non-biomass resources and/or shut the plant down completely. The following items were installed to track emissions of Carbon Dioxide (CO2), Methane (CH4), and Nitrous Oxide (N2O) to comply with the EPA greenhouse gas monitoring regulations:

1. The #1 & #2 Recovery Boiler Fuel Flow Meters were installed to meet strict EPA guidelines for tracking greenhouse gas emissions. The new fuel flow meters will provide more accurate fuel measurements for the recovery boilers that are required to be reported to the EPA.
2. Recovery Boiler #1 & #2 Precipitator Controls, RTO Rebuild, Recovery Boiler #1 & #2 Ducon Scrubber Nozzle systems and the #2 MoDo Scrubber strainer were all installed to meet more stringent environmental requirements due to the U.S. Court of Appeals overturn of the SSM (Start-up/Shut-down/Malfunction) allowances as set forth in the Cluster Rules and Innovations. Emissions that occur during periods of SSM will no longer be "exempt" from the hazardous air pollutant emissions standards. Facilities are required to comply with the air standard at all times (even during periods of SSM) and failure to comply will be a violation of the emissions standards.
3. During the specific project addressing the RTO modifications, additional items were identified which require attention. During construction and inspection, it was determined that the RTO rotor was compromised by holes, which were temporarily patched at the time. In addition, items addressing combustion air and possible short-circuiting were also identified. These items required long-lead materials and fabrication, as well as an extended outage. Therefore additional SSM Vacatur work was completed during the March 2011 GT Annual Outage. The scope includes replacing the existing rotor with upgraded metallurgy to increase rotor life and performance and changing the fresh air damper to a leak tight arrangement.

ii. Recovery Boiler #1 & #2 Sootblower controls was the replace of old obsolete controls with updated controls. If the sootblowers don't operate correctly then the recovery boilers plug up with saltcake which causes downtime on the boiler to clean out.

iii. The recovery boiler flooring was necessary for employees to be able to operate the boiler. One cannot access the boiler without proper flooring.

iv. The Recovery Boiler KES items installed corrective modifications to canopies on all IK units (steam lance that is used to clean soot off the boiler tubes), including covering all holes.

v. Recovery Boiler Structural Steel was replaced for the RB2 Precipitator / Scrubber Ductwork at the Georgetown mill which is a 12' - 0" ID duct that is

supported on a structural steel framework. These steel support structures have deteriorated to the point where some structural bracing members are either missing or are now a fraction of their original member size. Failure of these supports could occur during a hurricane or high wind situation causing catastrophic failure of the recovery boiler.

vi. The Continuous Emissions Monitoring (CEM) instrumentation upgrade for the Nos. 1 and 2 Recovery Boilers include new analyzers for No. 1 Recovery Boiler, sample conditioning equipment for both boilers, and upgraded Programmable Logic Controls (PLC). Due to the age of the CEMS, the mill is at risk for significant downtime if the system should fail due to obsolesces of some of the equipment currently being used. The SC Department of Health and Environmental Control (DHEC) requires continuous monitoring for Total Reduced Sulfur (TRS) for the No. 1 and No. 2 Recovery Boilers. If International Paper does not comply with the DHEC requirements, the government will require the boilers to be shut down. Thus, without the monitoring equipment, International Paper would be unable to operate the recovery boilers and would not be able to produce biomass energy.

F. **Area 13 – Causticizer $48,823**

The Causticizer plays an integral role in the biomass energy process. The causticizer tank takes green liquor (a slurry of the Recovery Boiler ash and weak wash) as well as lime to facilitate the production of white liquor, which is the chemical used to cook the wood chips in the digesters. The equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes is additional costs for the new causticizer tank. The causticizer tank had a foundation failure and needed to be replaced. The purpose of the causticizer tank is to give the lime and green liquor (molten ashes and weak wash mixture) time to react and become white liquor.

G. **Area 14 – Lime Kiln $682,293**

The lime kiln plays an integral role in the biomass energy process. The lime kiln produces the lime needed to regenerate the Recovery Boiler smelt (molten ashes) back into white liquor, where it will be reused in the digester to separate the lignin from the wood fibers. The lime kiln is a furnace-type equipment used to heat lime mud (calcium carbonate (CaCO3) above 900°C to produce the lime (CaO) used in the generation of white liquor. The Georgetown mill has two lime kilns. Some of the major equipment costs capitalized in this area in 2011 under the taxpayer's method of accounting for SC income tax purposes are: Lime Kiln #1 Gear Drive Shell and Gear Drive, Lime Kiln #1 & #2 Multi-Fuel Burner, and #1 & #2 Lime Kiln Flow Meters.

i. Lime Kiln #1 Gear Drive Shell and Gear Drive – The Lime Kiln Gear Drive turns the kiln to properly process the Lime Mud for re-use in the causticizer. Due to the poor condition of the #1 Lime Kiln Gear Drive, the existing gear and pinion were removed as well as replacement of a 26 ft section of the kiln shell. Due to the removal of the kiln shell, the existing bricks had to be

removed and replaced with a new section. A total of 34 ft of refractory was replaced because industry standards require removal of 4 ft of brick uphill and downhill of the cut line to ensure that the remaining refractory is not affected by the work on the new section. Without these upgrades No. 1 Kiln could have experienced severe reliability issues and significantly affected the amount of black liquor burned in the recovery boilers.

ii. The #1 & #2 Multi-Fuel burners were installed to substitute natural gas for No. 6 fuel oil. Lime Kiln burners are required to provide the temperature inside of the kiln (2000°F) to convert lime mud into reburned lime which is necessary to produce the liquor that cooks wood.

iii. #1 & #2 Lime Kiln flowmeters were installed as part of the Greenhouse Gas legislation requiring high levels of fuel flow accuracy. The new fuel flow meters will provide more accurate fuel measurements for the Lime Kilns that are required to be reported to the EPA.

H. Area AA – Multiple Areas $80,150

The Georgetown mill incurred capitalized equipment costs in this area in 2011 under the taxpayer's method of accounting for SC income tax purposes to modify 5 structural beam seats on the east wall of the Deionized Water (DI) Plant at the upper elevation. The Georgetown mill Recovery and Power Boilers produce steam at 1,000 psi and 1,450 respectively, because of the high steam pressures in the boilers, complete deionization of water flowing through the boiler piping is necessary to operate the boilers effectively. Deionization means removing all minerals and ions (e.g., sulfates, fluorides, and carbonates) from the water before it enters the boiler systems. The deionized water reduces the buildup of deposits in the boiler water pipes. The Deionized Warm Water Supply services all four boilers at the Georgetown mill; two Recovery Boilers and two Power Boilers.

III. Capitalization of Equipment Costs

International Paper capitalizes certain costs to its equipment in accordance with its method of accounting for SC income tax purposes. The capitalized costs include not only the cost of the tangible equipment but may also include, engineering, design, installation, financial carrying, and other costs required to be capitalized to the equipment under its method of accounting for SC income tax purposes. International Paper may purchase and install equipment at its Eastover facility in a year and capitalize costs to the equipment in subsequent years in accordance with its method accounting for SC income tax purposes.

International Paper Company
13-0872805
Georgetown, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets

Sum of Acq.value

Map Area	Proj. def.	Project Name	Qualifying Status	Asset	SNo.	Cap.date	Asset description	Total
		GT Wood Yard						
05. Logs/Woodyard	025908C695C	Reconfiguration	Y	624041	3	01/01/11	Surveillance Cameras, Common Woodyard	3,995.88
				624043	3	01/01/11	DCS/PLC Ctrls/IO/OperStat Fiber	3,995.88
				624044	3	01/01/11	Woodyard Comm/Gallrock Sys, Common Wood	4,774.86
				624046	3	01/01/11	Knuckle Boom Chipper Crane, Metso	4,108.87
	025908C695C Total							16,875.49
		GT Infrastructure						
	025910A108C	Improvements - Phase I	Y	647968	1	01/01/11	WOODYARD-INFRASTRUC IMPVMNTS I-10G108	74,554.93
	025910A108C Total							74,554.93
		Log Unbinding / #3 Gate						
	025910A751C	Scale Improvem.	Y	658407	0	06/01/11	WDYD - Truck Unbinding Racks - 10A751	197,623.30
				658408	0	06/01/11	WDYD-#3 Gate Scales/Improvements-10A751	1,546,442.57
	025910A751C Total							1,744,065.87
		Woodyard Portal Crane						
	025910C058C	Upgrade		655590	0	04/01/11	PULP-VFDs for All Motions-10C058	315,206.35
				655591	0	04/01/11	PULP-Drive Centers-10C058	269,358.45
				655592	0	04/01/11	PULP-Trucks and Gearmotors-10C058	425,315.10
				655593	0	04/01/11	PULP-Storm Brakes-10C058	191,379.45
	025910C058C Total							1,201,259.35
		40 Ton Woodyard Crane						
	025911A079C	Improvements	Y	655596	0	04/01/11	PULP-WY 40 Ton Crane Hoist-11A079	312,078.44
				655597	0	04/01/11	PULP-WY 40 Ton Camera&Comm System-11A079	88,925.25
	025911A079C Total							401,003.69
05. Logs/Woodyard Total								9,937,759.33
		GT Wood Yard						
06. Debarker	025908C695C	Reconfiguration	Y	624047	3	01/01/11	Debarking Drums(14'6x110),Metso Bark Sys	4,126.28
				624048	3	01/01/11	Bark Drum Collection Belt, Barking Metso	4,108.88
				624049	3	01/01/11	Bark Hog Discharge Conv, Bark Sys	4,108.88
				624050	3	01/01/11	Bark Hog Infeed Conv, Bark Sys	4,905.26
				624051	3	01/01/11	Drum Infeed Conv, Debark, Metso Bark Sys	247,582.11
				624052	3	01/01/11	Drum Discharge Conv, Debark, Metso Bark	4,108.88
	025908C695C Total							268,940.29
06. Debarker Total								268,940.29
		GT Wood Yard						
07. Chipper	025908C695C	Reconfiguration	Y	624041	3	01/01/11	Chipper Bldg Carthage, Common Woodyard	7,129.20
				624045	3	01/01/11	Electric Cr Chipper, Common Woody	8,782.77
				633366	2	01/01/11	Split Chipper Feed Conveyor, Metso	3,329.90
				633367	2	01/01/11	Chipper, Carthage 130 Metso, Chipping	3,329.90
				633368	2	01/01/11	Chipper Surge Hopper, Chipper, Metso	3,329.90
				633369	2	01/01/11	Surge Hopper Conv, Chipper, Met	3,329.90
				633372	2	01/01/11	Chipper Control Station, Chipper, Metso	3,995.88
	025908C695C Total							33,227.45
07. Chipper Total								33,227.45

425

International Paper Company
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Georgetown, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets

Sum of Acq.value

Map Area	Proj. def.	Project Name	Qualifying Status	Asset	SNo.	Cap.date	Asset description	Total
08. Digester	025909A423C	KAMYR Blow DEC Conversion	Y	630774	2	01/01/11	DCS/PLC Cnvs/IO/OperStat: Pulp/B	57,800.00
	025909A423C Total							57,800.00
	025910A048C	#3 BC Heater Replacement	Y	647959	1	01/01/11	PULP - #3 BC Heater - 10A048	83,298.84
	025910A048C Total							83,298.84
	025910A059C	Key Element Survey (KES) Improvements	Y	647948	63	01/01/11	PULP - KES #10 Kamyr Electrical - 10A059	1,211.47
	025910A059C Total							1,211.47
	025910H786C	EEI7-GT Kamyr Wash Transition Screen Mod	Y	647934	1	01/01/11	Kamyr Wash Transition Screen	38,528.22
	025910H786C Total							38,528.22
	025911A093C	Kamyr Chip Chute Replacement	Y	655606	0	04/01/11	PULP - Kamyr Lower Chip Chute - 11A093	313,181.67
	025911A093C Total							313,181.67
	025911A773C	Kamyr Critical Piping Upgrades	Y	655602	0	04/01/11	PULP - KAMYR PIPING UPGRADES - 11A773	307,987.82
	025911A773C Total							307,987.82
08. Digester Total								802,008.02
		RB2/PB Scrubber Duct						
12. Recovery Boiler	025910A062C	Structural Steel Repair	Y	64796S	1	01/01/11	POWER-RB2-PB Struct Steel Repair-10A062	108,716.15
	025910A062C Total							108,716.15
	025910A678C	RB Flooring Phase IV	Y	647954	1	01/01/11	POWER-Rec Boiler Floor 6,8,10.5-10A678	10,449.47
	025910A678C Total							10,449.47
		Greenhouse Gas						
	025910G008C	Monitoring	Y	630781	1	01/01/11	POWER - #1&2RB Fuel Flow Meters 10G008C	11,244.57
	025910G008C Total							11,244.57
		Excess Emission						
	025910G035C	Reduction	Y	632415	1	01/01/11	POWER-RB1 Precipitator Controls-10G035	5.43
				632416	1	04/01/11	POWER-RB2 Precipitator Controls-10G035	18.54
				632417	1	04/01/11	POWER - RTO Rebuild - 10G035	72.03
				632422	1	01/01/11	POWER-RB1 Ducon Scrbr Nozzle Sys-10G035	30,931.12
				632423	1	01/01/11	POWER-RB2 Ducon Scrbr Nozzle Sys-10G035	31,824.19
				632424	1	01/01/11	POWER-RB2 MoDo Scrubber Strainer-10G035	311,889.55
	025910G035C Total							374,740.86
	025910G112C	KES Improvements Phase II	Y	647961	0	01/01/12	POWER - RB KES ITEMS - 10A112	6,984.68
	025910G112C Total							6,984.68
	025910H019C	EEI7-MoDo Scub Mill Supply Heat Exch Re	Y	655595	0	04/01/11	POWER-Modo MW Heat Exchanger-10H019	463,218.47
	025910H019C Total							463,218.47
	025910H340C	EEI7 RB Advanced Sootblower Controls	Y	647935	1	01/01/11	RB1 Sootblower Controls	8,400.87
				647936	1	01/01/11	RB2 Sootblower Controls	8,400.85
	025910H340C Total							16,801.72
	025911A928C	2011 CEMS Upgrades	Y	655601	0	04/01/11	POWER - 2011 CEMS Upgrades - 11A928	128,720.64
	025911A928C Total							128,720.64
	025911G636C	SSM Vacatur - Outage	Y	655605	0	04/01/11	POWER-RTO ROTOR/COMBUSTION AIR-11G636	500,898.88
	025911G636C Total							500,898.88
12. Recovery Boiler Total								1,621,775.44

International Paper Company
13-0872805
Georgetown, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets

