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January 30, 2024

Mr. Patrick Wruck
Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Amended and Restated Transfer Pricing Agreement**

BC Hydro writes to file with the BCUC, pursuant to section 71(1)(a) of the *Utilities Commission Act (UCA)*, the Amended and Restated Transfer Pricing Agreement between BC Hydro and Powerex Corp. (**Powerex**) effective as of December 1, 2023 which amends and restates the Transfer Pricing Agreement originally made as of April 1, 2020 (**Amended and Restated 2020 TPA**). The BCUC's review of the Amended and Restated 2020 TPA is governed by the Government of B.C.'s direction to the BCUC in respect of the transfer pricing agreement between BC Hydro and Powerex as included in Order in Council No. 172 issued March 22, 2021, BC Reg. 88/2021 (**OIC No. 172**) amending Direction No. 8 to the BCUC.

The Amended and Restated 2020 TPA is an "energy supply contract" as defined in section 68 of the UCA. Under section 71(1)(a) of the UCA and section 1.1.2 of the BCUC Rules for Energy Supply Contracts for Electricity (the **Rules**), adopted by BCUC Order No. G-61-12, energy supply contracts shall be filed with the BCUC within 60 days of entering into the contract. The Amended and Restated 2020 TPA was executed on December 1, 2023.

This filing includes three attachments:

- Attachment 1 – OIC No. 172;
- Attachment 2 – Amended and Restated Transfer Pricing Agreement between BC Hydro and Powerex effective as of December 1, 2023 originally made as of April 1, 2020; and
- Attachment 3 – Black-lined version comparing the Transfer Pricing Agreement made as of of April 1, 2020 to the Amended and Restated 2020 TPA.

Background

On May 29, 2020, BC Hydro filed an application seeking an order from the BCUC accepting the Transfer Pricing Agreement made as of April 1, 2020 (**2020 TPA**) as filed under section 71 of the UCA. On March 22, 2021, the Government of British Columbia issued OIC No. 172 amending Direction No. 8 to the BCUC and which includes, in part:

- A new section 10 to Direction No. 8 that states “[t]he commission may not exercise its powers under section 71 (1) (b) and (3) of the Act in respect of the transfer pricing agreement”, and
- A new definition added to section 1 of Direction No. 8 that defines “transfer pricing agreement” subject to the OIC No. 172 as “the energy supply contract effective April 1, 2020 between the authority and Powerex Corp., as amended from time to time.”

On April 28, 2021, the BCUC issued Order No. G-127-21 accepting the 2020 TPA.

Amended and Restated 2020 TPA

BC Hydro and Powerex have executed an Amended and Restated 2020 TPA effective as of December 1, 2023, which amends and restates the 2020 TPA. The amendments incorporated are for the purpose of clarifying certain aspects of the Residual System Capability as defined in the 2020 TPA. Specifically, the Amended and Restated 2020 TPA

- (i) Confirms the availability of capacity in the BC Hydro system, as part of the Residual System, to meet needs and requirements of third party contracts entered into by Powerex in relation to forward capacity commitments; and
- (ii) Enhances the definition of the Residual System Capability to clarify that it includes all power and non-power attributes of the BC Hydro system.

The above noted amendments are shown in Attachment 3, the black-lined version of the agreement comparing the 2020 TPA to the Amended and Restated 2020 TPA.

The Amended and Restated 2020 TPA amends the “energy supply contract effective April 1, 2020 between the authority and Powerex Corp” and, thus, falls within the definition of “transfer pricing agreement” as provided in Direction No. 8 to the BCUC. Accordingly, pursuant to section 10 of the Direction No. 8, the BCUC may not exercise its powers under section 71 (1) (b) and (3) of the UCA respecting the Amended and Restated 2020 TPA.

January 30, 2024
Mr. Patrick Wruck
Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Amended and Restated Transfer Pricing Agreement

For further information, please contact Alicia Henderson by email at bhydroregulatorygroup@bhydro.com.

Yours sincerely,



Chris Sandve
Chief Regulatory Officer

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Enclosure

**BC Hydro 2020 Transfer Pricing Agreement
Amendments**

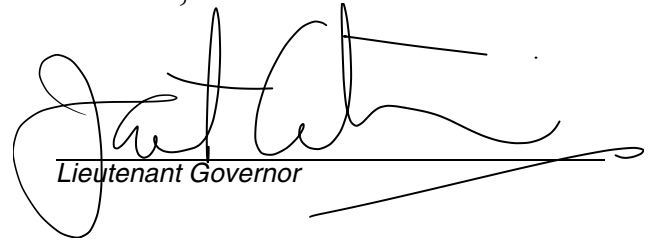
Attachment 1

OIC No. 172

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 172

, Approved and Ordered March 22, 2021



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that Direction No. 8 to the British Columbia Utilities Commission, B.C. Reg. 24/2019, is amended as set out in the attached Schedule.



Minister of Energy, Mines and Low Carbon Innovation



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 3

Other: OIC 51/2019

R10467937

SCHEDULE

1 Section 1 of Direction No. 8 to the British Columbia Utilities Commission, B.C. Reg. 24/2019, is amended by adding the following definitions:

“**F2022**” means the authority’s fiscal year commencing April 1, 2021 and ending March 31, 2022;

“**F2023**” means the authority’s fiscal year commencing April 1, 2022 and ending March 31, 2023;

“**trade income**” has the meaning given to it in section 1.1;

“**trade income deferral account**” means the regulatory account established under commission order G-96-04 and the approval in section 4.6 of the reasons that accompany that order;

“**transfer pricing agreement**” means the energy supply contract effective April 1, 2020 between the authority and Powerex Corp., as amended from time to time.

2 The following section is added:

Meaning of “trade income”

- 1.1** (1) Trade income for a fiscal year is the greater of the following:
- (a) the amount equal to the authority’s consolidated net income for the fiscal year after adjusting that income in accordance with subsection (2);
 - (b) zero.
- (2) For the purposes of subsection (1) (a), the authority’s consolidated net income must be adjusted as follows:
- (a) by subtracting the authority’s net income for the fiscal year;
 - (b) by subtracting the net income for the fiscal year of every subsidiary of the authority other than Powerex Corp.;
 - (c) by subtracting any foreign currency translation gains in the fiscal year on intercompany balances between the authority and Powerex Corp.;
 - (d) by adding any foreign currency translation losses in the fiscal year on intercompany balances between the authority and Powerex Corp.

3 Section 3 is amended by striking out “for F2020 and F2021,” and substituting “for F2020, F2021, F2022 and F2023,”.

4 Section 4 is amended by adding the following subsections:

- (3) In setting rates for the authority for a fiscal year, the commission must subtract from the costs to be recovered in rates an amount equal to the net incomes, for the fiscal year, of Powerex Corp. and Powertech Labs Inc.
- (4) For the purposes of subsection (3),
 - (a) the net income of Powerex Corp. for the fiscal year is the amount equal to the trade income forecast by the authority for that fiscal year, and

(b) the net income of Powertech Labs Inc. for the fiscal year is the amount forecast by the authority.

5 *The following sections are added:*

Regulatory account

9 In regulating and setting rates for the authority, the commission must allow the authority to continue to defer to the trade income deferral account the variances between actual and forecast trade income.

Transfer pricing agreement

10 The commission may not exercise its powers under section 71 (1) (b) and (3) of the Act in respect of the transfer pricing agreement.