Sum of Acq value								
Map Area	Proj. def.	Project Name	Qualifying Status	Asset	SNo.	Cap date	Asset description	Total
13. Causticizer	025910A050C	#3 Causticizer Replacement	Y	639665	1	01/01/11	#3 Causticizer Tank #2	48,823.32
	025910A050C Total							48,823.32
13. Causticizer Total								48,823.32
14. Lime Kiln	025909A687C	No.1 Lime Kiln Trunion & Drive Gear Upgd	Y	631568	2	01/01/11	PULP-#1 Lime Kiln GearDriveShell-09A687	76,492.40
	025909A687C Total							76,492.40
	025909H758C	EEI7-Lime Kiln Multi-Fuel Burner Replace	Y	639648	1	01/01/11	Lime Kiln 1 Multi-Fuel Burner	591,551.88
	025909H758C			639656	1	01/01/11	Lime Kiln 2 Multi-Fuel Burner	8,922.28
	025909H758C Total							600,474.16
	025910G008C	In Greenhouse Gas Monitoring	Y	630779	1	01/01/11	PULP - #1&2LK Fuel Flow Meters 10G008C	5,326.37
	025910G008C Total							5,326.37
14. Lime Kiln Total								682,292.93
AA. Multiple Areas	025910A927C	DI PLANT STRUCTURAL BEAM IMPROVEMENTS	Y	655594	0	02/01/11	POWER-DI Plant Struct Beam Improv-10A927	80,150.16
	025910A927C Total							80,150.16
AA. Multiple Areas Total								80,150.16
Grand Total								7,474,976.84

Black Liquor Yield - Georgetown

Order	1[illegible]155	EB# HARDWOOD	
Plant	0259	Georgetown Mill	
Material	[illegible]54	HARDWOOD PULP	
Production Process	Fremont 2001		
Actual quantity	289 152,000 LBS	LB Pound	
Target cost version	0 Actual vs PCV (Released Cost Estimate)		
From period	001/2011 January		
To period	12/2011 December		

Level Variation

	9620,970	Cost of Goods Manufactured at Standard	0259/100054	100054	HARDWOOD PULP	33,627,510.14-	33,62[illegible],931.84-	576.30	USD	LB	289,152,000 000-	289,152,000,000-	(A) 0.000
	843[illegible].052	Cost of Goods Manufactured Variances				0.00	1,844,332.83-	1,844,332.83-	USD	DOL	0.00	0.00	0.00
*						33,627,510.14-	35,471,764.67-	1,844,254.53-	USD	DOL	0.00	0.00	0.00
										LB	289,152,000 000-	289,152,000,000-	0.000
Chemicals	8,260,200	Chemicals-Other	0259/1084472	1084472	CAUSTIC SOLUTION, BY-PRODUCT 7-9% NA	38,457.22	4,815.30-	43,272.52-	USD	DT	274.694	34,395-	309,089-
Chemicals	61200,00	Chemicals-Other	0259/5936002	5936002	DIGESTER AQ. SO-	431,070.22	488,929.05	57,858.83	USD	LB	226,984,320	257,331,082	30,346,762
Chemicals	61200270	Chemicals-Other	0259/5834014	5834014	LIME, PEBBLE QUICK	203,418.41	169,950.09	33,468.32-	USD	LB	2,804,774,400	2,343,815,898	460,958,502-
Chemicals	61200200	Chemicals-Other	0259/5855001	5855001	SODIUM HYDROSULFIDE, LIQUID	183,949.18	32,480.74	141,468.44-	USD	TON	202,496	27,754	174,697-
Chemicals	61200200	Chemicals-Other	0259/1019900	1019900	CAUSTIC SODA, MEMBRANE 76- NAOH BASIS	1,032,630.94	1,219,673.51	186,822.57	USD	TON	2,125,265	2,509,669	384,403
* Chemicals						1,869,945.97	1,896,218.09	26,272.12	USD	DT	274.694	34,395-	309,089-
										LB	3,031,758,720	2,601,146,980	430,611,740-
										TON	2,327,671	2,537,422	209,751
Fuels & Utilities	61608800	Recoveries - Fuels & Utilities	0259/100018195	100018195	SALT CAKE - CL02 RECOVERED	477,823.68	471,910.66	5,912.82-	USD	TON	983.118	971.030	12.088-
Fuels & Utilities	61608800	Recoveries - Fuels & Utilities	0259/100073	100073	BLACK LIQ FUEL	6,255,998.21-	6,260,648.25-	52.04-	USD	M2B	2,606,353,446-	2,608,353,444-	0.002
Fuels & Utilities	84453600	Steam-Power Normalized	0259/100057	100057	STEAM NORMALIZED	8,072,400.97	7,847,148.24	425,252.73-	USD	M3B	11,291,387	10,696,509	594,878-
Fuels & Utilities	8[illegible]3607	Electric-Power Normalized	0259/100058	100058	ELECTRIC NORMALIZED	930,833.07	842,126.25	58,726.82-	USD	KKH	28,105,574	26,275,390	1,830,184-
Fuels & Utilities	8[illegible]3680	Produced Utilities Reporting Points	0259/100064	100064	TREATED WATER MILL SUPPLY	525,440.55	519,823.38	5,617.21-	USD	M2G	636,134	625,070	11,064-
Fuels & Utilities	[illegible]0530	Fuels and Utilities Consumption	0259/7877007	7877007	FUEL, NATURAL GAS	638,447.62	1,019,667.67	381,220.05	USD	M2B	135,540 001	216,369,949	80,949,948
Fuels & Utilities	61000500	Fuels and Utilities Consumption	0259/1241107	1241107	FUEL OIL, NO 6 2.1- SULFUR	[illegible],814,044.44	1,249,236.41	364,816 05-	USD	GAL	7e3,746 813	591,127 822	172,618,991-
* Fuels & Utilities						5,769,016.16	5,289,858.56	479,157.62-	USD	GAL	762,746,813	591,127,822	172,618 991-
										KKH	28,105,574	26,275,390	1,830,184-
										M2B	2,472,813,445-	2,381,863,495-	90,949,950
										M2G	636,134	625,070	11,064-
										M3B	11,291,387	10,696,509	594,878-
										TON	983.118	971.030	12 088-
Other Facility OH	SCE-OHALL	Overhead Allocation	128101/OHPULP			6,656,712.78	7,508,590.83	851,878.05	USD	BDT	144,576.000	144,576 000	0.000
* Other Facility OH						6,656,712.76	7,508,590.83	851,878.05	USD	BDT	144,576.000	144,576 000	0.000
Wood	84453195	Own Make Fiber	0259/100056	100056	HARDWOOD CHIPS	19,331,546.10	20,777,097.19	1,445,551.09	USD	BDT	285,740.006	307,126,344	21,386,338
* Wood						19,331,546.10	20,777,097.19	1,445,551.09	USD	BDT	285,740.006	307,126,344 (B)	21,386,338
**						289.11-	0.00	289.11	USD	MDT	430,316.006	451,702,344	21,386,338
										DOL	0.00	0.00	0.00
										DT	274 694	34,395-	309,089-
										GAL	763,746 813	591,127,822	172,618,991-
										KKH	28,105,574	26,275,390	1,830,184-
										LB	286,120,241,280-	286,550,853 020-	430,611 740-
										M2B	2,472,813,445-	2,381,863,495-	80,949,950
										M2G	636,134	625 070	11,064-
										M3B	11,291,387	10,696,509	594,878-
										TON	3,310,789	3,508,452	197,663

HWD Pulp yield

% Hardwood to Black Liquor

100%

£(A) 289,152,000 LBS Hardwood Pulp
÷ 2,000 LBS to tons conv factor
144,576 (G) Tons HWD Pulp

£(B) ÷ 307,126.344 Tons HWD Chips
0.470738
x 100
47.0738 % Yield Hardwood Pulp
(C)

£(C) = 47.0738% Yield HWD Pulp
52.9262% Hardwood Black Liquor Yield
(D)

	Over All Yield	£(G)	% of Total
Tons HWD Pulp	144,576		23.75 % (E)
Tons Pine Pulp	464,276		76.25 % (F)
Total Pulp	608,852		100 %

(52.9262% £(D) x 23.75% £(E)) = 12.57% Hardwood weighted yield

(53.5328% £(F) x 76.25%) = 40.63% Pine weighted yield

53.20% Total weighted Black Liquor Yield

Source: SAP - Caleb Cope - Global Finance - Georgetown Hardwood & Pine Black Liquor Yield 2011

Order	150v60.5M	EBK PINE
Plant	0259	Georgetown Mill
Material	.00v52	PINE PULP
Production Process	Pression Kraft	
Actual quantity	928,552 000.000	LB Pound
Target cost version	0 Actual vs IPCs (Released Cost Estimate)	
From period	001/2011 January	
To period	012/2011 December	

Legal Valuation

	62201000	Cost of Goods Manufactured at Standard	0259/100052	100052	PINE PULP	100,780,851.74-	100,781,820.78-	928.54-	USD	LB	928,552,000.000-	928,552,000.000-	(A) 0.000
	62201500	Cost of Goods Manufactured Variances				0.00	1,570,543.11	1,570,543.11	USD	DOL	0.00	0.00	0.000
						100,780,851.74-	99,191,277.17-	1,569,616.57	USD	DOL	0.00	0.00	0.000
										LB	928,552,000.000-	928,552,000.000-	0.000
Chemicals	61200200	Chemicals-Other	0259/1084472	1084472	CAUSTIC SOLUTION, BY-PRODUCT 7-9% NA	125,997.28	5,651.10	124,346.18-	USD	DT	928.552	40.365	882.187-
Chemicals	61200200	Chemicals-Other	0259/5936002	5936002	DIGESTER AC, 50-	1,896,567.49	1,571,233.35	325,334.14-	USD	LB	998,193.400	826,964.918	171,228.482-
Chemicals	61200200	Chemicals-Other	0259/5834014	5834014	LIME, PEBBLE QUICK	673,200.20	553,059.29	120,140.91-	USD	LB	9,285,529.000	7,629,352.102	1,656,147.898-
Chemicals	61200200	Chemicals-Other	0259/1005655	1005655	OSB, NIFRO SALT CAKE MAKEUP	0.00	5,214.40	5,214.40	USD	LB	0.000	260,870.000	260,870.000
Chemicals	61200200	Chemicals-Other	0259/5862005	5862005	SALT CAKE, TALL OIL	0.00	6,592.95	6,592.95	USD	TON	0.000	585.000	585.000
Chemicals	61200200	Chemicals-Other	0259/5855001	5855001	SODIUM HYDROSULFIDE, LIQUID	526,488.98	34,306.74	492,182.24-	USD	TON	648.986	42.354	607.632-
Chemicals	61200200	Chemicals-Other	0259/1019990	1019990	CAUSTIC SODA, MEMBRANE 76% NAOH BASIS	3,029,690.83	3,838,710.06	809,193.23	USD	TON	7,056.934	7,898.743	841.745
* Chemicals						6,655,860.78	6,014,772.69	641,087.85-	USD	DT	928.552	40.365	888.187-
										LB	10,283,713.400	8,715,287.020	1,568,426.380-
										TON	7,706.980	8,526.097	819.117
Fuels & Utilities	62009300	Fuels and Utilities Consumption	0259/7877007	7877007	FUEL, NATURAL GAS	2,055,345.87	3,512,184.35	1,456,838.48	USD	MZB	436,419.440	745,688.699	309,269.259
Fuels & Utilities	61000500	Fuels and Utilities Consumption	0259/1241107	1241107	FUEL OIL, NO 6 2.1% SULFUR	5,516,527.42	3,506,956.96	1,709,570.46-	USD	GAL	2,610,469.197	1,848,746.966	761,722.231-
Fuels & Utilities	61403600	Steam-Power Normalized	0259/100057	100057	STEAM NORMALIZED	19,482,155.42	14,833,098.29	1,649,057.13-	USD	MJB	27,810.131	26,342.945	1,467.186-
Fuels & Utilities	61e0r800	Recoveries - Fuels & Utilities	0259/100073	100073	BLACK LIQ FUEL	25,993,956.14-	25,993,067.56-	111.42-	USD	MZB	10,830,444.818-	10,830,444.817-	0.001
Fuels & Utilities	61403600	Electric-Power Normalized	0259/100058	100058	ELECTRIC NORMALIZED	2,669,587.00	2,495,456.75	174,130.25-	USD	KKH	83,291.114	77,861.365	5,429.749-
Fuels & Utilities	61403603	Produced Utilities Reporting Points	0259/100064	100064	TREATED WATER MILL SUPPLY	1,068,763.34	1,047,847.66	18,915.68-	USD	MZG	2,089.242	2,051.846	37.396-
Fuels & Utilities	61e0e800	Recoveries - Fuels & Utilities	0259/100018195	100018195	SALT CAKE - ClO2 RECOVERED	1,556,717.43	1,518,636.12	38,081.31-	USD	TON	3,203.506	3,124.830	78.676-
* Fuels & Utilities						6,756,144.36	5,323,212.57	1,433,031.79-	USD	GAL	2,610,469.197	1,848,746.966	761,722.231-
										KKH	83,291.114	77,861.365	5,429.749-
										MZB	10,394,029.378-	10,084,758.118-	309,267.260
										MZG	2,089.242	2,051.846	37.396-
										MJB	27,810.131	26,342.945	1,467.186-
										TON	3,203.506	3,124.830	78.676-
Other Facility OH	SGE-CHALL	Overhead Allocation	128100/OHPULP			21,793,223.85	23,738,843.09	2,005,619.24	USD	BDT	464,276.000	464,276.000	0.000
* Other Facility OH						21,793,223.85	23,738,843.09	2,005,619.24	USD	BDT	464,276.000	464,276.000	0.000
Other Raw Materials	61805600	Recoveries-Other	0259/100018173	100018173	BLACK LIQ SOAP - V4	3,240,559.84-	3,194,220.62-	67,339.22	USD	TON	38,349.198-	37,204.766-	1,144.433
Other Raw Materials	61705600	Recoveries-Other	0259/100018175	100018175	TURPENTINE REC - V4	251,637.58-	255,418.65-	3 781.07-	USD	GAL	419,659.077-	425,697.721-	6,038.644-
* Other Raw Materials						2,512,157.42-	2,448,639.27-	63,558.15	USD	GAL	419,659.077-	425,697.721-	6,038.644-
										TON	28,349.198-	37,204.766-	1,144.433
Wood	BP455173	Pwl Make Chips	0259/100055	100055	PINE CHIPS	68,126,931.70	66,563,187.89	1,563,743.81-	USD	BDT	1,022,614.316	999,147.221	(B) 23,467.095-
* Wood						68,126,931.70	66,563,187.89	1,563,743.81-	USD	BDT	1,022,614.316	999,147.221	23,467.095-

Pine Pulp Yield

(A) 928,553,000 LBS Pine Pulp
0.0005 LBS to Tons Conv Factor
464,276 Tons Pine Pulp

(B) 999,147.221 Tons Pine Chips
0.464672
X 100
46.4672% Yield Pine Pulp
(E)

% Pine to Black Liquor
100%
(C) - 46.4672% Yield Pine Pulp
53.5328% Pine Black Liquor Yield

Georgetown 2011 Pine Yields

Order	150.00198	EBA PINE	
Plant	0259	Georgetown Mill	
Material	120352	PINE PULP	
Production Process	PVersion.2.0		
Actual quantity	5,8,350,000.000	LB Pound	
Target cost version	0 Actual /5 IPC1	Released cost Estimate	
From period	001/2001	Summary	
To period	012/2001	Detailed	