**BC Hydro 2020 Transfer Pricing Agreement
Amendments**

Attachment 2

**2020 Amended and Restated Transfer Pricing
Agreement between BC Hydro and Powerex
Effective as of December 1, 2023 Originally Made as
of April 1, 2020**

AMENDED AND RESTATED TRANSFER PRICING AGREEMENT

This Agreement originally made as of April 1, 2020 is amended and restated effective as of December 1, 2023:

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a
corporation continued under the Hydro and Power Authority Act

(“**B.C. Hydro**”)

AND:

POWEREX CORP., a company duly incorporated under the laws of
the Province of British Columbia

(“**Powerex**”)

WHEREAS:

- A. B.C. Hydro carries on electrical utility operations in the Province of British Columbia and operates the B.C. Hydro System to: (i) ensure sufficient energy and capacity is available to serve B.C. Hydro’s Domestic Load, satisfy B.C. Hydro’s obligations under Interutility Agreements and respond to System Constraints; (ii) minimize the cost of serving Domestic Load, satisfying obligations under Interutility Agreements and responding to System Constraints; and (iii) maximize the value of the Residual System Capability;
- B. Powerex is engaged in the sale and purchase of energy products, principally with customers and suppliers in other Canadian provinces and the United States, and purchases transmission and transportation capacity in order to support energy product transactions;
- C. The parties wish to confirm the relationship between B.C. Hydro and Powerex under which B.C. Hydro will make the Residual System Capability available exclusively to

Powerex, including selling exclusively to Powerex electricity that is surplus to B.C. Hydro's requirements to serve Domestic Load, satisfy obligations under Interutility Agreements and respond to System Constraints, and purchasing exclusively from Powerex electricity required by B.C. Hydro to serve Domestic Load, satisfy obligations under Interutility Agreements and respond to System Constraints that is not supplied from the B.C. Hydro System, and to confirm the manner in which the parties will otherwise purchase and sell electricity to each other to enable B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and to enhance B.C. Hydro's energy reliability;

- D. B.C. Hydro is a purchaser of natural gas and wishes to confirm the relationship between B.C. Hydro and Powerex under which B.C. Hydro will purchase its requirements for natural gas exclusively from Powerex and sell exclusively to Powerex its surplus natural gas; and
- E. B.C. Hydro and Powerex wish to amend and restate the 2020 TPA in its entirety to set out their respective obligations in connection with the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. **DEFINITIONS**

1.1. **Definitions**

In this Agreement:

- 1.1.1. "2003 TPA" means the Transfer Pricing Agreement dated as of April 1, 2003 between B.C. Hydro and Powerex, as amended;
- 1.1.2. "2020 TPA" means the Transfer Pricing Agreement dated effective as of April 1, 2020 between B.C. Hydro and Powerex;
- 1.1.3. "Additional Daily Quantity" has the meaning set forth in Section 7.4;
- 1.1.4. "Agreement" means this amended and restated transfer pricing agreement, together with any appendices, as amended from time to time;

- 1.1.5. “B.C. Hydro System” means the reservoirs and all generating resources and related facilities that are owned or controlled by B.C. Hydro, and includes long-term supply contracted by B.C. Hydro from time to time from independent power producers or others;
- 1.1.6. “Canadian Entitlement” means at any time the downstream power benefits to which Canada is then entitled as described in the Columbia River Treaty;
- 1.1.7. “Columbia River Treaty” means the “Treaty between Canada and the United States of America relating to the Cooperative Development of the Water Resources of the Columbia River Basin” including its Annexes A and B” signed at Washington, District of Columbia, United States of America on the 17th day of January, 1961, and the Protocol brought into force by exchange of instruments of ratification and an exchange of notes on September 16, 1964, as may be amended, supplemented or replaced;
- 1.1.8. “Commencement Date” means April 1, 2020;
- 1.1.9. “Domestic Gas Requirements” means the quantity of Gas required by B.C. Hydro for its Thermal Generation Plants to serve Domestic Load, satisfy B.C. Hydro’s obligations under Interutility Agreements and Gas Utility Contracts, and respond to System Constraints;
- 1.1.10. “Domestic Load” means load that B.C. Hydro is obligated to serve under its electricity tariffs by reason of its status as a public utility, including transmission losses within the Province of British Columbia;
- 1.1.11. “Electricity Transfer Price” means the price set forth in Appendix A for electricity and any associated products and services that are delivered, sold or purchased on or after the Commencement Date between B.C. Hydro and Powerex pursuant to this Agreement;
- 1.1.12. “Environmental Attributes” means all environmental characteristics, credits, allowances, claims, reductions, offsets, and benefits created by, resulting from or associated with the generation of electricity;

- 1.1.13. “Flexible Export Schedule” means a schedule of electricity described in Section 4.3.1 and, subject to Section 4.6, any schedule deemed to be a Flexible Export Schedule in Section 4.5;
- 1.1.14. “Flexible Import Schedule” means a schedule of electricity described in Section 4.2.1, a Skagit Schedule, any schedule deemed to be a Flexible Import Schedule in Section 1.1.6 of Appendix C, and, subject to Section 4.6, any schedule deemed to be a Flexible Import Schedule in Section 4.5;
- 1.1.15. “Force Majeure” means any event or circumstance not within the reasonable control of the party seeking to suspend its performance of an obligation, and not avoidable by that party’s reasonable diligence, and subject to the foregoing includes: a strike, lockout or labour dispute; an act of God; inability to obtain labour or (other than as set out below relating to supply of electricity or Gas) materials; laws, ordinances, rules, regulations or orders of governmental authorities; enemy or hostile action; civil commotion; fire or other casualty, but does not include: (i) any condition or cause which is the result of the negligence of the claiming party, or which by the exercise of due diligence, the claiming party is or would be able to avoid, cause to be avoided, or overcome; or (ii) lack of finances; (iii) any inability of the claiming party to use or resell the electricity or Gas purchased hereunder; or (iv) the loss or failure of the claiming party’s supply of electricity or Gas, if the claiming party is the seller;
- 1.1.16. “Fort Nelson” means the gas-fired generating plant owned by B.C. Hydro and located in Fort Nelson, British Columbia;
- 1.1.17. “Forward Capacity Commitment” has the meaning set forth in Section 1.1 of Appendix C;
- 1.1.18. “Gas” means natural gas;

1.1.19. “Gas Delivery Point” means:

1.1.19.1. for Gas purchased for use at a Thermal Generation Plant, the recognized custody transfer point between the applicable Thermal Generation Plant and the gas pipeline that serves it; and

1.1.19.2. for Gas purchased for the purpose of serving the Gas Utility Contracts, the delivery point(s) specified in the Gas Utility Contracts;

1.1.20. “Gas Losses” means for each day, all lost and unaccounted for Gas and Gas burned to fuel compressors, from the applicable Gas Transfer Point to the applicable Gas Delivery Point;

1.1.21. “Gas Transfer Point” means:

1.1.21.1. with respect to Gas forming part of a Specified Contract Quantity, any of the points at which the index prices set out in Section 1.1.4 of Appendix B are determined; and

1.1.21.2. with respect to Gas forming part of an Additional Daily Quantity, any of the points at which the index prices set out in Section 1.1.3 of Appendix B are determined;

1.1.22. “Gas Transfer Price” means the price determined in accordance with Section 1.5 of Appendix B;

1.1.23. “Gas Utility Contracts” means any agreement between B.C. Hydro and one or more third parties in effect from time to time that provides for the supply of Gas by B.C. Hydro on a firm or interruptible basis, but excludes agreements whose purpose is the purchase and sale of gas or gas transportation for profit;

1.1.24. “Island Generation” means the gas-fired generating plant located at Elk Falls, British Columbia;

1.1.25. “Imbalance Charges” means any fees, penalties, costs or charges (in cash or in kind) assessed by the applicable transportation provider(s) in respect of the Transportation Capacity, for failure to satisfy the transportation balance and nomination requirements;

1.1.26. “Interutility Agreement” means:

1.1.26.1. an agreement between B.C. Hydro and one or more third parties related to the coordination of generation, transmission and/or reservoir operations;

1.1.26.2. an agreement between B.C. Hydro and one or more balancing authorities or reliability entities for the purpose of maintaining transmission and generation system reliability;

1.1.26.3. an agreement between B.C. Hydro and one or more third parties relating to international treaty obligations of Canada;

1.1.26.4. an agreement under which B.C. Hydro exports electricity pursuant to a border accommodation electricity export permit issued by the National Energy Board or any successor permit; or