Legal Valuation

**							928.48-	0.00	928.48	USD	BDT	1,486,890.318	1,463,423.221	23,467.097-
											DOL	0.00	0.00	0.00
											DT	928.552	40.368	888.187-
											GAL	2,190,810.110	1,423,049.245	767,760.865-
											KKH	93,291.114	77,861.365	5,429.749-
											LB	918,268,296.600-	919,836,712.980-	1,568,426.380-
											M2B	10,394,025.378-	10,084,758.118-	309,267.260
											M2G	2,089.242	2,051.846	37.396-
											M3B	27,810.131	26,342.965	1,467.166-
											TON	27,439.712-	25,553.833-	1,884.879

Fuel Summary - Georgetown

International Paper Company
Georgetown, SC Mill

(MMBTU = 1,000,000 BTU)

	Power Boilers - Fuel Source									
	Bark MMBTU	Sawdust MMBTU	Wood Waste MMBTU	Coal MMBTU	#6 Fuel Oil MMBTU	Pellets MMBTU	TDF MMBTU	Natural Gas MMBTU	Propane MMBTU	% Biomass
2000	1,890,229	1,175,176	1,667,370	2,575,179	412,077	143,011	93,268	391,938	28,927	56%
2001	1,834,284	1,248,069	2,358,396	2,705,344	331,563	132,371	12,607	143,591	5,932	62%
2002	1,752,878	1,178,982	2,630,080	2,953,000	237,266	130,998	0	138,132	6,260	62%
2003	1,556,745	712,195	1,447,572	2,251,710	203,715	132,355	874,510	241,595	2,882	50%
2004	1,452,636	664,984	2,437,003	1,491,218	375,420	154,948	1,432,355	203,635	332	55%
2005	1,590,998	688,350	2,090,205	1,715,863	349,062	103,902	1,710,022	146,176	19,344	52%
2006	1,654,372	712,753	2,367,195	1,605,020	81,319	19,617	1,836,099	124,174	779	56%
2007	1,671,071	721,746	1,949,807	1,822,756	18,750	19,507	1,806,897	25,096	451	54%
2008	1,608,464	712,770	2,069,470	1,554,205	43,706	18,923	2,117,827	25,663	0	54%
2009	1,641,074	715,423	2,168,520	1,049,677	26,651	13,477	2,198,247	49,911	0	58%
2010	2,070,116	508,925	1,781,391	1,219,631	40,903	13,518	1,863,551	106,507	4,320	57%
2011	2,219,738	525,028	1,555,146	745,555	14,981	13,292	1,953,821	266,722	283	59%

	Recovery Boilers - Fuel Source						
	BL Solids MMBTU	#2 Fuel Oil MMBTU	#6 Fuel Oil MMBTU	Natural Gas MMBTU	Propane MMBTU	Total MMBTU	% Biomass
2000	11,577,655	0	90,021	43,546	1,523	11,712,745	98.85%
2001	12,070,973	0	292,617	15,955	312	12,379,857	97.50%
2002	11,995,674	0	353,985	15,405	330	12,363,393	97.01%
2003	12,239,669	0	264,976	26,842	154	12,531,641	97.67%
2004	12,382,915	0	308,864	22,628	15	12,714,422	97.39%
2005	12,669,540	0	249,842	16,242	1,017	12,936,641	97.94%
2006	12,894,947	0	203,061	13,797	40	13,111,845	98.35%
2007	13,134,484	0	126,854	2,789	20	13,264,147	99.02%
2008	13,044,324	2,282	152,043	3,340	0	13,201,989	98.81%
2009	12,780,813	49,242	97,489	5,782	0	12,933,326	98.82%
2010	13,107,966	2,390	120,690	11,814	0	13,242,860	98.98%
2011	13,438,053	0	71,070	29,611	0	13,538,736	99.26%

Lime Kilns - Fuel Source	
#6 Fuel Oil MMBTU	Natural Gas MMBTU
1,116,136	48,908
1,033,798	34,972
1,023,311	44,436
1,016,073	43,063
1,009,823	82,830
1,003,548	54,057
1,016,300	59,783
996,053	37,402
1,002,624	67,413
897,251	195,754
572,421	698,206
365,315	966,980

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International Paper Company
Georgetown, SC Mill

(MMBTU

	Steam Production							Electrical Power					
	Power Boilers MSB (100 MMBTU)	Power Boilers Decatherms	Recovery Boilers MSB (100 MMBTU)	Recovery Boilers Decatherms	Total MSB (100 MMBTU)	Total Boilers Decatherms	% RB Steam to Total Steam	Turbine Generator 1 (Recovery Boiler) Generated (MMWH)	Total Power Generated (MMWH)	Total Power Used (MMWH)	Total Power Purchased (MMWH)	Total Power Sold (MMWH)	Overall balance adj? (MMWH)
2000	54,715	5,471,500	62,365	6,216,500	117,080	11,708,000	53.27%	Data not available	578,030	610,996	41,500	8,534	0
2001	53,641	5,364,100	63,546	6,354,600	117,187	11,718,700	54.23%	Data not available	545,825	568,132	31,129	8,822	0
2002	54,061	5,406,100	61,727	6,172,700	115,788	11,578,800	53.31%	Data not available	548,461	574,376	35,054	9,139	0
2003	49,453	4,945,300	61,938	6,193,800	111,421	11,142,100	55.59%	Data not available	527,891	562,826	43,565	8,610	0
2004	54,848	5,484,800	62,513	6,251,100	117,361	11,736,100	53.27%	Data not available	543,703	567,264	31,843	10,282	0
2005	58,955	5,895,500	62,452	6,245,200	121,407	12,140,700	51.44%	Data not available	563,680	9,994	21,029	574,915	0
2006	55,370	5,537,000	63,294	6,329,400	118,664	11,866,400	53.34%	Data not available	533,941	550,526	26,617	10,032	0
2007	58,869	5,586,900	64,895	6,489,900	120,764	12,076,800	53.74%	228,854	552,841	555,264	12,273	9,840	0
2008	53,168	5,316,800	61,504	6,150,400	116,672	11,667,200	52.63%	220,621	531,027	538,697	17,620	9,950	0
2009	53,774	5,377,400	61,968	6,196,800	115,742	11,574,200	53.54%	214,207	541,035	547,115	14,826	8,746	0
2010	54,291	5,429,100	64,480	6,448,000	118,771	11,877,100	54.29%	218,440	543,138	552,100	18,029	9,067	0
2011	49,512	4,951,200	64,744	6,474,400	114,256	11,425,600	56.67%	218,594	535,516	533,902	28,749	10,363	0

\ Previously reported 11,917,100 Decatherms, however, due to conversion error that amount was incorrect.

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PRINTING & COMMUNICATIONS PAPERS
OPERATING STATISTICS
GEORGETOWN MILL

DECEMBER, 2011
PAGE 16H

DESCRIPTION	2010 ACTUAL	2011 STANDARD	ACTUAL JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Y-T-D
PURCHASED FUELS															
UNITS CONSUMED															
POWER BOILERS															
GAS - MCF	103,628	21,867	11,400	20,569	38,586	32,844	16,460	15,625	19,561	19,224	23,876	20,403	21,196	17,890	257,634
PROPANE GAS - MCF	1,394		114												114
OIL - BBLS.	6,505	13,504	207	437	982	310	30	142	166	18	12	43	38	18	2 383
COAL - TONS	47,574	51,282	4,967	4,283	3,395	3,874	3,599	2,197	2,586	935	1,432	754	635	698	29,355
TDF - TONS	60,111	63,964	6,308	4,582	4,043	4,472	4,309	5,214	4,986	5,828	5,798	5,791	5,722	5,974	63,026
*WOOD WASTE - M2BTU'S	1,794,909	1,776,696	107,332	93,258	71,902	138,230	131,280	166,932	132,333	132,776	155,875	125,401	129,446	183,609	1,568,373
RECOVERY BOILERS															
GAS - MCF	11 523	5,927	1,270	2,281	4,289	3,644	1,821	1,742	2,170	2,135	2,649	2,269	2,347	1,985	28,602
PROPANE GAS - MCF	349														
OIL - BBLS.	19 204	32,609	1,903	682	4,388	878	38	510	751	491	464	230	661	307	11,303
#2 FO - BBLS.	380														
LIME KILNS															
GAS - MCF	617,663	535,172	47,236	30,940	35,108	93,178	97,716	92,204	92,460	80,787	85,255	87,495	97,438	94,217	934,032
PROPANE GAS - MCF															
OIL - BBLS	90,759	78,856	9,240	11,319	3,804	2,719	2.500	2,206	3,888	5,704	4,608	4,706	3,727	3,679	58 100
TOTAL CONSUMED															
GAS - MCF	732,814	562,966	59,906	53,790	77,983	129,664	115,997	109,571	114,191	102,146	111,780	110 167	120,981	114,092	1,220,268
PROPANE GAS - MCF	1,743		114												114
OIL - BBLS	116,468	124,969	11,350	12,438	9,151	3,907	2,569	2,858	4,805	6,214	5,084	4,979	4,427	4,004	71,785
#2 FO - BBLS	380														
COAL - TONS	47,574	51,282	4,967	4,283	3 395	3,874	3 599	2,197	2,586	935	1,432	754	635	698	29,355
TDF - TONS	60,111	63,964	6,308	4,582	4,043	4,472	4,309	5,214	4,986	5,828	5,798	5,791	5,722	5,974	63,026
*WOOD WASTE - M2BTU'S	1,794,909	1,776,696	107,332	93,258	71,902	138,230	131,280	166,932	132,333	132,776	155,875	125,401	129,446	183,609	1,568,373
TOTAL M2BTU CONSUMED															
GAS	760,985	591,115	61,571	55,673	81,414	134,721	120,591	114,502	118,462	105,619	115,469	114,011	124,344	117,036	1,263,412
PROPANE GAS	4,322		283												283
OIL	732,318	785,788	71,368	78,208	57,541	24,564	16,151	17,972	30,211	39,070	31,967	31,304	27,833	25,175	451,366
#2 FO	2 357														
COAL	1,208,289	1,302,460	126,144	108,774	86,216	98,385	91,418	55,804	65,682	23,746	36,371	19,157	16,120	17,738	745,555
TDF	1,863,428	1,982,898	195,534	142,038	125,325	138,621	133,575	161,643	154,567	180,679	179 741	179,530	177,382	185,187	1,953,821
*WOOD WASTE	1,794,909	1,776,696	107,332	93,258	71,902	138,230	131,280	166,932	132,333	132,776	155,875	125,401	129,446	183,609	1,568,373
CONSUMPTION COST PER UNIT															
GAS $/MCF	4 87	4.49	5 02	5.53	4,74	4,88	5.02	5.08	5.06	4.74	4 39	4.33	4.18	4 07	4 70
PROPANE GAS $/MCF	3 75		202.37												202 37
OIL $/BBL	75 55	88.76	86.68	91.92	109 85	112.95	101.67	85.23	103.61	110.57	96.51	103 52	106.47	106.17	99 82
#2 FUEL OIL $/BBL	87.53														
COAL $/TON	89.96	102 85	111 83	95 37	106 74	102 81	107.36	93.20	115.05	107 49	100 81	112.88	112 60	77.32	104 54
TDF $/TON	61.87	62.89	62 77	64,08	64 22	66.36	66.24	67.64	66.87	66.54	67.42	67.01	66.97	67.41	66.16
*WOOD WASTE $/M2BTU	2 48	2 68	2 73	2 64	2 64	2 76	2.83	2 80	2.76	2.82	2.82	2 83	2 79	2.88	2.79
CONSUMPTION COST PER M2BTU															
GAS	4 69	4 71	4.88	5.35	4 54	4.68	4 83	4.86	4 88	4.59	4 25	4 18	4 07	3.97	4.54
PROPANE GAS	1.51		81.52												81.52
OIL	12 01	14 12	13 79	14 62	17.47	17.96	16.17	13.56	16 48	17.58	15 35	16 46	16 93	16.89	15.88
#2 FO	14.12														
COAL	3 54	4 05	4.40	3 75	4.20	4.05	4.23	3 67	4.53	4.23	3.97	4.44	4 43	3 04	4.12
TDF	2.00	2.03	2.02	2 07	2.07	2 14	2.14	2.18	2.16	2 15	2.17	2 16	2 16	2.17	2 13
*WOOD WASTE	2.48	2.68	2.73	2.64	2.64	2.76	2.83	2.80	2 76	2.82	2 82	2 83	2.79	2.88	2.79

*INCLUDES PELLETIZED PAPER

PRINTING & COMMUNICATIONS PAPERS
OPERATING STATISTICS
GEORGETOWN MILL

DECEMBER, 2011

DESCRIPTION	2010 Actual	2011 Standard	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT	OCT	NOV	DEC	Y-T-D
GROSS M2BTU'S/UNF. TON															
Black Liquor Fuel	20.54	20.47	19.40	19.82	19.08	19.94	20.16	20.12	20.40	20.86	20.03	20.57	21.08	20.73	20.22
Bark	3.24	3.33	3.40	3.43	2.70	3.44	3.16	3.33	3.31	3.21	3.36	3.31	3.61	3.59	3.34
Reclaim Sawdust	0.80	0.81	0.80	0.79	0.73	0.82	0.74	0.77	0.79	0.79	0.80	0 79	0.84	0.81	0.79
SUB-TOTAL	24.58	24.61	23.60	24.04	22.51	24.20	24.06	24.22	24.50	24.86	24.19	24.67	25.53	25.13	24.35
Tire Derived Fuel	2.92	3.11	3.29	2.61	3.78	2.46	2.28	2.88	2.70	3.18	3.06	3.00	3.24	3.13	2.94
Woodlands Refuse	2.79	2.75	1.80	1.69	2.12	2.42	2.21	2.95	2.30	2.32	2.63	2.07	2.34	3.09	2.34
Pelletized Waste	0.02	0.04	0.01	0.02	0.04	0.03	0.03	0.03	0.02	0.01	0.02	0.03	0.02	0.02	0.02
Coal	1.91	2.04	2.12	2.00	2.60	1.74	1.56	0.97	1.15	0.42	0.62	0.32	0.29	0.30	1.12
Fuel Oil	1.15	1.23	1.20	1.44	1.73	0.52	0.21	0.31	0.54	0.70	0.54	0.52	0.52	0.41	0.68
Fuel Oil #2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Natural Gas	1.19	0.93	1.04	1.02	2.45	2.39	2.06	2.04	2.07	1.75	1.96	1.91	2.27	1.98	1.89
Propane Gas	0.00	0.00	0.01	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Electricity (Purch.)	0.10	0.10	0.19	0.21	0.80	0.07	0.03	0.15	0.07	0.24	0 12	0.04	0.11	0.08	0.15
Less: Sales of Energy	(0.05)	(0.05)	(0.05)	(0.05)	(0.09)	(0.05)	(0.05)	(0.06)	(0.05)	(0.06)	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
TOTAL PURCHASED	10.03	10.15	9.61	8.94	13.43	9.58	8.33	9.27	8.80	8.56	8.90	7.84	8.74	8.96	9.09
TOTAL FOSSIL FUEL	40.34	34.75	33.21	32.98	35.94	33.78	32.39	33.49	33.30	33.42	33.09	32.51	34 27	34.09	33.44
Shut-down & Start up	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Unfinished Tons Produced	638,114	637,578	59,431	54,337	33,178	56,449	58,664	56,041	57,228	56,881	58,766	59,749	54,786	59,081	664,592

PRINTING & COMMUNICATIONS PAPERS
OPERATING STATISTICS
GEORGETOWN MILL

DECEMBER, 2011

DESCRIPTION	BASE 2010 ACTUAL	BASE 2011 STANDARD	ACTUAL JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	Y-T-D
SEWER LOSSES															
FIBER LOSSES - TOTAL MILL															
LBS/MILL OPER. DAY	50,055	44,000	55,109	35,756	34,064	46,183	40,103	33,047	28,180	32,692	41,439	36,136	42,108	42,464	38,947
LBS/TON UNF. PROD	27.3	22.0	29	18	32	25	21	18	15	18	21	19	23	22	21 4
TOTAL BDT FIBER LOSSES	8,722	7,013	854	501	528	693	622	496	437	507	622	560	632	658	7,108
UTILITY PRODUCTION															
STEAM PRODUCTION - CM2BTU															
POWER BOILERS	54,291	55,702	5,072	4,463	3,275	3,987	3,905	3,834	4,077	3,920	3,834	4,222	4,334	4,588	49,512
RECOVERY BOILERS	64,480	63,778	5,637	5,146	3,225	5,385	5,836	5,491	5,588	5,531	5,480	5,928	5,679	5,819	64,744
TOTAL STEAM PRODUCTIO	118,771	119,480	10,708	9,609	6,501	9,372	9,741	9,326	9,664	9,451	9,314	10,151	10,013	10,407	114,256
ELECTRIC POWER - MKWH															
GENERATED	552,752	576,553	46,047	41,821	27,443	46,318	47,781	45,235	48,084	45,365	45,945	48,131	45,506	47,840	535,516
PURCHASED	22,946	18,230	3,296	2,603	7,704	1,101	563	2,403	1,221	4,092	2,042	706	1,751	1,266	28,749
TOTAL	575,698	594,783	49,343	44,425	35,147	47,419	48,344	47,638	49,305	49,457	47,987	48,836	47,257	49,107	564,266
SOLD OR TRANSFERRED	9,067	10,000	834	762	863	844	854	911	854	930	923	876	839	873	10,363
TOTAL CONSUMED	566,631	584,783	48,509	43,662	34,284	46,575	47,490	46,727	48,451	48,526	47,065	47,960	46,418	48,234	553,902
WATER PRODUCTION - MIL. GALS.															
RAW WATER SURFACE	11,622	11,207	971	876	749	933	941	962	950	1,004	921	955	911	929	11,104
MILL SUPPLY WATER	11,514	11,009	962	868	740	925	932	953	1,116	995	912	947	903	920	11,173
BOILER FEEDWATER	662	697	61	55	53	56	52	50	52	52	50	58	57	62	661
OPERATING HOURS	8,397	8,432	744	672	476	720	720	720	720	720	720	720	720	720	8,372

UTILITY SALES DOLLARS
GEORGETOWN MILL
DECEMBER, 2011

	MONTH			YEAR TO DATE		
	CITY OF GEORGETOWN	CONTAINER DIVISION	WOODLANDS	CITY OF GEORGETOWN	CONTAINER DIVISION	WOODLANDS
RAW WATER SURFACE						
MFG. COST	$3,859.29			$56,467.92		
SALES	$3,859.29			$56,467.92		
QUANTITY	67.26			978.18		
MILL SUPPLY WATER						
MFG. COST		$518.59			$5,671.06	
SALES		$518.59			$5,671.06	
QUANTITY		2.26			24.74	
ELECTRIC POWER						
MFG. COST		$23,641.77	$2,254.99		$280,425.61	$27,059.86
SALES		$23,641.77	$2,254.99		$280,425.61	$27,059.86
QUANTITY		796.80	76.00		9,451.20	912.00
STEAM						
MFG. COST		47,581.01			443,416.98	
SALES		47,581.01			443,416.98	
QUANTITY		111.59			961.70	

International Paper Company
Eastover, South Carolina
EIN 13-0872805
2011 SC Biomass Credit Site Summary Memo

Organizational Information

Legal Entity: International Paper
Division(s): Printing & Communication Papers

Introduction

This memo is divided into the following sections:

I. Site Overview
II. Qualified Projects
III. Capitalization of Equipment Costs

I. Site Overview

A. Corporate Overview

International Paper acquired the Eastover mill in 1999, as part of the Union Camp acquisition. The Eastover mill is one of the uncoated free sheet mills within International Paper. The Eastover mill produces more than 690,000 tons of uncoated free sheet and fine white paper per year. The mill also manufactures 100,000 tons of bleached market pulp per year to sell on the open market. Slightly more than half of the paper sold goes directly to manufacturers for conversion into such paper products as envelopes, computer paper and business forms. The remaining output, primarily printing and business papers, is sold to distributors and consumers through retail outlets.

B. Biomass Energy Making Process

Wood consists of two primary elements, lignin and cellulose. On average, a dry log consists of 55% lignin and 45% cellulose. Cellulose is the fiber component of wood. Lignin functions as the glue that holds cellulose together to form wood. Lignin is an excellent fuel which yields more energy when burned than cellulose. In order for lignin to be used as a fuel, it must be separated from the cellulose, concentrated and then burned.

International Paper's process of generating energy and paper from biomass resources begins with the delivery of wood chips or logs from third-party suppliers. Wood chips are typically ready for processing when received; however, logs must be converted into chips of a specific size. Logs are removed from delivery trucks using a portable crane. The crane then loads the logs onto a conveyor which transports the logs to the debarker. The debarker tumbles the logs in large drums to remove the bark. Next, the raw logs are sent through the chipper to form wood chips.

Wood chips are next separated into their two primary elements, lignin and cellulose. To accomplish the bifurcation of wood chips into its two components of lignin and cellulose, the

chips are cooked in a chemical solution in large vats called digesters. The digestion process can be either batch or continuous. The Eastover mill uses both digestion processes. In continuous cooking, wood chips together with a pre-heated mixture of white liquor (a solution of sodium hydroxide (NaOH) and sodium sulphide (Na2S)) are added to the digester where they are cooked at high pressure for 1 – 1.5 hours. After cooking, the wood chips are converted into a watery mixture of weak black liquor (lignin and cooking chemicals) and cellulose fiber. The hot solution is extracted into a low-pressure tank where flash steam is generated for re-use in the continuous digester. In batch cooking, the digester is filled with chips, covered with white liquor, and then heated under high pressure for up to 3.5 hours. After the batch cooking is complete, the contents are discharged into a blow tank.

After the wood chips have cooked, the contents from the batch digestion blow tank and/or the continuous digester are sent to the brown stock washers in order to begin the process of separating the lignin and cooking chemicals (weak black liquor) from the cellulose wood fiber. The brown stock washers consist of a series of spinning drums to extract the weak black liquor from the wood fibers. At this point in the process, the lignin and cooking liquids are sent to the evaporator and the cellulose wood fibers are sent to the bleaching process. The process of converting the cellulose wood fibers to paper continues through other equipment in the plant and is not further addressed herein.

Once the weak black liquor has been pumped through multiple evaporators, the liquid is concentrated from 15% solids to 50 - 75% solids to form strong black liquor. This concentrated black liquor is pumped to the recovery boiler where it is further concentrated, sprayed into the furnace, and burned. Feed water is pumped first to the economizers where it is heated by flue gas. The pre-heated water then enters the water circulation system of the boiler. When black liquor is burned, pre-heated water is converted into high pressure steam. The superheated steam flows from the recovery boiler to a turbine generator plant where electricity is generated for use within the mill. The bi-product steam is further recovered and sent as heat to the dryers and other mill manufacturing processes.

Finally, the ashes (smelt) from the burned black liquor are dissolved in weak lime wash from the lime kiln to create weak green liquor water and this solution is then pumped to the causticizer where it is mixed with lime from the lime kiln in order to facilitate the production of white liquor. The white liquor slurry is then pumped to the clarifier / Caustic Plant where the lime mud is separated from the white liquor. The recovered lime mud is sent to the lime kiln where it is regenerated and circulated back to the causticizer for the creation of new white liquor. The white liquor is sent back to the digesters as an essential part of the continuous cycle to separate the lignin and cellulose within wood chips.

II. Qualified Projects $13,448,869

A. Area 3a – Recovery Boiler Turbine $34,372

The objective of the project was to provide a safe means for operations and maintenance personnel to access the top of the Recovery Boiler Turbine Cooling Tower. The existing stairs were in a degraded condition from years of being in a wet environment. This

project replaced the existing treated wood stairs with the newer industry standard, structural fiberglass.

B. **Area 5 – Logs/Woodyard $343,960**

The woodyard is the area of the mill where logs containing lignin (the raw material used to produce steam from biomass), are received from log trucks, sorted into hardwood and softwood, stored, and transported to the debarker. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: Portal Crane Guide Wheels, East Portal Crane Hoist Drum Assembly, Woodyard Bobcat Steer Loader, and Portal Crane Jersey Barriers.

i. The Woodyard Portal Cranes are very large structure cranes that move on bridge wheels that ride on rails. Over time the flanges on the bridge wheels wear down and have to be replaced as part of normal repairs. However, newer technology includes a set of guide wheels mounted next to the bridge wheels. The guide wheels will ride against the rails and help the crane from riding strongly against the wheel flanges, which will help them last longer. This project installed guide wheels on both the East and West Portal Cranes. Adding these guide wheels will improve the life and availability of the cranes.

ii. Eastover replaced the hoist drum assembly of the East Portal Crane in the woodyard that was showing wear that indicated it is in need of replacement in order to remain reliable and avoid the risk of hoist failure. The East Portal Crane helps supply round wood to the #2 Log Line.

iii. Eastover installed a Woodyard Bobcat Steer Loader and Portal Crane Jersey Barriers to protect personnel from heavy equipment hazards around the portal cranes in the Eastover Woodyard. The project installed concrete barriers along the North and South side of the two portal cranes. This will provide visual barriers of the restricted areas around the portal crane and wood truck unloading operations. The concrete barriers on the North side of the portal cranes are necessary due to the wood truck traffic and unloading that occurs as logs are picked up in the grapple and transported from the trucks below. The barricades were painted safety yellow for increased visibility. The proximity of these barriers to the portal cranes creates a need for equipment to assist with the housekeeping of fallen wood and debris that will periodically be trapped between the barriers and the cranes. This project also required a skid-steer loader with a 36" bucket to faciltate the clean-up of larger debris that cannot easily be done by hand. Current woodyard equipment is too large to operate in the 5 foot clearance specified for the barricade distance from the crane.

C. **Area 6 – Debarker $12,581**

The debarker is an integral part of preparing the logs to separate the lignin (the raw material used to produce steam from biomass) from the wood fibers. The debarker removes bark from whole logs to prepare them for the wood chipper. The bark is then conveyed and burned in the No.2 Power Boiler to produce power at the mill. Some of the

major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes is the No.2 Debarking Drum Disch Gate Actuator. This project replaced the chime rings, drive gearbox, and discharge gate actuator on the No. 2 Debarking Drum in the woodyard. All of these are major components of the drum and have substantially long life. Replacing them will extend the useful life of the No. 2 Debarking Drum.

D. Area 7 – Chipper $4,811

The chipper is an integral part of preparing the logs to separate the lignin (the raw material used to produce steam from biomass) from the wood fibers. The chipper reduces the tree-length logs to chips of a consistent size that is easy for the digester to cook the wood so that the lignin can be extracted. An improved chipper was necessary to be able to continue chipping tree-length logs. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes is the #1 Chipper Transfer Conveyor Lift Tube. The #1 Chipper Transfer Conveyor Lift Tube project installed a new style shroud around the #1 Transfer conveyor feed end that reduced the spillage of wood chips. This also allowed the mill to shut down the mill air used to push these chips out from under the conveyor. This was accomplished by installing a new Lift Tube system developed by Stanam Industries Inc. The project removed a 30' section of the existing conveyor, and installed a new 30' section of the Lift-tube conveyor.

E. Area 8 – Digester $528,669

The continuous digester is one of the most important components in the black liquor production process (separating lignin from the wood fibers). It provides the feedstock (dissolved lignin) that is sent to the washers to be separated into black liquor and wood fiber. Eastover has two continuous digesters labeled K1 and K2 respectively. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: K2 Digester 48", 18", and 24" Vent Stack, No. 2 Digester Outlet Device, K2 Steaming Vessel Screw Replacement, K1 Lo Solids Flow Meter.

i. The K2 Digester Vent Stack project replaced the vent stacks on the K2 Digester Chip Chute Dump Tank. The stack was carbon steel from the original 1992 construction of the K2 Digester system. The stack had experienced severe corrosion due to liquor and vapor releases from the K2 Digester system. The wall thickness of the stack was less than half of its original thickness. The stack was replaced with a new stainless steel stack that is resistant to the corrosion potential of the liquor and vapors. The vent stack is critical to the safety and reliability of the digester process as it protects against overpressurization in the chip feed and liquor system to the digester.

ii. The K2 Outlet Device Cone and IV Scraper Arm were replaced. The outlet device cone had experienced thinning due to wear and the scraper arm was also approaching failure due to extensive cracks. This equipment is used to move the cooked pulp out of the digester and impregnation vessel on to the washing process

to continue lignin removal. The K1 Outlet Device Spare Scraper Arm was purchased as the existing arm in K1 was nearing the end of its useful life due to stress cracking.

iii. The K2 Steaming Vessel Screw was replaced due to cracking and wear over its 18 year life. The steaming vessel screw is necessary to convey wood chips from the chip bin to the digester system for cooking and lignin removal. Steam is added to the chips as they pass through the screw to pre-steam them and begin the process of breaking them down.

iv. The K1 Lo Solid Flow Meter project replaced an existing magnetic flow meter that becomes unreliable between 3-6 months after being cleaned as scale builds up on the flow meter element making the readings unreliable. The unreliable flow measurement leads to improper extraction from the upper cooking zone of the digester and leads to variability and inefficient washing. The new flow meter clamps on external to the piping and thus is not impacted by scaling.

F. **Area 11 – Evaporator $8,924,635**

The evaporator is an integral part of the black liquor production process (separating lignin from the wood fibers). It removes water from the weak black liquor that comes to it from the washers. After the evaporation process, the weak black liquor is ready to be sent to the recovery boiler. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: #1 Evaporator 3,4,5 Effects Clean Condensate Piping, and #1 Evaporator Prod Liquid Flash Tank, No.2 Evaporator High Solids Upgrade, VFD Replacement - #2 Evaporator Fans 1&3 and 2&4.

i. The replacement of the Evaporator 3,4,5 Effects Clean Condensate Piping is to eliminate the potential for sudden heating element damage in the third, fourth and fifth effects of the No. 1 Evaporator set at Eastover as a result of steam/condensate hammer.

ii. The product liquor flash tank modification resulted in improved steam economy on the evaporator train. Heat is reclaimed back into the evaporator instead of steam flashing to atmosphere. This also results in the power boiler reducing coal usage.

iii. Eastover installed a different High Solids Crystallizer (HSC) unit that alleviated Recovery Boiler pluggage resulting from low concentration Evaporator final black liquor solids being sent to the recovery boilers to be burned and turned into biomass energy. To operate the boilers efficiently, the black liquor must be concentrated to a certain strength to be able to be burned in the recovery boilers. In practice, the 1st Effect of the Evaporator is limited to operating at 52-55% solids. Some tube pluggage was occurring since it operates in the critical solids range requiring online dilutions every 3-4 days to remove the soluble scale from the tubes. The previous High Solids Crystallizer was maximized to make up for the deficiency of the 1st Effect, but could only concentrate up to 65-66% final

black liquor solids. The No. 2 Evaporator final product liquor solids were mixed with the No. 1 Evaporator final product liquor solids to achieve 66-68% firing liquor solids in both Recovery Boilers. However, firing liquor solids in the 66-68% range forms sticky deposits on the economizer and generating bank tubes, requiring the boilers to be shut down three times each year to remove the deposits by water washing or dry blowing. Digester production had to be curtailed for each of these events, so they were normally planned to coincide with liquor cycle maintenance field days. However, the duration of the field days were extended beyond the time that was needed for maintenance work, in order to accommodate the Recovery Boiler cleaning.

iv. The 4 evaporative condenser fans pull vapor off the evaporators and condense the vapor into foul condensate. They are operated by 2 variable speed Alternating Current (AC) drives that are no longer supported. The objective of this project was to replace the 2 electric drives, which have reached the end of their useful life with 4 new state of the art drives. Changing the configuration to one motor per drive will lessen the impact of individual fan or motor issues.