1.1.26.5. any other agreement with one or more third parties under which B.C. Hydro imports or exports electricity to or from the B.C. Hydro System,

but excludes agreements whose purpose is the purchase and sale of transmission or electricity and any associated products and services for B.C. Hydro’s profit;

1.1.27. “Net Delivered Quantity to B.C. Hydro” has the meaning set forth in Section 4.8;

1.1.28. “Net Delivered Quantity to Powerex” has the meaning set forth in Section 4.8;

- 1.1.29. “Non-Flexible Export Schedule” means a schedule of electricity described in Section 4.3.2 and any schedule deemed to be a Non-Flexible Export Schedule in Section 4.6;
- 1.1.30. “Non-Flexible Import Schedule” means a schedule of electricity described in Section 4.2.2 and any schedule deemed to be a Non-Flexible Import Schedule in Section 4.6;
- 1.1.31. “Open Access Transmission Tariff” means the tariff under which B.C. Hydro provides open-access non-discriminatory services on the Transmission System, as amended from time to time, and including any successor tariff;
- 1.1.32. “Prime Rate” means the annual rate of interest published by B.C. Hydro’s principal banker from time to time as its prime rate;
- 1.1.33. “Residual System Capability” means, at any time and as determined by B.C. Hydro in its sole discretion, the capability of the B.C. Hydro System (including all power and non-power attributes of the B.C. Hydro System, which includes energy, capacity, flexibility and Environmental Attributes), while all Domestic Load requirements and Interutility Agreement obligations (including pursuant to operating procedures) are being satisfied and System Constraints are being responded to, to allow purchases of electricity and any associated products and services by B.C. Hydro from Powerex and/or to allow sales of electricity and any associated products and services from B.C. Hydro to Powerex;
- 1.1.34. “RPG” means the gas-fired generating plant owned by B.C. Hydro and located in Prince Rupert, British Columbia;
- 1.1.35. “Senior Executive” means, for a party, its Chief Executive Officer or such other senior executive with primary responsibility for this Agreement from time to time, or duly appointed delegate;
- 1.1.36. “Skagit Schedule” has the meaning set forth in Section 4.7;

- 1.1.37. “Specified Contract Quantity” has the meaning set forth in Section 7.2;
- 1.1.38. “Specified Quantity Request” has the meaning set forth in Section 4.5;
- 1.1.39. “System Constraints” means any outage, suspension, constraint or curtailment in the operation of the B.C. Hydro System or the Transmission System, including forced outages on the B.C. Hydro System, forced outages on the Transmission System, and constraints arising as a result of minimum or maximum generation requirements or environmental, regulatory, or reservoir management requirements;
- 1.1.40. “Thermal Generation Plants” means the gas-fired generation plants owned or under the control of B.C. Hydro from time to time including Fort Nelson, Island Generation and RPG;
- 1.1.41. “Transfer Period” means, commencing on the Commencement Date, any one-year period from April 1st until March 31st;
- 1.1.42. “Transfer Pricing Principle” means the pricing principles established by Sections 9.1 and 9.2;
- 1.1.43. “Transmission System” means the transmission system owned or operated by B.C. Hydro;
- 1.1.44. “Transportation Capacity” has the meaning set forth in Section 7.8;
- 1.1.45. “Variable Operating Costs” means all incremental costs incurred by B.C. Hydro in respect of generation at the Thermal Generation Plants at the request of and for purchase by Powerex pursuant to Sections 5.1 or 5.2, as determined in good faith from time to time by B.C. Hydro; and
- 1.1.46. “Variable Transportation Costs” means all incremental transportation costs incurred by B.C. Hydro in respect of the use of the Transportation Capacity by Powerex for the purposes of trade.

1.2. Other Defined Terms

Capitalized words or phrases appearing in this Agreement that are defined in the appendices to this Agreement shall have the meanings ascribed to them in the appendices.

1.3. Interpretation

References in this Agreement to sections are references to sections of the body of the Agreement, unless otherwise specified as referring to a section in an appendix. All references in this Agreement to appendices are to the appendices attached to this Agreement. Reference to any party includes any permitted successor or assignee. The term “including” followed by descriptive words is used in this Agreement by way of example only and is not intended to limit the scope of the provision. The headings used in this Agreement are for convenience and reference purposes only.

2. TERM

2.1. Term

The term of this Agreement commenced on April 1, 2020 and shall continue in full force and effect until terminated by mutual agreement of the parties or as provided in Section 2.3.

2.2. Transitional Payment

2.2.1. If there is a positive balance in the Trade Account under the 2003 TPA at 12:00 a.m. on April 1, 2020, B.C. Hydro will pay to Powerex in a timely manner the amount obtained by multiplying the volume in MWh of the positive balance in the Trade Account under the 2003 TPA by the weighted average price of each MWh in the Trade Account under the 2003 TPA, in each case at 12:00 a.m. on April 1, 2020.

2.2.2. If there is a negative balance in the Trade Account under the 2003 TPA at 12:00 a.m. on April 1, 2020, Powerex will pay to B.C. Hydro in a timely manner the amount obtained by multiplying the volume in MWh of the negative balance in the Trade Account under the 2003 TPA by the

weighted average price of each MWh in the Trade Account under the 2003 TPA, in each case at 12:00 a.m. on April 1, 2020.

2.3. **Early Termination**

Either party may terminate this Agreement at the end of a Transfer Period provided that written notice is given to the other party at least 60 days prior to the end of the applicable Transfer Period; for greater certainty, notice of termination given in the 60-day period prior to the end of a Transfer Period will have no effect. A termination effected by notice given in accordance with this section will take effect immediately following the annual adjustments for the Transfer Period provided for in Section 7.3 of Appendix A (the “Early Termination Time”).

2.4. **Negotiation of New Transfer Pricing Agreement**

Following the delivery of a notice of termination by either party under Section 2.3, the parties will negotiate a new agreement to confirm the relationship under which the parties will purchase and sell electricity and natural gas to each other following termination of this Agreement, including provisions to address any existing commitments or liabilities of the parties that exist on and extend beyond the termination of this Agreement.

2.5. **Effect of Termination**

Notwithstanding any termination of this Agreement, provisions respecting obligations which have arisen or accrued prior to the date of termination will continue in full force and effect in accordance with their respective terms until such obligations have been fully satisfied.

2.6. **Calculation of Net Settlement Amount on Termination**

- 2.6.1. Within seven days of the Early Termination Time, the parties will, in good faith and in a commercially reasonable manner, determine the value of the gains or losses applicable to the Transfer Volume Account. The parties will determine the value of any such gains and losses by (i) calculating the market value of the volume in the Transfer Volume Account at the replacement or resale price (as applicable) at the British Columbia-United

States border, relative to (ii) the value of the Transfer Volume Account determined by multiplying the volume in the Transfer Volume Account by the Weighted Average Price, discounted to present value. If consideration for any such gains or losses is included in the terms of a new or replacement transfer pricing agreement, then any gains or losses under this Agreement will be zero.

2.6.2. The parties will aggregate such gains or losses and any other amounts then owing but unpaid in respect of the period prior to the Termination Date into a single net amount (the “Net Settlement Amount”).

2.6.3. The party owing the Net Settlement Amount will pay the party owed the Net Settlement Amount such amount, in cash, within three business days of the parties agreeing to such calculation.

3. **RESIDUAL SYSTEM CAPABILITY**

3.1. **Residual System Capability**

B.C. Hydro shall make the Residual System Capability available exclusively to Powerex to support the sale and purchase to or from third parties of electricity and any associated products and services by Powerex. For greater certainty, B.C. Hydro is not providing any storage services to Powerex under this Agreement.

3.2. **Attributes**

Powerex’s ability to sell to third parties electricity and any associated products and services with or without any of the specific attributes of the B.C. Hydro System comprising the Residual System Capability remains subject to B.C. Hydro’s determination of the Residual System Capability at any time and the scheduling and other constraints set out in this Agreement. Each party will work in good faith with the other party, and prepare or provide such documentation, information and other assistance as is reasonably requested and necessary, to support current and future legal, regulatory and other requirements of each party, including as needed by Powerex to support its sales of electricity and any associated products and services.

3.3. Forward Capacity Commitment

Without limiting Sections 3.1 and 3.2, B.C. Hydro will make available to Powerex capacity forming part of the Residual System Capability on the terms set out in Appendix C.

4. PURCHASE AND SALE OF ELECTRICITY

4.1. Purchase and Sale of Electricity

B.C. Hydro shall purchase and sell electricity exclusively from and to Powerex as contemplated by this Agreement, and in doing so, B.C. Hydro will make electricity available to Powerex and Powerex will make import and export decisions, both acting in good faith and with the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro's energy reliability. In support of this objective, B.C. Hydro will communicate to Powerex on a regular basis forecasts of the anticipated electricity surplus or deficit and the Residual System Capability in the B.C. Hydro System and Powerex will communicate to B.C. Hydro on a regular basis forecasts of its anticipated electricity import and export activities, and both parties will regularly communicate to each other any anticipated constraints referred to in Section 4.4 on their abilities to satisfy their obligations under this Part 4, all in accordance with Section 10.1.

4.2. Schedules to B.C. Hydro

Subject to Sections 4.4 and 4.5:

4.2.1. Powerex may at any time and in its discretion schedule electricity to B.C. Hydro on an hourly or sub-hourly basis, including electricity that Powerex has purchased from B.C. Hydro under Sections 5.1 or 5.2 or from independent power producers or other entities within British Columbia (each, a "Flexible Import Schedule"); and

4.2.2. Powerex will schedule electricity to B.C. Hydro on an hourly or sub-hourly basis as requested by B.C. Hydro for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including

under any operating procedures), and responding to System Constraints, and, for greater certainty, Powerex may schedule for that purpose electricity that Powerex has purchased from B.C. Hydro under Sections 5.1 or 5.2 or from independent power producers or other entities within British Columbia (each, a “Non-Flexible Import Schedule”).

4.3. **Schedules to Powerex**

Subject to Sections 4.4 and 4.5:

- 4.3.1. B.C. Hydro will at Powerex’s request at any time schedule electricity to Powerex on an hourly or sub-hourly basis (each, a “Flexible Export Schedule”); and
- 4.3.2. Powerex will accept a schedule of electricity from B.C. Hydro on an hourly or sub-hourly basis as requested by B.C. Hydro for the purposes of responding to System Constraints (each, a “Non-Flexible Export Schedule”).

4.4. **Constraints on Scheduling**

The rights and obligations of the parties to schedule electricity under Sections 4.2, 4.3, 4.5, 4.6, and 4.7 shall be subject to:

- 4.4.1. availability of Residual System Capability;
- 4.4.2. applicable laws and/or limitations imposed on the parties by regulatory authorities with jurisdiction over their respective operations;
- 4.4.3. B.C. Hydro’s rights under the Open Access Transmission Tariff to use, and any constraints on, the Transmission System;
- 4.4.4. Powerex’s rights to use, and any constraints on, any transmission facilities required for Powerex to deliver or receive electricity to or from B.C. Hydro, as determined by Powerex at the time of the applicable request by B.C. Hydro; and

4.4.5. Powerex's ability, as determined by Powerex at the time of the applicable request by B.C. Hydro, to purchase or sell electricity to or from external markets, provided that Powerex is complying with its obligations under Section 4.1 and, if requested by B.C. Hydro, provides B.C. Hydro with the reason(s) for its inability to satisfy such request.

4.5. **Long-Term System Requirements**

In addition to and without limiting B.C. Hydro's rights under Sections 4.2.2 and 4.3.2, B.C. Hydro may in its discretion from time to time request in writing that Powerex schedule a specified aggregate quantity of electricity to or from the B.C. Hydro System over a specified period of time for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), and responding to System Constraints (each request, a "Specified Quantity Request"). Subject to the conditions listed in Section 4.4, Powerex will schedule the aggregate amount of electricity subject to a Specified Quantity Request to or from the B.C. Hydro System during the specified period of time, provided that Powerex will in its discretion determine when and in what quantities each hour to schedule such aggregate amount of electricity in order to satisfy its obligation to B.C. Hydro under this Section 4.5. Subject to Section 4.6, any such schedules will be deemed for the purposes of this Agreement to be either a Flexible Import Schedule or Flexible Export Schedule, as the case may be. B.C. Hydro may from time to time revoke or replace any Specified Quantity Request made under this Section 4.5.

4.6. **Extraordinary Event**

If agreed in writing by the Senior Executives of the parties that a Specified Quantity Request was necessary to respond to an extraordinary, significant and reasonably unforeseeable event that would require Powerex to make substantial ongoing imports or exports of electricity outside of the ordinary course of Powerex's business in order to meet its obligation to import or export the aggregate amount of electricity subject to a Specified Quantity Request, any schedules required to implement the Specified Quantity Request will be deemed for the purposes of this Agreement to be either a Non-Flexible Import Schedule or Non-Flexible Export Schedule, as the case may be. For greater

certainty, variations in forecasted load or hydrology or outages occurring in the normal course of business will not be considered to be extraordinary, significant and reasonably unforeseeable events for the purposes of this Section 4.6.

4.7. External Deliveries to Satisfy B.C. Hydro Interutility Agreement Obligations

The parties acknowledge that, pursuant to certain agreements among the Province of British Columbia, the City of Seattle (including its division Seattle City Light) and B.C. Hydro, B.C. Hydro is the assignee of certain obligations to deliver electricity to Seattle City Light, and that B.C. Hydro subsequently assigned to Powerex certain of the operating obligations as they relate to delivery of electricity (the “**Skagit Agreements**”). In connection with Powerex delivering electricity under the Skagit Agreements, Powerex has the discretion whether to supply electricity to Seattle City Light from the B.C. Hydro System or from sources outside of the B.C. Hydro System. If, in an hour, Powerex schedules energy to Seattle City Light that it has acquired from sources outside of the B.C. Hydro System to satisfy the obligations under the Skagit Agreements (each, a “**Skagit Schedule**”):

- 4.7.1. the Skagit Schedule in that hour will be deemed to be a Flexible Import Schedule for the purposes of Section 3.1.1 of Appendix A; and
- 4.7.2. B.C. Hydro will pay Powerex the amount obtained by multiplying each MWh associated with the Skagit Schedule in that hour by the applicable Flexible Import Price. For greater certainty, the MWh associated with the Skagit Schedule will not be included in the Net Delivered Quantity to B.C. Hydro calculated in Section 4.8.1 for the hour, and no additional amounts will be payable under Section 4.10 in respect of the MWh associated with the Skagit Schedule.

In the event that B.C. Hydro and Powerex enter into any similar agreement whereby Powerex supplies electricity to a party located outside of the B.C. Hydro System and has the discretion to supply such electricity from a source outside of the B.C. Hydro System, the parties agree that the provisions of this Section 4.7 will apply similarly to any such agreement.

4.8. **Determination of Net Delivered Quantities**

The parties shall for each hour determine the quantity (in MWh) of:

- 4.8.1. all electricity actually delivered by Powerex to B.C. Hydro under this Agreement within the hour; and
- 4.8.2. all electricity actually delivered by B.C. Hydro to Powerex under this Agreement within the hour, excluding any electricity delivered to Powerex under Sections 5.1 or 5.2 and any electricity delivered to Powerex and then scheduled by Powerex to satisfy B.C. Hydro's obligations under Interutility Agreements.

If in an hour the amount (in MWh) of electricity referred to in Section 4.8.1 exceeds the amount of electricity referred to in Section 4.8.2, such excess will be a "Net Delivered Quantity to B.C. Hydro", and if in an hour the amount (in MWh) of electricity referred to in Section 4.8.2 exceeds the amount of electricity referred to in Section 4.8.1, such excess will be a "Net Delivered Quantity to Powerex".