G. Area 12 – Recovery Boiler $2,233,847

The recovery boiler is the central piece of equipment for generating heat and steam from a 99% biomass resource. At least 99% of the fuel burned in the recovery boiler furnace is derived from black liquor produced through the processes noted in areas 1 through 11. The purpose of the recovery boiler is to burn black liquor for energy (heat, steam and ultimately electricity) production for use in other mill processes or for sale to 3rd parties. Also, the recovery boiler reclaims chemicals (smelt) used in the digester for the pulping of wood. The chemicals recovered are a mixture of sodium carbonate and sodium sulfide (green liquor). The green liquor is further processed in the causticizing area to produce white liquor. The Eastover mill has two recovery boilers. Some of the major equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes are: No. 1 Recovery Boiler Shatter Jet; Recovery Boiler 2 PPT East Drags Drive Shafts & Shaft Components; Recovery Boiler 2 PPT East Drags inlet Plenum Chain & Flights; Recovery Boiler 2 PPT West Drags Drive Shaft & Components; Recovery Boiler 2 West Drags Tail Shafts & Shaft Components; Heater Exchanger for Rect. Methanol Pumps; TRS Incinerator Louvered Comb Air Damper; TRS Incinerator Outlet Gas Temperature; CNGG Low Point Drain Piping for Incinerator; Recovery Boiler 1 Sootblower Optimization Equipment: Recovery Boiler 1 Sootblower CLX PLC Panel, ITM Fouling Monitoring System, ITM Strain Gauge, ITM Zero Cooling Flow, .Evaporator High Solids Project Recovery Boiler Equipment: RB1 Economizer Hopper Flush, RB1 and RB2 Mix & Retention Tank Agitators; RB2 Ash Conveyor; and Incinerator Hot Duct Replacement.

i. The shatter jets use steam to break up the smelt flowing from the recovery boiler. The objective of this project was to reduce 160 psi steam used on the Recovery Boiler Shatter Jets. This project retrofitted the old shatter jets on both recovery boilers with Metso shatter jets which reduce steam usage from 2000 lbs/hr to 800

lbs/hr. There are four shatter jets on the No. 1 Recovery Boiler and four on the No. 2 Recovery Boiler. Total steam consumption will be reduced by 9600 lbs/hr for an annual energy savings of over $220,000. These new nozzles are venturi-style nozzles that provide a greater penetration into the smelt for better atomization. A smaller smelt particle size will improve dissolving tank operation in addition to reducing dissolving tank noise and vibration.

ii. The No. 2 Recovery Boiler Precipitator Drag Scraper Head Shaft system (i.e. shafts, couplings, sprockets, bearings, etc.) in the East & West chambers were replaced along with the chain and flights for the drag scraper system in the East chamber inlet plenum. These drag scrapers are used to remove ash that has collected in the precipitators from the burning of black liquor. This ash is then added back to the new black liquor that is to be burned again in the recovery boiler and continues in this cycle until it is fully consumed. The ash removal is necessary to clear the precipitators and allow the recovery boiler to run reliably without interruption. The primary objective of this project was to eliminate unplanned drag scraper system failures in the No. 2 recovery boiler precipitator system to support the mill strategy of operating the No. 2 recovery boiler at maximum firing rates on a daily basis except for planned field days and outages.

iii. A water cooled Heater Exchanger for Methanol Pumps was installed on the recirculation line back to the methanol storage tank. Methanol is delivered to the incinerator as the primary fuel to support combustion. The methanol pumps create significant heat and if the temperature in the storage tank gets high enough, the methanol pumps will begin to cavitate resulting in an incinerator shutdown. This is particularly a problem in the summer months.

iv. The TRS (Total Reduced Sulfur) Incinerator Outlet Gas Temperature Control manages the temperature of the incinerator gas. Control of the incinerator gas temperature is critical to reliable operation. The current design uses two temperature probes, one for sending a signal to the temperature controller and another for the high and low temperature trip. This makes it difficult to troubleshoot failing thermocouples. A third thermocouple and thermowell was added to the outlet gas on the incinerator. All three probes would be capable of delivering the temperature signal to the controller as well as being recorded.

v. In instances when incinerator failure from the recovery boiler occurs, concentrated non-condensable gas (CNCG) is tripped out of the incinerator and a ventless transfer occurs into the No.2 power boiler by means of a continuous steam purge. However, this is not always successful. At times, a loss of flame occurs just as the CNCG is admitted and then the CNCG goes to vent. Usually the second try is successful. This is believed to be caused by insufficient drainage on the forward steam purged line. A low point drain existed on the old line causing condensate to occasionally blow out the CNCG burner flame. To correct this problem, CNGG Low Point Drain Piping was installed directly to the NCG tank loop seal. This

required approximately 200' pipe and assures complete drainage on the steam purge line.

vi. Installed strain gauges, zero cooling flow meeters and controls (Intelligent Sootblowing) to monitor superheater deposit loading in the No. 1 recovery boiler. This project optimized the existing sootblower operation and reduced the steam required to blow soot deposits out of the boiler from 25,900 lb/hr to 12,000 lb/hr. Strain gauges will be externally installed to monitor deposit loading in various boiler tube sections (superheater, generating bank, and economizer) of the No. 1 Recovery Boiler and allow further optimization of sootblowing. Controls and wiring will also be installed to provide signals from the strain gauges to the Utilities control room. In conjunction with the strain gauges, a Clyde-Bergemann Intelligent Sootblowing System (ISB) will be integrated into the existing Distributed Control System (DCS) controls for sootblower operation. The ISB will provide section prioritization to the DCS to operate the sootblowers in a closed loop control, based on the fouling data measured by the strain gauges. The ISB uses Clyde-Bergemann SmartControls to decide what section of the boiler requires the most cleaning at any given moment.

vii. The Evaporator High Solids Project required modifications to the Recovery Boilers to handle the higher concentration of black liquor (higher concentration of biomass solids in the black liquor) being sent to them from the Evaporator. The review of the impact of the Evaporator Project on the Recovery Boilers concluded that the flushing medium for the Economizer Hopper on RB1 would need to be changed from using heavy liquor to condensate and several pump and agitator upgrades were needed to ensure adequate mixing of the higher biomass solids.

viii. Replaced the precipitator ash transfer conveyors on the No. 2 Recovery Boiler. Dry saltcake captured in the electro-static precipitators on the recovery boiler is collected by a drag scraper system inside the precipitator and then is conveyed to a mix tank where the solid saltcake is mixed with black liquor before it is injected into the boiler to be burned. The saltcake is corrosive and over time has corroded these conveyors.

ix. Incineration is used to destroy non-condensible gasses from the pulping processes. The Hot Duct is a large thick pipe made from corrosion resistant alloy that carries the hot combustion gases from the Incinerator to the Quench Tower. This duct operates in very high temperature corrosive gas service continually. Upon inspection during the outage the duct was found to have multiple cracks and embrittlement resulting from the exposure to high temperature corrosive gas for 20 years and could not be repaired. The duct was replaced in kind with alloy Avesta 253 due to the high temperatures of the process. The new duct is expected to have a similar 20 year life as the original.

H. Area 13 – Causticizer $45,833

The causticizer plays an integral role in the biomass energy process. The causticizer tanks collect weak green liquor from the recovery boiler furnace where it is mixed with lime in order to convert it into white liquor. The white liquor is subsequently used to cook the wood chips in the digesters. This completes the chemical liquor cycle. The equipment costs capitalized in this area during 2011 under the taxpayer's method of accounting for SC income tax purposes is the #2 WL Causticizer Standpipe and the No. 2 WLPF Inlet Valve.

i. The white liquor Causticizer Standpipe is used to provide sufficient pumping above the pump head that exits the causticizer. The existing standpipe had experienced significant thinning of its shell due to erosion from the white liquor process. Modifications were made to reduce the height of the existing standpipe to allow the process to enter at the top of the standpipe as opposed to the existing at the side. In addition, an external removable elbow was used for the process inlet piping to provide easier replacement of the elbow as thinning occurs due to the erosion.

ii. The No. 2 White Liquor Pressure Filter (WLPF) is a 9.0' diameter vertical pressurized vessel manufactured by Goslin with 390 filter tubes and 8' long fabric filter socks. It is used to separate approximately 900 gpm of unclarified white liquor from the No. 2-4 Causticizer into clear white liquor for digester cooking and lime mud which is recovered and sent to the Mud washing system. The No. 2 WLPF inlet isolation valve is leaking and this project replaced this valve during the October 2011 Fall Mill outage.

I. Area 14 – Lime Kiln $1,103,051

The lime kiln also plays an integral role in the biomass energy process. The lime kiln produces the lime needed for reaction in the causticizers to produce the caustic for whiter liquor. The resulting byproduct from this reaction is calcium carbonate (lime mud) which is sent back to the kiln to be regenerated back into lime. The Lime Kiln is a furnace-type equipment used to heat lime mud (calcium carbonate ($CaCO_3$) above 900°C to produce the lime (CaO) used in the generation of new white liquor. The Eastover mill has two Lime Kilns. The major equipment costs capitalized in this area in 2011 are: Lime Kiln DCS Consoles, 2-2 Lime Conveyor Platform, #1 and #2 Lime Crusher Platforms, #2 Lime Kiln Precoat Cleaner, #1 Lime Kiln BMS Instrumentation, and #1 Lime Kiln Jammbco Chain System.

i. The DCS (Distributed Control System) is the operator interface hardware and software for the Lime Kiln. This project replaced obsolete operator interface equipment with current technology.

ii. These platforms provide safe access for operations and allow maintenance employees to provide equipment care and maintain the reliability of the lime conveying and crushing equipment.

iii. The purpose of the DOCC system is to continuously remove a small amount of precoat and clean the filter media with the lime mud filter "on-line". The No. 2

Precoat filter currently blinds over with lime mud fines and requires "off-line" manual cleaning once per shift. The DOCC system will reduce the frequency at which the No.2 Precoat filter must be taken "off-line" for manual cleaning from once per shift to once per week and it will result in more stable kiln and back end control with reduced formation of mud and mid-kiln rings. Mud flow to the kiln, mud washing and solids to the Kiln are better stabilized.

iv. The #1 Lime Kiln Boiler Management System (BMS) was re-programmed to ensure safe operation of the Lime Kiln.

v. The Eastover Mill installed a Jammbco chain system in No. 2 Lime Kiln in 2004 and successfully reduced fuel oil usage by 0.3 MMBTU / Ton CaO. To achieve a similar fuel oil reduction on No. 1 Lime Kiln Jammbco installed approximately 50,220 lbs of chain which equates to approximately 193 lbs of chain per ton of production.

J. **Area 15 – Clarifier $118,624**

The Clarifier plays an integral role in the biomass energy process. The clarifier separates the lime mud from the white liquor produced in the Causticizer in order to prepare the white liquor to be reintroduced into the Digester. The major equipment costs capitalized in this area in 2011 under the taxpayer's method of accounting for SC income tax purposes is to replace both #1 White Liquor Pump Variable Frequency Drives. The #1-1 Mud and #1-1 Unclarified White Liquor Pumps supply white liquor through the pressure filters and into the white liquor storage tank, where it is pumped to the digesters. They are operated by variable speed alternating current (AC) drives that are no longer supported. Any production loss in this process cannot be recovered. The objective of this project was to replace the electric drives which have reached the end of their useful life.

K. **Area AA – Multiple Areas $98,485**

The Eastover mill capitalized equipment costs in this area in 2011 under the taxpayer's method of accounting for SC income tax purposes to improve its Sodium Analyzer Steam Path, #1 Power Boiler\Recovery Boiler LCI Feed Water Pump Drive and #1 Anion Tank Liner and Bed Replacement.

i. The recovery and power boilers require that sodium levels be at a minimum to operate effectively. Build up of contaminants in the steam path can cause loss of heat transfer in the boilers, stress corrosion cracking, or pitting in the turbines leading to failures. The more contaminants in the steam path, more acid cleaning will be required during outages. The wet sections began to fail and the sodium analyzers needed to be replaced in order to ensure reliable sodium detection system and have parts available when repairs are necessary.

ii. The #1 Boiler Feedwater Pump supplies water to the #1 power boiler and the #1 recovery boiler. The old pump was driven by a 3500 horsepower motor that is controlled by a GE LCI drive. The LCI drive on the #1 feedwater pump is a 1983 vintage drive, with the original control cards. The drive control cards have been

obsolete for years. The majority of our spares are cards that have been removed from other mill's LCI drives that were updated.

iii. The #1 Anion Vessel is critical to the production of demineralized water used in all four Boilers at the Eastover Mill. This project replaced the internal rubber liner and some carbon steel shell sections of the #1 Anion Vessel.

III. Capitalization of Equipment Costs

International Paper capitalizes certain costs to its equipment in accordance with its method of accounting for SC income tax purposes. The capitalized costs include not only the cost of the tangible equipment but may also include, engineering, design, installation, financial carrying, and other costs required to be capitalized to the equipment under its method of accounting for SC income tax purposes. International Paper may purchase and install equipment at its Eastover facility in a year and capitalize costs to the equipment in subsequent years in accordance with its method accounting for SC income tax purposes.