4.9. **Purchase and Sale of Electricity**

In each hour of a Transfer Period:

- 4.9.1. B.C. Hydro will purchase from Powerex and Powerex will sell to B.C. Hydro any Net Delivered Quantity to B.C. Hydro; and
- 4.9.2. Powerex will purchase from B.C. Hydro and B.C. Hydro will sell to Powerex any Net Delivered Quantity to Powerex.

4.10. **Payments for Electricity Transactions**

The parties acknowledge and agree that:

- 4.10.1. B.C. Hydro will pay to Powerex the amount obtained by multiplying each MWh associated with the sale of a Net Delivered Quantity to B.C. Hydro by the applicable Electricity Transfer Price; and

4.10.2. Powerex will pay to B.C. Hydro the amount obtained by multiplying each MWh associated with the sale of a Net Delivered Quantity to Powerex by the applicable Electricity Transfer Price.

4.11. **Annual Payment for Wear and Tear Associated with Powerex Import and Export Decisions**

4.11.1. B.C. Hydro will, acting reasonably, develop and implement a procedure that will: (a) outline the factors that B.C. Hydro will take into account in determining whether or not Powerex's import and export decisions during a Transfer Period will result in increased or decreased wear and tear on the B.C. Hydro System (each, a "Wear and Tear Determination"); and (b) provide: (i) the method by which wear and tear on the B.C. Hydro System is calculated and attributed to Powerex's import and export decisions; and (ii) the methodology for determining the cost of, or cost saved in respect of, the increased or decreased wear and tear subject to the Wear and Tear Determination. B.C. Hydro may amend or replace such procedure from time to time, provided that any amended or replacement procedure will only take effect for the purposes of Section 4.11.2 on the first day of the next Transfer Period.

4.11.2. If B.C. Hydro determines, in accordance with a procedure established pursuant to Section 4.11.1, that Powerex's import and export decisions during a Transfer Period have resulted in increased or decreased wear and tear on the B.C. Hydro System for a Transfer Period, B.C. Hydro will notify Powerex of such determination (including the applicable cost) within 30 days after the end of the Transfer Period. Provided that Powerex received a copy of the procedure referred to in Section 4.11.1 (including any applicable amendments) prior to the beginning of the applicable Transfer Period, Powerex will pay to B.C. Hydro within a further 30 days the amount determined by B.C. Hydro in accordance with such procedure to be the cost of the applicable increase in wear and tear, or B.C. Hydro will pay to Powerex the amount determined by B.C. Hydro in accordance

with such procedure to be the cost saved as a result of any applicable decrease in wear and tear.

4.12. Maintenance Schedules

B.C. Hydro will use commercially reasonable efforts to schedule the maintenance of the B.C. Hydro System in as efficient a manner as possible to optimize the capability of the B.C. Hydro System and to assist the parties in achieving the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro's energy reliability.

4.13. Increase in Residual System Capability

Powerex may from time to time request that B.C. Hydro consider increasing the Residual System Capability over a specified period to support a higher level of electricity import or export activity under Sections 4.2.1 and 4.3.1. B.C. Hydro will review any such request and consider whether there are changes that may be made in the operation of the B.C. Hydro System to accommodate the request. If B.C. Hydro determines in its sole discretion that it is desirable and in keeping with B.C. Hydro's obligations under Section 4.1 to make changes in the operation of the B.C. Hydro System to increase the Residual System Capability to accommodate the request by Powerex, B.C. Hydro will notify Powerex reasonably in advance of the proposed change in operation and of the associated incremental costs, if any, that B.C. Hydro intends to charge to Powerex. Powerex may retract its request at any time prior to the implementation of the change in operation, provided that Powerex will reimburse B.C. Hydro for any incremental costs incurred by B.C. Hydro in taking steps to implement the change in operation prior to the retraction. Provided that Powerex was notified reasonably in advance of any incremental costs associated with a change of operation of the B.C. Hydro System to accommodate a request made by Powerex under this Section 4.13 and did not retract its request, Powerex will reimburse B.C. Hydro for the associated incremental costs if B.C. Hydro changes the operation of the B.C. Hydro System to increase Residual System Capability as requested by Powerex.

5. GAS-FIRED GENERATION PLANTS

5.1. Transfer to Powerex from B.C. Hydro's Gas-Fired Generation Plants

At any time when the generating capacity of the Thermal Generation Plants is not required to serve Domestic Load, satisfy B.C. Hydro's obligations under Interutility Agreements or respond to System Constraints, B.C. Hydro may, at the request of Powerex, operate such Thermal Generation Plants to generate electricity. If B.C. Hydro agrees to Powerex's request, B.C. Hydro will sell to Powerex and Powerex will purchase all such electricity generated pursuant to Powerex's request, provided that Powerex will supply, at its own cost, all Gas required to generate the requested electricity and pay to B.C. Hydro the Variable Operating Costs to generate the requested electricity and any Variable Transportation Costs incurred by B.C. Hydro to deliver the Gas to the Thermal Generation Plant and no further payment will be payable by Powerex to B.C. Hydro in respect of the sale and purchase of such electricity. In the event that a Thermal Generation Plant is being operated to generate electricity both for B.C. Hydro's use and at Powerex's request in the same hour, the quantity of electricity generated at Powerex's request shall be the aggregate quantity of electricity measured at the relevant generation meter for the applicable Thermal Generation Plant less the amount of generation requested by B.C. Hydro. Otherwise, the quantity of electricity generated at Powerex's request will be as measured at the relevant generation meter for the applicable Thermal Generation Plant. Electricity purchased by Powerex under this Section 5.1 shall be made available and title and risk of loss shall pass from B.C. Hydro to Powerex at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System.

5.2. Powerex Option to Purchase Thermal Generation

At any time when B.C. Hydro is operating any of the Thermal Generation Plants for its own purposes, Powerex will have the option, exercisable by notice in writing to B.C. Hydro, to purchase from B.C. Hydro the electricity generated by that operation on the terms set out in Section 5.1 for the purchase by Powerex of electricity from a Thermal Generation Plant, including with respect to the supply of Gas by Powerex and the payment by Powerex of the Variable Operating Costs and any Variable Transportation

Costs. Electricity purchased by Powerex under this Section 5.2 shall be made available and title and risk of loss shall pass from B.C. Hydro to Powerex at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System.

6. **DELIVERY POINT, TRANSMISSION CHARGES, ANCILLARY SERVICES. SCHEDULING**

6.1. **Delivery Point, Title and Risk**

Unless the parties agree otherwise:

6.1.1. subject to Sections 6.1.2 and 6.1.3, electricity delivered under this Agreement shall be made available, and title and risk of loss shall pass from the seller to the buyer, at either the British Columbia-United States border or the British Columbia-Alberta border, as determined by Powerex;

6.1.2. electricity purchased by Powerex under Sections 5.1 or 5.2 and then sold to B.C. Hydro under this Agreement shall be made available and title and risk of loss shall pass from Powerex to B.C. Hydro at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System; and

6.1.3. electricity purchased by Powerex from independent power producers or other entities in British Columbia and sold to B.C. Hydro under this Agreement shall be made available and title and risk of loss shall pass from Powerex to B.C. Hydro at the point of interconnection between the third party and the Transmission System.