International Paper Company
13-0872805
Eastover, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets

Description EASTOVER

Sum of Net Acq Val

Map Area	Proj. def.	Project Name	Qualifying Status	Asset	Sblo	Cap date	Asset description	Total
03A. Recovery Boiler Turbine	076911A820C	Turbine Cooling Tower Starti - FRP	Y	653207	0	09/30/11	Turbine Cooling Tower Starti - FRP	34,371.91
	076911A820C Total							34,371.91
03A. Recovery Boiler Turbine Total								34,371.91
		East Portal Crane Drum Hoist						
05. Logs/Woodyard	076910A042C	Replacement	Y	653293	0	03/18/11	East Portal Crane Hoist Drum Assembly	299,565.15
	076910A042C Total							299,565.15
	076910A137C	Portal Crane Wheel Installation	Y	646676	1	12/25/11	PORTAL CRANE GUIDE WHEELS	
					2	01/01/11	PORTAL CRANE GUIDE WHEELS	17,807.54
	076910A137C Total							17,807.54
	076910G999C	Woodyard Portal Crane Barriers	Y	640591	1	01/26/11	Woodyard Bobcat Steer Loader	5,317.56
				640592	1	01/26/11	Portal Crane Concrete Jersey Barriers	21,270.24
	076910G999C Total							26,587.80
05. Logs/Woodyard Total								343,960.49
06. Debarker	076910A136C	No. 2 Debarking Drum Restoration		658577	0	06/09/11	No. 2 Debarking Drum Disch Gate Actuator	12,580.83
	076910A136C Total							12,580.83
06. Debarker Total								12,580.83
		EE17 - #1 Chipper #1 Transfer Conveyor Spillage Improvement						
07. Chipper	076910H992C	Project	Y	640991	1	01/01/11	#1 Chipper #1 Transfer Conveyor LiftTube	4,811.35
	076910H992C Total							4,811.35
07. Chipper Total								4,811.35
		K2 Chip Chute Vent Stack						
08. Digesters	076910A039C	Replacement	Y	640990	1	01/01/11	K2 Digesters 48" Diameter Vent Stack 304L SS	16,580.21
	076910A039C Total							16,580.21
	076910A053C	K1 Chip Chute Dump Tank Vent Stacks	Y	653291	0	03/18/11	K1 Digester 18" Diameter Vent Stack, 304L SS	204,250.48
				653292	0	03/18/11	K1 Digester 24" Diameter Vent Stack, 304L SS	293,321.50
	076910A053C Total							497,571.98
	076910A783C	No 2 Digester Outlet Device VF Drive	Y	640596	1	01/26/11	No 2 Digester Outlet Device Variable Freq. Drive	258.32
	076910A783C Total							258.32
		K2 Steaming Vessel Screw						
	076910A988C	Replacement	Y	640992	1	10/30/11	K2 Steaming Vessel Screw Replacement	
					2	01/01/11	K2 Steaming Vessel Screw Replacement	601.41
	076910A988C Total							601.41
	076910A996C	K1 Low Solids Flow Meter	Y	646677	1	12/25/11	K1 LO SOLIDS FLOW METER	

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International Paper Company
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Eastover, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets
Description: EASTOVER

Map Area	Proj. def.	Project Name	Qualifying Status	Asset	SNo	Cap date	Asset description	Sum of Net Acq Val Total
08. Digester	076910A996C	K1 Low Solids Flow Meter	Y	646677	2	01/01/11	K1 LO SOLIDS FLOW METER	13,656.65
	076910A996C							
	Total							13,656.65
08. Digester Total								528,668.57
11. Evaporator	076910A002C	No.1 Evaporators Condensate Modifications for 3rd 4th and 5th Effects	Y	639151	1	01/24/11	#1 Evap. 3,4,5 Effect Clean Condensate Piping	3,548.36
	076910A002C							
	Total							3,548.36
	076910H045C	EEI7 - No.1 Evaporators Product Liquor Flash Tank Modification	Y	639601	1	10/28/11	#1EVAP PROD LIQ FLASH TANK ZO10 MODIFICATIONS	5,430.01
	076910H045C							
	Total							5,430.01
	076910H791C	EEI7 - No.2 Evaporator High Solids Upgrade	Y	638432	1	10/12/11	ISC Assets - Vapor Bodies, Heaters, Struct (intermediate solids crystalizer)	6,397,378.33
					2	10/12/11	ISC Assets - Circulation Pumps & Motors (intermediate solids crystalizer)	953,559.32
				663115	0	10/12/11	HSC Circulation Pump #1	120,620.97
				663116	0	10/12/11	HSC Circulation Pump #2	120,620.51
				663117	0	10/12/11	HSC Product Liquor Pump	68,017.32
				663118	0	10/12/11	Steam Condensate Flash Tank (SCFT)	607,038.04
				663119	0	10/12/11	Steam Condensate Transfer Pump	84,412.09
				663121	0	10/12/11	1st Effect Transfer Pump - #2 Evap	41,187.25
				663122	0	10/12/11	Process Condensate Flash Tank Pump (PCFT)	39,267.94
				663123	0	10/12/11	SRP Process Condensate Flash Tank Pump	35,668.97
				663126	0	10/12/11	5000 kVA Transformer (#2 Evap)	214,951.39
				663127	0	10/12/11	#2 Evap High Solids DCS I/O and Configuration	140,610.30
				663139	0	10/12/11	CAPITAL SPARE: 400HP 900RPM, 5810V, 7300V Motor	49,398.52
				663138	0	12/15/11	CAPITAL SPARE: Goulds 3180XL Pull-Out Assembly	13,884.00
	076910H791C							
	Total							8,846,614.95
	076911A822C	VFD Replacement - #2 Evaporator Fans 1&3 and 2&4	Y	663461	0	10/14/11	#2 Evap #1 Evaporative Condenser Fan VFD	17,260.55
				663462	0	10/14/11	#2 Evap #2 Evaporative Condenser Fan VFD	17,260.55
				663463	0	10/14/11	#2 Evap #3 Evaporative Condenser Fan VFD	17,260.55
				663464	0	10/14/11	#2 Evap #4 Evaporative Condenser Fan VFD	17,260.46
	076911A822C							
	Total							69,042.11
11. Evaporator Total								8,924,635.43
12. Recovery Boiler	076908H729C	EEI6 - No. 1 and No. 2 Recovery Boiler Shatter Jet Upgrade	Y	624947	2	05/01/11	No. 1 RB Shatter Jet 0769-05-02-010-060-080	637.10
	076908H729C							
	Total							637.10
	076910A134C	No. 2 RB PPT Drag Scraper Drive System Replacement (East Chamber)	Y	646098	1	10/17/11	RB2 PPT East Drags Drive Shafts & Shaft Components	26,176.74
				646099	0	10/17/11	RB2 PPT East Drags Tail Shafts & Shaft Components	18,990.97
					1	10/17/11	RB2 PPT East Drags Tail Shafts & Shaft Components	66,126.04
				646100	1	10/17/11	RB2 PPT East Drags Inlet Plenum Chain & Flights	6,159.24
	076910A134C							
	Total							117,452.99
	076910A138C	#2 RB PPT Drag Scraper Drive Systems (West Chamber)	Y	646101	1	10/17/11	RB2 PPT West Drags Drive Shafts & Shaft Components	64,348.73

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Eastover, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets
Description EASTOVER

Sum of Net Acq Val

Map Area	Proj. def.	Project Name	Qualifying Status	Asset	SNo.	Cap.date	Asset description	Total
12. Recovery Boiler	076910A138C	#2 RB PPT Drag Scraper Drive System	Y	646103	1	10/17/11	RB2 PPT West Drags Tail Shafts & Shaft Components	31,096.48
	076910A138C Total							75,445.21
	076910A998C	TRS Incinerator Reliability	Y	646594	1	01/26/11	Heat Exchanger for Rect. Methanol Pumps	5,734.89
				646595	1	01/26/11	TRS Incinerator Louvered Comb Air Damper	1,092.35
				646596	1	01/26/11	TRS Incinerator Outlet Gas Temperature	5,598.33
				646597	1	01/26/11	CNGG Low Point Drain Piping for Incinerator	1,228.90
	076910A998C Total							13,654.47
	076910H659C	EEI7 - No. 1 RB Fouling Monitoring System and Supervisory Sootblowing	Y	636177	12	03/25/11	RB1 SB / Sootblower CLX PLC Panel	152,678.63
				636178	0	03/25/11	RB1 ITM Fouling Monitoring System PLC	100,241.66
				636179	0	03/25/11	RB1 ITM Strain Gauge / Fouling Monitoring System	192,471.85
				653554	0	03/25/11	RB1 ITM Zero Cooling Flow	100,241.48
	076910H659C Total							545,633.62
	076910H791C	EEI7 - No 2 Evaporator High Solids Upgrade	Y	653295	0	03/25/11	RB1 Precip Mix Tank Agitator, Chemineer Model 23GT	94,564.66
				653296	0	03/25/11	RB1 Economizer Hopper Flush Upgrade to Condensate	384,923.04
				653418	0	03/25/11	RB1 Precip Mix Tank - Baffles and Floor Fillet	40,527.55
				653589	0	03/25/11	CAPITAL SPARE: Chemineer Gearbox, Model 23GTA	18,515.57
				663124	0	10/12/11	RB2 Mix Tank Agitator	134,417.62
				663125	0	10/12/11	RB2 #1 Retention Tank Agitator	162,341.83
				663128	0	10/12/11	CAPITAL SPARE: Chemineer Gearbox, Model 6HT	21,170.80
	076910H791C Total							856,461.07
	076911A154C	No. 2 Recovery Boiler Ash Conveyor Replacement	Y	663156	0	10/12/11	No. 2 RB Ash Conveyor No. 1	205,088.56
				663157	0	10/12/11	No. 2 RB Ash Conveyor No. 1	170,496.57
	076911A154C Total							375,585.13
	076911A358C	RB2 and RB2 Rapper and TR Controls	Y	663268	0	10/14/11	#2RB Rapper and AVC Controllers	104,699.99
	076911A358C Total							104,699.99
	076911A844C	Deck Drives on No. 2 RB Dampers	Y	662984	0	10/28/11	No. 2 RB Air Flow Damper Pos. #382-L-181	13,874.98
				662987	0	10/28/11	No. 2 RB Air Flow Damper Pos. #382-L-182	13,136.20
	076911A844C Total							27,011.18
	076911A850C	Incinerator Hot Duct Replacement	Y	668062	0	12/31/11	Incinerator Hot Duct Replacement	117,266.20
	076911A850C Total							117,266.20
12. Recovery Boiler Total								2,233,846.96
11 Causticizer	076910A993C	#2 WL Causticizer Standpipe Replacement	Y	640590	1	01/27/11	#2 WL Causticizer Standpipe	3,949.10
	076910A993C Total							3,949.10
	076911A818C	No. 2 WLPF Inlet Valve Replacement	Y	663013	0	10/24/11	No. 2 WLPF Inlet Valve	41,894.22

International Paper Company
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Eastover, SC Paper Mill
12/31/11 SC Biomass Credit Qualifying Assets

Description	EASTOVER							
Sum of Net Acq Val								
Map Area	Proj. def.	Project Name	Qualifying Status	Asset	Sno.	Cap.date	Asset description	Total
	076911A838C							
13 Causticizer	Total							41,884.22
13. Causticizer Total								41,884.22
		Chemical Area DCS Operator Console						
14. Lime Kiln	076910A104C	Replacement	Y	667404	0	12/31/11	Lime Kiln DCS Consoles	273,360.20
	076910A104C							
	Total							273,360.20
	076910A806C	Lime Kiln Safety Platforms	Y	646539	1	01/26/11	2-2 Lime Conveyor Platform	20,792.03
				646541	1	01/26/11	#1 Lime Crusher Platform	15,720.80
				646542	1	01/26/11	#2 Lime Crusher Platform	14,199.43
	076910A806C							
	Total							50,712.26
		EEI7-#2 Lime Kiln Continuous Precoat						
	076910H024C	Renewal (CPR)	Y	663012	0	10/17/11	No. 2 Lime Kiln Precoat Cleaner	315,178.14
	076910H024C							
	Total							315,178.14
	076911A814C	No.1 Lime Kiln BMS Modifications	Y	653257	0	03/01/11	No.1 Lime Kiln BMS instrumentation	72,745.73
	076911A814C							
	Total							72,745.73
		EEI7 - No. 1 Lime Kiln Chain						
	076911H125C	Replacement	Y	651838	0	03/30/11	No. 1 Lime Kiln Jammbco Chain System	391,054.54
	076911H125C							
	Total							391,054.54
14. Lime Kiln Total								1,103,050.87
		VFD Replacement - #1&2 WL Pumps						
15. Clarifier	076911A821C	and Mud Feed Pumps	Y	659780	0	07/27/11	1-1 UBCL W L FEED PUMP VF DRIVE	59,312.31
				659781	0	07/27/11	1-1 MUD PUMP VF DRIVE	59,312.18
	076911A821C							
	Total							118,624.49
15. Clarifier Total								118,624.49
AA. Multiple Areas	076910A746C	Sodium Analyzer	Y	645113	1	12/25/11	SODIUM ANALYZERS (5) - STEAM PATH	
					2	01/15/11	SODIUM ANALYZERS (5) - STEAM PATH	1,853.20
	076910A746C							
	Total							1,853.20
		LCI Drive Phase 1 and Phase 2 Boiler						
	076910A780C	Feedwater Pumps	Y	639236	1	01/26/11	#1 PB/RB LCI FEED WATER PUMP DRIVE	4,818.34
	076910A780C							
	Total							4,818.34
		No.1 Anion Tank Shell and Liner						
	076911A849C	Replacement	Y	668045	0	12/31/11	#1 Anion Tank Liner and Bed Replacement	91,813.46
	076911A849C							
	Total							91,813.46
AA. Multiple Areas Total								98,485.00
Grand Total								13,448,869.22

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Black Liquor Yield - Eastover

Order	150.66161	EBK HARDWOOD
Plant	0264	Eastover Mill
Material	10.0054	HARDWOOD PULP
Production Process	PVersion:P001	
Actual quantity	900,282,960.000	LB Pound
Target cost version	0 Actual vs. Ests	(Released Cost Estimate)
From period	001/2011	January
To period	012/2011	December