6.2. **Transmission Charges and Ancillary Services**

B.C. Hydro shall acquire and pay for all necessary wholesale transmission services, including losses and ancillary services, on the Transmission System for electricity transactions under this Agreement. For greater certainty, B.C. Hydro may self-supply losses and ancillary services. Unless otherwise determined by B.C. Hydro, acting

reasonably, Powerex will pay to B.C. Hydro an amount equal to the parties' reasonable estimate of:

- 6.2.1. the point-to-point transmission costs incurred by B.C. Hydro presently under the Open Access Transmission Tariff in respect of transactions under this Agreement, but excluding
- 6.2.2. the point-to-point transmission costs incurred by B.C. Hydro for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), responding to System Constraints, satisfying B.C. Hydro's obligation to manage the Annual Flexible Surplus/Deficit (as defined in Appendix A) and delivering electricity pursuant to Non-Flexible Export Schedules, and receiving and/or delivering the Canadian Entitlement,

in accordance with Section 12. Such amount is the parties' reasonable allocation of the point-to-point transmission costs incurred by B.C. Hydro in respect of Powerex's trading activities.

7. **GAS MARKETING**

7.1. **Purchase and Sale of B.C. Hydro's Gas Requirements**

Powerex shall use commercially reasonable efforts to make available to B.C. Hydro, and B.C. Hydro shall purchase exclusively from Powerex, B.C. Hydro's Domestic Gas Requirements. B.C. Hydro shall purchase from Powerex and Powerex shall sell to B.C. Hydro all Gas requested by B.C. Hydro under this Agreement from time to time. In performing their obligations under this Section 7.1, both B.C. Hydro and Powerex will act in good faith with the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro's energy reliability. In support of this objective, B.C. Hydro will communicate to Powerex on a regular basis forecasts of B.C. Hydro's surplus Gas position (if any), demand for Gas and the status of physical storage and delivery for B.C. Hydro's Gas, all in accordance with Section 10.1.

7.2. Notification of Monthly Requirements

B.C. Hydro will notify Powerex (each, a “Monthly Gas Notice”) by the 15th day of each month from and after the Commencement Date until the end of the term of this Agreement (or if that day is not a business day, then the next ensuing business day) of its Domestic Gas Requirements (in GJ/day) for each day of the next following month (or months), specifying the quantity of Gas (in GJ/day) required for each Thermal Generation Plant and for each Gas Utility Contract (the aggregate amount of Gas required for each such day, the “Specified Contract Quantity”). B.C. Hydro agrees to purchase the Specified Contract Quantity from Powerex.

7.3. Monthly Market Indices

To the extent that B.C. Hydro holds firm Transportation Capacity from one or more Gas Transfer Points to a Gas Delivery Point specified in a Monthly Gas Notice, B.C. Hydro may in the Monthly Gas Notice also specify that the Monthly Index Price(s) determined at the applicable Gas Transfer Point(s) will be used during the month in which B.C. Hydro holds such firm Transportation Capacity for the purposes of determining the Gas Transfer Price applicable for any Specified Contract Quantity to be delivered to that Gas Delivery Point during that month. If B.C. Hydro does not hold such firm Transportation Capacity, B.C. Hydro may request that a Monthly Index Price determined at a specified Gas Transfer Point be used for the purposes of determining the Gas Transfer Price applicable for such deliveries during the month, but Powerex will not be obligated to deliver such amounts of Gas at the specified Monthly Index Price. Such request by B.C. Hydro for pricing at a specified Gas Transfer Point shall be for pricing purposes only and shall in no way determine the source from which Powerex is to purchase the Gas to be sold by Powerex to B.C. Hydro hereunder. Otherwise, Powerex shall use commercially reasonable efforts to purchase Gas for delivery to B.C. Hydro under this Agreement at the most favourable Monthly Index Price, taking into account transportation costs and availability and in view of the obligations of the parties under Section 7.1.

7.4. Notification of Daily Requirements

B.C. Hydro may notify Powerex (each, a “Daily Gas Notice”) at any time during a month, of the Domestic Gas Requirements (in GJ/day), in addition to the Specified Contract Quantity, that it projects will be required during any remaining day in the month specified by B.C. Hydro. B.C. Hydro’s notice shall specify the quantity of Gas (in GJ/day) required for each Thermal Generation Plant and for the Gas Utility Contracts (in each case, the “Additional Daily Quantity”). B.C. Hydro agrees to purchase the Additional Daily Quantity from Powerex.

7.5. Daily Market Indices

To the extent that B.C. Hydro holds firm Transportation Capacity from one or more Gas Transfer Points to a Gas Delivery Point specified in a Daily Gas Notice, B.C. Hydro may in the Daily Gas Notice also specify that the Daily Index Price(s) determined at the applicable Gas Transfer Point(s) will be used during the period of time in which B.C. Hydro holds such firm Transportation Capacity for the purposes of determining the Gas Transfer Price applicable for any Additional Contract Quantity to be delivered to such Gas Delivery Point on that day. If B.C. Hydro does not hold such firm Transportation Capacity, B.C. Hydro may request that a Daily Index Price determined at a specified Gas Transfer Point be used for the purposes of determining the Gas Transfer Price applicable for any such deliveries on that day, but Powerex will not be obligated to deliver such amounts of Gas at the specified Daily Index Price. Such request by B.C. Hydro for pricing at a specified Gas Transfer Point shall be for pricing purposes only and shall in no way determine the source from which Powerex is to purchase the Gas to be sold by Powerex to B.C. Hydro hereunder. Otherwise, Powerex shall use commercially reasonable efforts to purchase Gas for delivery to B.C. Hydro under this Agreement at the most favourable Daily Index Price, taking into account transportation costs and availability and in view of the obligations of the parties under Section 7.1.

7.6. Payments for B.C. Hydro’s Gas Requirements

B.C. Hydro shall pay to Powerex the amount obtained by multiplying the applicable Gas Transfer Price by:

- 7.6.1. the Specified Contract Quantity actually delivered by Powerex to B.C. Hydro each day (in GJ) in accordance with this Agreement plus all Gas Losses applicable to such quantities of Gas actually delivered; and
- 7.6.2. the Additional Daily Quantity actually delivered by Powerex to B.C. Hydro each day (in GJ) in accordance with this Agreement plus all Gas Losses applicable to such quantities of Gas actually delivered.

All quantities of Gas delivered during any day by Powerex to B.C. Hydro under this Agreement shall be deemed for the purpose of this Agreement to be delivered firstly on account of the Specified Contract Quantity up to the Specified Contract Quantity, and thereafter on account of the Additional Daily Quantity.

7.7. **Title and Risk**

Possession of, title to and all risk of loss respecting the Gas delivered under this Agreement shall pass from Powerex to B.C. Hydro at the applicable Gas Transfer Point, unless Powerex in its sole discretion elects to deliver Gas directly to B.C. Hydro at the Gas Delivery Point in which case title and all risk of loss shall pass from Powerex to B.C. Hydro at the Gas Delivery Point.

7.8. **Gas Transportation and Storage**

B.C. Hydro shall be responsible for obtaining all third-party Gas transportation and storage capacity required to deliver B.C. Hydro's Domestic Gas Requirements from the Gas Transfer Point to the applicable Gas Delivery Point (such transportation and storage capacity referred to herein as the "Transportation Capacity"), unless Powerex in its sole discretion elects to deliver Gas directly to B.C. Hydro at the Gas Delivery Point. All costs and expenses of transporting and delivering the Gas to the Gas Transfer Point shall be borne by Powerex and all costs and expenses of transporting the Gas beyond the Gas Transfer Point shall be borne by B.C. Hydro, including all reservation, demand and other charges. Powerex will assist B.C. Hydro, as and when requested by B.C. Hydro and at B.C. Hydro's cost and expense, to obtain the Transportation Capacity. B.C. Hydro hereby grants to Powerex the exclusive right and authority to use any of the

Transportation Capacity and B.C. Hydro shall take all necessary steps to enable Powerex to fully use and nominate such Transportation Capacity for Powerex's own use, when not required to deliver B.C. Hydro's Domestic Gas Requirements. Powerex shall pay to B.C. Hydro the Variable Transportation Costs, if applicable, for such use by Powerex of the Transportation Capacity. Powerex shall be responsible for arranging all third-party Gas transportation required to sell Gas that is surplus to B.C. Hydro's Domestic Gas Requirements.

7.9. **B.C. Hydro's Failure to Receive Gas**

If B.C. Hydro fails to receive all or part of the Specified Contract Quantity or Additional Daily Quantity, unless excused by Powerex's failure to perform, then:

7.9.1. B.C. Hydro will pay to Powerex an amount for each GJ of such Gas not received by B.C. Hydro, equal to the positive difference, if any, obtained by subtracting the Sales Price from the applicable Gas Transfer Price; or

7.9.2. Powerex will pay to B.C. Hydro an amount for each GJ of such Gas not received by B.C. Hydro, equal to the positive difference, if any, obtained by subtracting the applicable Gas Transfer Price from the Sales Price,

where "Sales Price" for the purpose of this Section 7.9, means the Daily Index Price contemplated by Section 1.1.3(b) of Appendix B (or otherwise as specified in any amendment thereto).

7.10. **Gas Imbalance Inventory**

B.C. Hydro acknowledges and agrees that all Gas imbalance inventories in the Transportation Capacity recorded with the applicable transportation providers, shall belong to Powerex, to use as it may determine in its sole discretion. If and to the extent that any Thermal Generation Plant consumes in any day more Gas than has been requested by B.C. Hydro, and such excess quantity of Gas is delivered to the Gas Delivery Point from the Gas imbalance inventories of Powerex on an unscheduled basis, B.C. Hydro shall pay to Powerex the Daily Index Price (which Daily Index shall be determined by Powerex in its sole discretion) for such excess quantity of Gas. Otherwise,

Gas scheduled and delivered by Powerex to B.C. Hydro from the Gas Imbalance Inventories shall be priced in accordance with Sections 7.3 and 7.5.

7.11. **Imbalance Charges**

The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Imbalance Charges are incurred as a result of B.C. Hydro's actions or inactions (which shall include, but shall not be limited to, B.C. Hydro's failure to accept quantities of Gas equal to the quantities requested by B.C. Hydro), then B.C. Hydro shall pay such Imbalance Charges, or reimburse Powerex for such Imbalance Charges paid by Powerex to the applicable transportation provider. If the Imbalance Charges were incurred as a result of Powerex's actions or inactions (which shall include, but shall not be limited to, Powerex's failure to deliver quantities of Gas equal to the quantities requested by B.C. Hydro), then Powerex shall pay for such Imbalance Charges or reimburse B.C. Hydro for such Imbalance Charges paid by B.C. Hydro to the applicable transportation provider.

7.12. **Taxes**

B.C. Hydro shall pay or reimburse Powerex for all sales, carbon, motor fuel, transfer and other taxes incurred by Powerex in connection with the purchase of Gas by Powerex from third parties for sale to B.C. Hydro under this Agreement or otherwise applicable to the purchase of Gas by B.C. Hydro from Powerex under this Agreement.

8. **FORWARD PURCHASES AND SALES FOR B.C. HYDRO**

8.1. **Forward Purchases and Sales for B.C. Hydro**

B.C. Hydro and Powerex may from time to time enter into forward fixed-price, fixed-volume contracts for the purpose of managing market risk associated with expected Annual Flexible Surplus/Deficit volumes or with expected Non-Flexible Import Schedules and Non-Flexible Export Schedules or managing market risk associated with purchases of Gas to meet Domestic Load, satisfy B.C. Hydro's obligations under Interutility Agreements or Gas Utility Contracts or respond to System Constraints. Such forward contracts will be executed at agreed-upon prices based on prevailing market

conditions and will be financially-settled against an agreed-upon market index. B.C. Hydro and Powerex may agree to wholly or partially close any resulting forward position by entering into an offsetting forward contract at an agreed-upon fixed price based on then prevailing market conditions.

9. **TRANSFER PRICING PRINCIPLES**

9.1. **Electricity Transfer Pricing Principle**

The parties acknowledge and agree that all electricity sold and purchased between B.C. Hydro and Powerex pursuant to this Agreement other than electricity purchased and sold pursuant to Sections 5.1 or 5.2 is deemed for transfer pricing purposes to occur at the British Columbia-United States border. B.C. Hydro and Powerex declare that the Electricity Transfer Price is intended to be established as a sale price that reflects the fair market value of electricity delivered at the British Columbia-United States border during the heavy load hours in a day or the light load hours in a day, whichever is applicable, at which parties acting on an arms-length basis would be willing to transact.

9.2. **Gas Transfer Pricing Principle**

The parties acknowledge and agree that all Gas sold to B.C. Hydro by Powerex pursuant to Section 7 of this Agreement is deemed for transfer pricing purposes to occur at the Gas Transfer Point corresponding to the applicable index price specified by B.C. Hydro or determined by Powerex in accordance with Sections 7.3 or 7.5. B.C. Hydro and Powerex declare that the Gas Transfer Price is intended to be established as a sale price that reflects the fair market value of Gas delivered at such applicable Gas Transfer Point on a monthly or daily basis, as applicable, at which parties acting on an arms-length basis would be willing to transact.

9.3. **Electricity Transfer Price and Gas Transfer Price**

The parties agree that the pricing methodology for determining the Electricity Transfer Price is as set forth in Appendix A and the Gas Transfer Price is as set forth in Appendix B.

9.4. TPA Values

B.C. Hydro and Powerex acknowledge that, from time to time during the term of this Agreement, it may be appropriate or necessary to replace or modify the method of determining one or more of the following terms or values in this Agreement: the Monthly Index Price, the Daily Index Price, the exchange rate described in Section 12.3, the interest rate described in Section 12.3, the Prime Rate, the Deficit Multiplier, the Surplus Multiplier, the Mid-C Index Price, a Bid Week or any other published index price on which the Gas Transfer Price may be based (each, a “TPA Value”). If a party believes that one of the TPA Values then in use under this Agreement should or must be replaced or its method of determination modified, the party may, by notice to the other party, propose a replacement or modification for the applicable TPA Value (or its method of determination). If the proposal is accepted, the agreed replacement or modification of the applicable TPA Value (or its method of determination) will become effective at the beginning of the month immediately following the 90th day after the initial notice or such earlier date as the parties may agree. If the proposal is not accepted, the parties will negotiate in good faith to agree on, within 90 days of such notice, a replacement or modification of the TPA Value (or its method of determination). If the parties are unable to agree on a replacement or modification of the TPA Value (or its method of determination) within such time, either party may submit the matter to dispute resolution pursuant to Section 16. Upon agreement or determination by dispute resolution of a replacement or modification of the TPA Value (or its method of determination), the replaced or modified TPA Value (or its method of determination) shall become effective at the beginning of the month immediately following the 90th day after the agreement or determination, as the case may be, or such earlier date as the parties may agree, and the parties shall adjust any amounts paid that depend on the TPA Value (or its method of determination) from that date. In no event shall the parties adjust the amounts paid or payable, if applicable, for any period prior to the effective date of the new TPA Value (or new method of determination of the TPA Value).

10. **INFORMATION AND FORECASTS**

10.1. **Information and Forecasts**

The parties shall provide information to each other on system and market conditions, including the forecasts to be provided pursuant to Sections 4.1 and 7.1, provided, however that the foregoing and any information sharing with respect to the transmission capabilities of the B.C. Hydro System shall be done only within the information sharing limits set forth in the Standards of Conduct (Transmission) or successor policies of B.C. Hydro published from time to time by B.C. Hydro and applicable information sharing limits regarding transmission system capabilities imposed by pertinent Canadian and United States regulatory authorities.

11. **CONFIDENTIAL INFORMATION**

11.1. **Powerex Information Is Confidential**

B.C. Hydro acknowledges that Powerex operates in a highly competitive market and that disclosure of information relating to Powerex, its business and operations could be reasonably expected to significantly harm the competitive position of Powerex or interfere with the negotiating position of Powerex with trading counterparties. Accordingly, information provided by Powerex to B.C. Hydro under this Agreement, including information provided in connection with B.C. Hydro's audit from time to time, is proprietary and is provided only on condition that it shall be kept confidential by B.C. Hydro and not disclosed to any third party, unless Powerex otherwise agrees or except as required by law or any authority having jurisdiction or if the same has entered the public domain other than through unauthorized disclosure by B.C. Hydro.