Equa. Valuation

	PA10.000	Cost of Goods Manufactured at Standard	0769/100054	100054	HARDWOOD PULP	85,624,111.77-	86,625,917.32-	1,000.55-	USE	LB	900,282,960.000-	900,282,960.000-	A	0.000
	86101.000	Cost of Goods Manufactured Variances				0.00	1,025,889.12	1,025,889.12	USD	DOL	0.00	0.00		0.00
*						85,624,111.77-	86,600,027.20-	1,024,084.57	USE	DOL	0.00	0.00		0.00
										LB	900,282,960.000-	900,282,960.000-		0.000
Chemicals	61702200	Chemicals-Other	0769/5670001	5670001	CAUSTIC SODA, DIAPHRAGM 76% KAZO BASIS	1,089,342.36	1,233,286.96	143,944.60	USD	TON	2,116.677	2,350.611		233.934
Chemicals	61100200	Chemicals-Other	0769/5634014	5634014	LIME, PEBBLE QUICK	1,185,222.51	1,096,062.98	89,159.53-	USD	LB	17,245,550.299	15,947,372.992		1,298,177.307-
Chemicals	61700200	Chemicals-Other	0769/1147732	1147732	SODIUM HYDROSULFIDE, 45% LIQUID	97,230.57	300,589.91	203,359.34	USD	TON	194.011	599.582		404.571
Chemicals	61200200	Chemicals-Other	0769/1014900	1014900	CAUSTIC SODA, MEMBRANE 76% NAOH BASIS	0.00	8.17	8.17	USD	TON	0.004	0.016		0.008-
* Chemicals						2,371,795.46	2,629,950.04	258,154.58	USE	LB	17,245,550.299	15,947,372.992		1,298,177.307-
										TON	2,310.712	2,995.009		684.297
Fuels & Utilities	86453607	Electric-Power Normalized	0769/100056	100056	ELECTRIC NORMALIZED	3,218,511.58	3,045,088.91	173,422.67-	USD	KKH	68,961.674	65,247.244		3,714.430-
Fuels & Utilities	86453680	Produced Utilities Reporting Points	0769/100064	100064	TREATED WATER MILL SUPPLY	1,100,585.90	1,093,040.01	7,551.89-	USD	M2G	900.282	894.095		6.188-
Fuels & Utilities	61604860	Recoveries - Fuels & Utilities	0769/100073	100073	BLACK LIQ FUEL	26,485,424.39-	26,485,633.74-	209.35-	USD	M2B	10,810,462.740-	10,810,462.744-		0.004-
Fuels & Utilities	61000500	Fuels and Utilities Consumption	0769/1241107	1241107	FUEL OIL, NO 6 2.1% SULFUR	9,954,941.42	10,523,681.82	28,740.40	USD	GAL	5,074,575.546	5,085,196.689		14,616.743
Fuels & Utilities	86453606	Steam-Power Normalized	0769/100057	100057	STEAM NORMALIZED	8,342,472.04	8,286,098.45	56,373.55-	USD	M2B	10,713.367	10,640.938		72.429-
* Fuels & Utilities						3,828,903.45-	4,037,724.51-	208,821.06-	USD	GAL	5,074,575.546	5,085,196.689		14,616.743
										KKH	68,961.674	65,247.244		3,714.430-
										M2B	10,810,462.740-	10,810,462.744-		0.004-
										M2G	900.283	894.095		6.188-
										M3B	10,713.367	10,640.938		72.429-
Other Facility OH	SCE-SMALL	Overhead Allocation	203202/CHPULP			22,132,556.29	21,158,949.20	973,607.09-	USD	BDT	450,141.480	450,141.480		0.000
* Other Facility OH						22,132,556.29	21,158,949.20	973,607.09-	USD	BDT	450,141.480	450,141.480		0.000
Other Raw Materials	61900200	Other Raw Matls	0769/1156559	1156559	ADDITIVE, OXAMORE 03b	150,347.26	139,173.88	11,173.38-	USD	TON	12,475.092	11,549.693		929.399-
* Other Raw Materials						150,347.26	139,173.88	11,173.38-	USD	TON	12,475.092	11,549.693		929.399-
Wood	86453195	Own Make Flows	0769/100056	100056	HARDWOOD CHIPS	64,799,666.62	64,705,478.19	89,188.03-	USD	BDT	746,109.502	745,074.019		1,035.483-
* Wood						64,799,666.62	64,709,678.59	89,988.03-	USD	BDT	746,109.592	745,074.019	B	1,035.483-
**						1,350.41	0.00	1,350.41-	USD	BDT	1,196,250.982	1,195,215.499		1,035.483-
										DOL	0.00	0.00		0.00
										GAL	5,074,579.946	5,089,196.689		14,616.743
										KKH	68,961.674	65,247.244		3,714.430-
										LB	983,037,609.701-	886,335,587.008-		1,298,177.307-
										M2B	10,810,462.740-	10,810,462.744-		0.004-
										M2G	900.283	894.095		6.188-
										M3B	10,713.367	10,640.938		72.429-
										TON	16,789.804	14,544.702		245.102-

HWD Pulp Yield

(A) 900,282,960 LBS Hardwood pulp
× 0.0005 LBS to tons conv factor
450,141 (G) Tons Hardwood Pulp

(B) ÷ 745,074 tons Hardwood Chip
0.604156
× 100
60.4516% yield Hardwood Pulp
(C)

% Hardwood to Black liquor
100
(C) 60.4516% yield HWD Pulp
39.5844% Hardwood Black Liquor Yield
(D)

		%	
overall yield			
Tons HWD Pulp (G)	450,141	67.27%	(E)
Tons Pine Pulp	219,046	32.73%	(F)
Total Pulp	669,187	100%	

(39.5844% (D) × 67.27% (E)) = 26.63%
(54.139% × 32.73%) = 17.72%
44.35%

Hardwood weighted yield
Pine weighted yield
TOTAL WEIGHTED Black Liquor Yield

Source: SAP - Caleb Cope - Eastover Hardwood & Pine Black Liquor Yield 2011

Order	150000180		RBW PINE
Plant	0760		Eastover Mill
Material	100252		PINE PULP
Production Process	PVersion:P001		
Actual quantity	438,092,856.000	LB	Pound
Target cost version	0	Actual vs. PRCY (Released Cost Estimate)	
From period	001/2011	January	
To period	012/2011	December	

Legal Valuation

Cost Element	Cost Element	Cost Element Description	Material	Material	Material Description	Total Value	Total Value	Total Value	Crcy	Base UoM	Total Quantity	Total Quantity	Variance Quantity
	86201000	Cost of Goods Manufactured at Standard	0769/100052	100052	PINE PULP	43,565,436.92-	43,566,144.09-	657.17-	USD	LB	438,092,856.000-	438,092,856.000-	A 0.000
	86201050	Cost of Goods Manufactured Variances				0.00	942,039.53	942,039.53	USD	DOL	0.00	0.00	0.00
*						43,565,481.92-	42,624,104.56-	941,382.36	USD	DOL	0.00	0.00	0.00
										LB	438,092,856.000-	438,092,856.000-	0.000
Chemicals	61200200	Chemicals-Other	0769/5670001	5670001	CAUSTIC SODA, DIAPHRAGM 76% NAZO BASIS	460,216.55	510,961.85	50,745.30	USD	TON	894.322	992.953	-98.631
Chemicals	61200200	Chemicals-Other	0769/5834014	5834014	LIME, PEBBLE QUICK	613,329.99	663,321.92	50,008.07-	USD	LB	8,922,177.262	8,196,157.326	726,019.936-
Chemicals	61200200	Chemicals-Other	0769/1019500	1019500	CAUSTIC SODA, MEMBRANE 76% NAZO BASIS	0.00	1.02	1.02	USD	TON	0.012	0.002	0.010-
Chemicals	61200200	Chemicals-Other	0769/1147732	1147732	SODIUM HYDROSULFIDE, 45% LIQUID	0.00	0.00	0.00	USD	TON	0.012	0.000	0.012-
* Chemicals						1,073,546.54	1,074,284.79	738.25	USD	LB	8,922,177.262	8,196,157.326	726,019.936-
										TON	894.346	992.855	98.509
Fuels & Utilities	86453697	Electric-Power Normalized	0769/100058	100058	ELECTRIC NORMALIZED	2,315,539.79	2,185,377.07	130,162.72-	USD	KKH	49,614.017	46,826.164	2,787.853-
Fuels & Utilities	86453680	Produced Utilities Reporting Points	0769/100064	100064	TREATED WATER MILL SUPPLY	856,909.63	847,195.74	9,713.89-	USD	MZG	700.951	692.997	7.954-
Fuels & Utilities	61606800	Recoveries, Fuels & Utilities	0769/100073	100073	BLACK LIQ FUEL	14,174,932.43-	14,174,895.56-	32.87	USD	MCB	5,785,673.304-	5,785,673.304-	0
Fuels & Utilities	42000500	Fuels and Utilities Consumption	0769/1241107	1241107	FUEL OIL, NO 6 2.1% SULFUR	4,616,870.16	4,655,335.32	40,465.16	USD	GAL	2,343,095.829	2,363,594.311	20,498.482
Fuels & Utilities	86453606	Steam-Power Normalized	0769/100057	100057	STEAM NORMALIZED	8,784,419.89	8,713,411.65	71,007.24-	USD	MSB	11,280.890	11,189.690	91.200-
* Fuels & Utilities						2,396,806.04	2,226,420.22	170,385.82-	USD	GAL	2,343,095.829	2,363,594.311	20,498.482
										KKH	49,614.017	46,826.164	2,787.853-
										MZB	5,785,673.304-	5,785,673.304-	0
										MZG	700.951-	692.997	7.954-
										MSB	11,280.890	11,189.690	91.200-
Other Facility OH	SCE-OHALL	Overhead Allocation	203201/OHPULP			11,263,367.32	10,432,879.77	830,487.55-	USD	BDT	219,046.428	219,046.428	0.000
* Other Facility OH						11,263,367.32	10,432,879.77	830,487.55-	USD	BDT	219,046.428	219,046.428	0.000
Other Raw Materials	61900200	Other Raw Matls	0769/1156558	1156558	ADDITIVE, OXANONE OSB	60,456.80	57,385.75	3,071.05-	USD	TON	5.022 875	4,762 297	260.578-
Other Raw Materials	61605600	Recoveries-Other	0769/100018173	100018173	BLACK LIQ SOAP - V4	1,180,003.11-	1,287,210.97-	107,207.86-	USD	TON	19,166.562-	20,909.860-	1,743.295-
Other Raw Materials	61605600	Recoveries-Other	0769/100018175	100018175	TURPENTINE REC - V4	121,132.68-	152,764.47-	31,631.79-	USD	GAL	201,960.806-	254,607.446-	52,646.640-
* Other Raw Materials						1,240,679.99-	1,382,589.69-	141,910.70-	USD	GAL	201,960.806-	254,607.446-	52,646.640-
										TON	14,143.687-	16,147.563-	2,003.876-
Wood	86459195	Own Make Fiber	0769/100055	100055	PINE CHIPS	30,072,884.09	30,273,109.47	200,225.38	USD	BDT	477,630.735	480,830.837	B 3,200.102
* Wood						30,072,884.09	30,273,109.47	200,225.38	USD	BDT	477,630.735	480,830.837	3,200.102

Pine Pulp Yield

(A) 438,092,856 LBS Pine Pulp
× 0.0005 LBS to Tons conv factor
219,046 Tons Pine Pulp

÷

(B) 477,631 Tons Pine Chips
0.458610
× 100
45.8610 % Yield Pine Pulp

% Pine to Black Liquor

100
- 45.8610 Yield Pine Pulp
54.139 % Pine Black Liquor Yield

Source: SAP - Caleb Cope - Global Finance

Order	15[illegible]190	ESK PINE
Plant	0762	Eastover Mill
Material	104092	PINE PULP
Production Process	PR#1SON.4001	
Actual quantity	438,651,456.000	LB Pound
Target cost version	0 Actual ve	1PC1 (Released Cost Estimate)
From period	01/2011	January
To period	12/2011	December

Legal Validation

						438.08	0.00	438.08-	USD	BOT	696,677.163	699,877.265	3,200.102-
										DOL	0.00	0.00	0.00
										GAL	2,141,135.023	2,108,986.865	32,148.158-
										KKH	49,614.017-	46,826.164	2,787.853-
										LB	429,170,678.798-	429,896,698.464-	726,019.866-
										MZB	5,785,673.304-	5,785,673.304-	0
										MZG	700.951	692.997	7.954-
										MZB	11,280.890	11,189.690	91.200-
										TON	13,249.361-	15,154.708-	1,905.367-

Fuel Summary - Eastover

	No.1 Power Boiler (MM Btu = 1 million Btu)						No.2 Power Boiler											
	Coal (Tons)	Coal MM Btu	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel Oil (Gal)	#6 Fuel Oil MM Btu	Bark (Ton)	Bark MM Btu	TDF (Ton)	TDF MM Btu	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel LS Oil (Gal)	#6 Fuel LS MM Btu	Rectified Methanol (Gal)	Rectified Methanol MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu
2000 (LY)	149,563	3,888,638	6,509	924	103,976	15,596	320,440	2,723,740			543,599	77,191	185,830	27,875	516,431	28,650	90,393	12,022
2001	141,944	3,690,544	401,284	56,982	163,761	24,564	310,101	2,635,855	1,878	57,279	740,912	105,210	0	0	656,461	36,418	124,843	16,604
2002	128,998	3,353,948	354,188	50,295	0	0	333,832	2,837,570	0	0	468,073	66,466	85,989	12,898	494,413	27,429	90,961	12,098
2003	142,046	3,693,196	0	0	304,544	45,682	310,220	2,636,869	3,529	107,639	1,160,368	164,772	0	0	565,753	31,386	73,336	9,754
2004 (LY)	127,626	3,318,276	0	0	342,082	51,312	290,930	2,472,905	15,335	467,718	375,637	53,340	0	0	724,524	40,194	57,156	7,602
2005	122,545	3,186,170	0	0	162,166	24,325	288,202	2,449,717	16,703	509,442	574,776	81,618	0	0	545,731	30,276	85,934	11,429
2006	115,423	3,000,998	0	0	182,622	27,393	344,719	2,930,112	17,888	545,584	460,337	65,368	0	0	599,207	33,242	26,908	3,579
2007	122,451	3,183,726	129,715	18,420	21,772	3,266	335,716	2,853,586	18,368	560,224	387,547	55,032	0	0	604,971	33,562	60,158	8,001
2008 (LY)	121,458	3,157,908	99,053	14,066	0	0	323,076	2,746,146	20,232	617,076	468,845	66,576	0	0	500,532	27,768	90,553	12,044
2009	109,128	2,837,328	2,650,648	376,392	0	0	345,924	2,940,354	15,788	481,534	862,922	122,535	0	0	540,137	29,965	174,649	23,228
2010	119,541	3,108,066	557,181	79,120	0	0	309,919	2,634,312	17,249	526,095	379,907	53,947	0	0	601,475	33,368	297,087	39,513
2011	110,444	2,871,544	194,864	27,671	0	0	325,974	2,770,779	14,102	430,111	540,304	76,723	0	0	586,303	32,526	172,489	22,941

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	No.1 Recovery Furnace									
	BL Solids (Tons)	BL Solids MM Btu	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel Oil (Gal)	#6 Fuel Oil MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu	Total MM Btu	% Biomass
2000 (LY)	349,123	4,049,827	225,842	32,070	1,244,651	186,698	0	0	4,268,594	94.87%
2001	339,682	3,940,307	299,438	42,520	917,316	140,597	0	0	4,123,425	95.56%
2002	384,007	4,454,481	379,619	82,306	0	0	0	0	4,536,787	98.19%
2003	371,968	4,314,829	0	0	545,750	81,863	0	0	4,396,691	98.14%
2004 (LY)	379,337	4,400,309	0	0	748,131	112,220	0	0	4,512,529	97.51%
2005	365,110	4,235,270	0	0	409,671	61,451	0	0	4,296,721	98.57%
2006	374,563	4,344,931	0	0	422,611	63,392	0	0	4,408,322	98.56%
2007	390,013	4,524,156	337,057	47,862	100,954	15,143	0	0	4,587,161	98.63%
2008 (LY)	403,289	4,678,147	518,468	73,622	0	0	7,800	1,037	4,752,806	98.43%
2009	412,311	4,782,811	291,424	41,382	0	0	127,452	16,951	4,841,144	98.80%
2010	428,892	4,975,147	222,000	31,524	0	0	0	0	5,006,671	99.37%
2011	414,136	4,803,978	122,349	17,374	0	0	0	0	4,821,351	99.64%

	No.2 Recovery Furnace									
	BL Solids (Tons)	BL Solids MM Btu	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel Oil (Gal)	#6 Fuel Oil MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu	Total MM Btu	% Biomass
	806,030	9,349,948	155,007	22,011	158,996	53,849	37,833	5,032	9,430,840	99.14%
	810,898	9,406,420	225,040	31,956	717,136	107,570	72,283	9,614	9,555,560	98.44%
	848,807	9,846,166	358,913	50,966	0	0	38,401	5,107	9,902,239	99.43%
	857,335	9,945,086	0	0	369,495	55,424	20,776	2,763	10,003,274	99.42%
	891,585	10,342,386	0	0	52,383	7,857	4,452	592	10,350,836	99.92%
	806,805	9,358,939	0	0	275,681	41,352	33,374	4,439	9,404,730	99.51%
	860,215	9,978,490	0	0	387,291	58,094	20,338	2,705	10,039,289	99.39%
	838,528	9,726,927	676,792	96,104	37,688	5,653	53,588	7,127	9,835,812	98.89%
	834,061	9,675,103	404,711	57,469	0	0	91,697	12,196	9,744,767	99.29%
	824,683	9,566,326	764,326	108,534	0	0	297,389	39,553	9,714,413	98.48%
	851,947	9,882,585	456,000	64,752	0	0	0	0	9,947,337	99.35%
	857,617	9,948,357	507,466	72,060	0	0	2,650	352	10,020,770	99.28%

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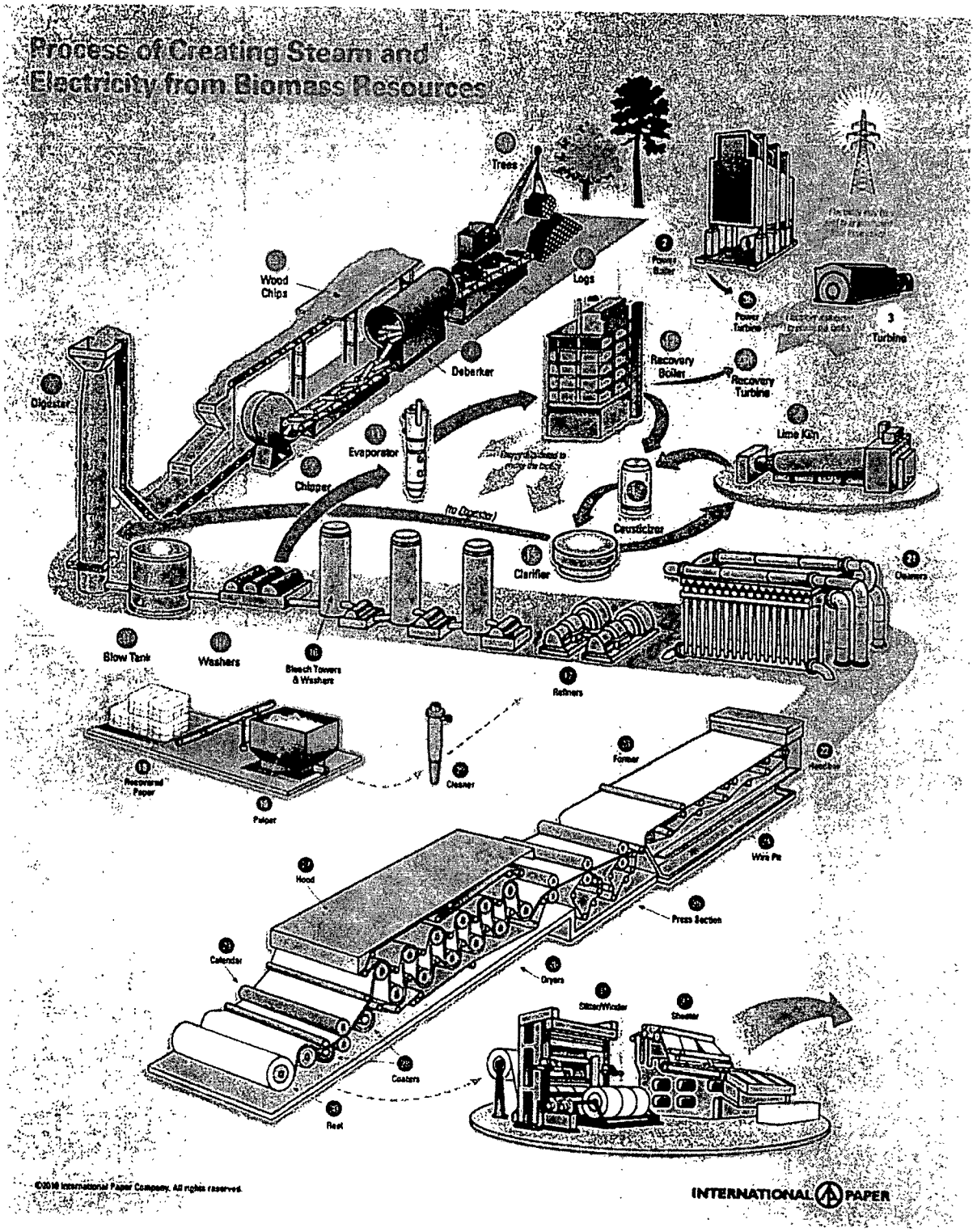
	No.1 Lime Kiln						No.2 Lime Kiln						NCG Incinerator			
	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel Oil (Gal)	#6 Fuel Oil MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu	#5 Used Oil (Gal)	#5 Used Oil MM Btu	#6 Fuel Oil (Gal)	#6 Fuel Oil MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu	Rectified Methanol (Gal)	Rectified Methanol MM Btu	#2 Fuel Oil (Gal)	#2 Fuel Oil MM Btu
2000 (LY)	196,714	27,933	2,795,469	419,320	2,869	382	418,613	59,443	4,426,097	663,915	4,542	604	1,268,171	70,354	103,675	9,357
2001	352,277	50,023	2,504,973	375,746	2,439	324	654,230	92,901	3,660,399	549,060	3,563	474	1,099,164	60,978	138,151	8,110
2002	0	0	3,141,236	471,185	869	116	0	0	4,779,395	716,909	1,322	176	1,307,724	72,549	62,567	9,649
2003	60,197	8,548	2,786,496	417,974	855	114	111,794	15,875	4,311,848	646,777	1,323	176	1,361,107	75,510	71,992	10,043
2004 (LY)	0	0	3,045,470	456,821	699	93	0	0	4,530,216	679,532	1,041	138	1,195,197	66,306	39,853	8,819
2005	0	0	2,876,989	431,548	1,140	152	0	0	4,130,977	619,647	1,637	218	1,375,160	76,290	73,431	10,147
2006	0	0	2,843,673	426,551	1,063	141	0	0	4,290,496	643,574	1,604	213	1,217,359	67,535	89,399	8,982
2007	0	0	3,009,848	451,477	1,295	172	0	0	4,636,555	695,483	1,996	265	1,390,872	77,161	60,972	10,262
2008 (LY)	0	0	2,986,829	448,024	831	111	0	0	4,553,376	683,006	1,267	169	1,406,383	78,022	24,716	10,377
2009	0	0	3,052,982	457,947	830	110	0	0	4,368,736	655,310	1,818	242	1,421,826	78,879	91,953	10,491
2010	0	0	3,447,000	517,050	5,000	665	0	0	4,390,000	688,500	42,000	5,586	1,389,649	77,094	137,528	10,253
2011	0	0	3,273,845	491,077	7,553	1,005	0	0	4,448,606	667,291	20,163	2,682	1,414,619	78,479	137,924	10,438

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	Average 1500# Steam Production											Electrical Power				
	PB1 (MPPH)	PB1 Decatherms	PB2 (MPPH)	PB2 Decatherms	RF1 (MPPH)	RF1 Decatherms	RF2 (MPPH)	RF2 Decatherms	Total (MPPH)	Total Decatherms	% RB1+RB2 Steam of Total Steam	Total Power Generated (MMWH)	Total Power Used (MMWH)	Total Power Purchased (MMWH)	Total Power Sold (MMWH)	Overall balance =0? (MMWH)
2000 (LY)	383	3,888,538	265	2,690,503	292	2,964,629	664	6,741,486	1,604	16,285,155	59.60%	768,102	801,977	24,029	22,794	11,450
2001	368	3,736,729	247	2,502,738	282	2,867,683	660	6,704,074	1,557	15,811,224	60.54%	764,841	790,801	26,110	19,475	(19,325)
2002	331	3,364,642	255	2,583,996	313	3,180,811	682	6,925,299	1,581	16,054,748	62.95%	788,292	802,603	27,257	20,966	(8,021)
2003	349	3,545,381	251	2,550,420	307	3,115,948	694	7,049,392	1,602	16,261,141	62.51%	792,173	803,835	27,515	26,628	(10,775)
2004 (LY)	317	3,218,450	261	2,649,891	314	3,187,992	726	7,370,962	1,618	16,427,295	64.28%	812,390	795,480	23,504	29,755	10,659
2005	312	3,163,811	266	2,699,375	312	3,167,642	696	7,071,355	1,586	16,102,183	63.59%	791,312	772,757	27,914	24,034	22,435
2006	293	2,973,227	281	2,848,250	330	3,354,328	721	7,323,306	1,625	16,499,112	64.72%	802,064	815,567	41,787	16,198	12,086
2007	307	3,114,017	281	2,856,418	341	3,467,042	719	7,302,261	1,649	16,739,738	64.31%	837,492	838,504	23,234	16,983	5,238
2008 (LY)	293	2,979,073	273	2,766,947	329	3,344,394	716	7,268,169	1,611	16,358,582	64.87%	822,555	826,807	40,633	18,312	18,070
2009	292	2,960,409	269	2,731,934	331	3,360,748	702	7,127,900	1,594	16,180,992	64.82%	787,316	824,108	41,074	12,602	(8,320)
2010	286	2,903,712	283	2,873,254	354	3,594,105	719	7,299,892	1,642	16,670,963	65.35%	822,947	858,465	46,370	10,852	0
2011	275	2,792,031	281	2,852,948	330	3,350,437	718	7,289,739	1,604	16,285,155	65.34%	797,890	836,169	46,944	8,665	0

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Biomass Energy Process


Process of Creating Steam and Electricity from Biomass Resources
Trees
Wood Chips
Logs
Power Boiler
Power Turbine
Turbine
Debarker
Digester
Recovery Boiler
Recovery Turbine
Lime Kiln
Evaporator
Chipper
Causticizer
Clarifier
Cleaners
Blow Tank
Washers
Bleach Towers & Washers
Refiners
Recovered Paper
Pulper
Cleaner
Former
Wire Pit
Hood
Press Section
Calendar
Dryers
Coaters
Reel
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INTERNATIONAL PAPER

emyers@energy.sc.gov

From: Tracy L Bolger [mailto:Tracy.Bolger@ipaper.com]
Sent: Monday, January 31, 2011 12:24 PM
To: Myers, Erika; Jenkins, Ralph
Cc: Robert E Shands
Subject: International Paper 2010 SC Biomass Credit Application

Erika and Ralph,

Attached is our SC Biomass Credit application. We are also sending a hard copy via Certified Mail Return Receipt today. I'm looking forward to our conference call at 2 pm CST.

Regards,

Tracy Bolger
State Income Tax Analyst
International Paper Company
6400 Poplar Ave., c/o Tax Department
Memphis, TN 38197
(901) 419-4742 Phone
(901) 419-4539 Fax

MCNAIR
ATTORNEYS

March 25, 2011

Erik P. Doerring
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F (803) 753-3277

Via Hand Delivery
Jana E. Shealy
Clerk of Court
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Request for Contested Case Hearing by International Paper Company
South Carolina State Energy Office Determination

Dear Ms. Shealy:

Pursuant to Rule 11 of the Rules of Procedure for the Administrative Law Court, International Paper Company ("Petitioner") hereby requests a contested case hearing in response to the determination of the South Carolina State Energy Office ("Determination") issued on March 1, 2011. A copy of the Determination and the filing fee of $100.00 are enclosed.

Petitioner requests the Administrative Law Court to determine that the South Carolina State Energy Office in its Determination failed to correctly certify that Petitioner's equipment as claimed in its Application for Biomass Resource Credit for the tax year 2010 qualifies for the income tax credit provided by South Carolina Code Section 12-6-3620.

Petitioner is represented by the undersigned, and all notices in this case should be mailed to the undersigned.

Should you have any questions with respect to this matter, please do not hesitate to contact me.

Sincerely,
McNAIR LAW FIRM, P.A.

Erik P. Doerring
Shareholder

McNair Law Firm, P. A.
1221 Main Street
Suite 1700
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

EPD:jr
Enclosures

cc: Ashlie Lancaster, Director of State Energy Office
Edwin E. Evans, General Counsel State Budget and Control Board

March 2, 2012

Erik P. Doerring

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T (803) 799-9800
F (803) 753-3277

Via Hand Delivery
Jana E. Shealy
Clerk of Court
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Request for Contested Case Hearing by International Paper Company
South Carolina State Energy Office Determination

Dear Ms. Shealy:

Pursuant to Rule 11 of the Rules of Procedure for the Administrative Law Court, International Paper Company ("Petitioner") hereby requests a contested case hearing in response to the determination of the South Carolina State Energy Office ("Determination") issued on March 1, 2012. A copy of the Determination and the filing fee of $150.00 are enclosed.

Petitioner requests the Administrative Law Court to determine that the South Carolina State Energy Office in its Determination failed to correctly certify that Petitioner's equipment as claimed in its Application for Biomass Resource Credit for the tax year 2011 qualifies for the income tax credit provided by South Carolina Code Section 12-6-3620. A copy of the Application is attached.

Petitioner is represented by the undersigned, and all notices in this case should be mailed to the undersigned.

Should you have any questions with respect to this matter, please do not hesitate to contact me.

Sincerely,

McNAIR LAW FIRM, P.A.

Erik P. Doerring
Shareholder

EPD:jr
Enclosures

cc: Ashlie Lancaster, Director of State Energy Office
Frank Potts, Esq., Counsel for State Budget and Control Board

McNair Law Firm, P. A.
1221 Main Street
Suite 1700
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

Potts, Frank

From: Harvin Fair <hfair@scalc.net>
Sent: Thursday, October 18, 2012 10:32 AM
To: Potts, Frank; Doerring, Erik
Cc: McCook, Keith; Samuel Johnson; Nancy B. Riley
Subject: International Paper v. SC State Energy Office, 12-ALJ-30-0086-CC- 2nd request

In addition to the matters the parties requested to further brief following the motion's hearing on October 17, 2012, Judge Anderson requests the parties brief the followings issues citing authority to support each conclusion:

- If due process requires a review of International Paper's claims by the State Energy Office, what type of review should be required? More specifically,
    - Must that review be a testimonial type hearing for International Paper to receive "an opportunity to be heard in a meaningful way"?
    - Must the review be by an impartial fact finder?
    - If not testimonial, to what extent must the State Energy Office grant review of this matter?
- If review of this case is appellate, can the ALC convert a request for contested case review to an appeal?
- If appellate review of this case is conducted solely upon the record, what action should be taken to develop a record?
    - The State Energy Office was granted leave to file an amended tax credit certification, which the State Energy Office subsequently issued. Would the review of this matter be based upon the State Energy's Office's Final Determination as it existed on the date of the filing of the case with the ALC or as subsequently amended?

Please send a courtesy copy of the briefs in **WORD** format to Chambers when filing the documents with the Court.

Thank you for your attention to this matter.
Sincerely,

Harvin Fair
Law clerk to the Honorable Ralph King Anderson, III
office phone 803-734-6409

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