11.2. **B.C. Hydro Information Is Confidential**

Information provided by B.C. Hydro to Powerex under this Agreement is proprietary and is provided only on condition that it shall be kept confidential by Powerex and not disclosed to any third party, unless B.C. Hydro otherwise agrees or except as required by law or any authority having jurisdiction or if the same has entered the public domain other than through unauthorized disclosure by Powerex.

12. **BILLING; PAYMENTS.**

12.1. **Powerex to Provide Statement for Electricity and Gas Transactions**

Powerex shall send to B.C. Hydro for each calendar month statements setting forth:

12.1.1. the total electricity that was delivered in each hour during that month, and

12.1.2. the total Gas that was delivered in each hour during that month,

in each case with sufficient detail to enable the parties to determine the amount received and the payments due in connection therewith. Statements shall be sent within 15 days of the end of the month.

12.2. **B.C. Hydro to Provide Statement**

B.C. Hydro shall send to Powerex for each calendar month statements setting forth the amount owing by Powerex to B.C. Hydro or by B.C. Hydro to Powerex pursuant to Sections 4.7.2, 4.10, 5.1 or 5.2 (Variable Operating Costs), 6.2 and 7.8 (Variable Transportation Costs) for that month, with sufficient detail to enable the parties to determine the payment due in connection therewith. Statements shall be sent within 15 days of the end of the month.

12.3. **Netting and Payment**

The amounts that each party owes to the other as determined under Section 12.2 for electricity and Gas under this Agreement for each month shall be aggregated and the party, if any, owing the greater aggregate amount shall pay to the other party the difference between the amounts owed. Unless otherwise agreed between the parties, payments shall be made by wire transfer or other agreed manner. Payment is due by the 25th calendar day of each month for the prior month. Any late payments will accrue interest at the Prime Rate plus 1.5%. US dollars shall be converted to Canadian dollars using the applicable Bank of Canada Daily Exchange Rate for each day of the month during which the applicable payment obligations were incurred.

12.4. **Dispute of Invoices**

Each party shall have the right to dispute any amount which is set out in any statement or invoice in accordance with the procedure set out in Section 16. All statement and invoice amounts shall be paid pending resolution of any dispute.

13. **REPRESENTATIVES OF THE PARTIES**

13.1. **Designated Representatives**

B.C. Hydro and Powerex may from time to time designate representatives for the purpose of giving or confirming any approval required pursuant to this Agreement. As of the date hereof, the representative of B.C. Hydro shall be its Chief Executive Officer or delegate, and the representative of Powerex shall be its Chief Executive Officer or delegate.

14. **FORCE MAJEURE**

14.1. **Suspension for Force Majeure**

If either party is or was wholly or partly unable because of a Force Majeure to perform an obligation arising from this Agreement and claims that a Force Majeure is occurring or has occurred and reasonably establishes that fact, then the performance of the obligation shall be deemed to be suspended provided always that:

14.1.1. the suspension shall be of no greater scope and no longer duration than the Force Majeure;

14.1.2. the non-performing party shall make its best efforts to counter the Force Majeure or to otherwise remedy its inability to perform the obligation;

14.1.3. a performance required at a time other than when the Force Majeure is occurring shall not be excused by the Force Majeure; and

14.1.4. an obligation to pay any fees when due shall not be excused by the Force Majeure; however, to the extent that there are any savings to either party as

a result of the Force Majeure, that party shall pass on any savings to the other party so as to reduce its obligation accordingly.

15. **INDEMNITY AND CONSEQUENTIAL DAMAGES**

15.1. **Powerex Indemnity**

Powerex will indemnify B.C. Hydro and hold it harmless against any claims, demands, losses, costs, damages, actions, suits or other proceedings made, sustained, brought or prosecuted against B.C. Hydro by a third party arising out of, or in any way based upon, any act or omission by Powerex in making import or export decisions in respect of electricity or Gas as contemplated under this Agreement or any inability by B.C. Hydro to satisfy the Forward Capacity Commitment (each, a “B.C. Hydro Claim”), unless caused or contributed to by the gross negligence or wilful misconduct of B.C. Hydro. Powerex will assume, upon request of B.C. Hydro, the defence of all such B.C. Hydro Claims, provided that B.C. Hydro will be entitled to participate in the defence of any such B.C. Hydro Claims and to employ counsel to assist in the handling of any such B.C. Hydro Claims.

15.2. **B.C. Hydro Indemnity**

B.C. Hydro will indemnify Powerex and hold it harmless against any claims, demands, losses, costs, damages, actions, suits or other proceedings made, sustained, brought or prosecuted against Powerex by a third party arising out of, or in any way based upon, any act or omission by B.C. Hydro in its operation of the B.C. Hydro System to ensure sufficient energy and capacity is available to serve B.C. Hydro’s Domestic Load, satisfy B.C. Hydro’s obligations under Interutility Agreements and Gas Utility Contracts, and respond to System Constraints (each, a “Powerex Claim”), unless caused or contributed to by the gross negligence or wilful misconduct of Powerex. B.C. Hydro will assume, upon request of Powerex, the defence of all such Powerex Claims, provided that Powerex will be entitled to participate in the defence of any such Powerex Claims and to employ counsel to assist in the handling of any such Powerex Claims.

15.3. Consequential Damages

In no event shall either party be liable to the other or to any third party for incidental, indirect, special or consequential damages, howsoever caused and on any theory of liability, arising out of or related to the performance of this Agreement.

16. DISPUTE RESOLUTION

16.1. Disputes Defined

For purposes of this Section 16, “Dispute” means any dispute that arises under or in connection with this Agreement and includes any failure to agree upon the Electricity Transfer Price, the Gas Transfer Price or the amounts contemplated by Section 6.2 or any of the factors that go into determining such prices.

16.2. Senior Executives

The parties shall use reasonable efforts to settle all Disputes. In the event any Dispute is not settled within 30 days after the date such Dispute arises, each party shall within 10 days refer the matter in dispute to its Senior Executive. The Senior Executives shall meet within 21 days to attempt to negotiate a resolution of the Dispute. Settlement offers shall not be admissible in any subsequent dispute resolution process.

16.3. Arbitration

If the parties have not succeeded in negotiating a resolution of the Dispute within 30 days after the first meeting of the Senior Executives or if the Senior Executives do not meet within 21 days, the parties shall be deemed to be at an impasse and either party may commence arbitration procedures in accordance with this Section. Unless the parties otherwise agree, any arbitration commenced in accordance with this Section 16 shall be determined by a single arbitrator and shall proceed in accordance with the Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre, as they may be in force at the time of the arbitration. The arbitrator will not have the jurisdiction to amend or vary the terms of this Agreement except as expressly provided in Section 9.4.

16.4. Sole Means of Resolving Dispute

The parties declare that arbitration pursuant to this Section 16 shall be the exclusive means of resolving any Dispute and the determination of the arbitrator shall be final and binding. The parties expressly declare that the arbitrator shall have the express authority to determine the Electricity Transfer Price, the Gas Transfer Price or the amounts contemplated by Section 6.2 in the event of a Dispute.

17. NOTICES

17.1. Notices

Any notice or other communication provided for herein or given hereunder to a party shall be in writing and shall be delivered by electronic transmission, or in person to the individual listed below:

17.1.1. to Powerex:

Powerex Corp.
Suite 1300, Park Place
666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Attention: Tom Bechard, President and CEO

Email address: tom.bechard@powerex.com

17.1.2. to B.C. Hydro:

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Attention: Heather Matthews, Director, Generation System Operations

Email address: heather.matthews@bchydro.com

or such other address with respect to a party as such party shall notify the other in writing as above provided. Notices by electronic transmission shall be deemed given upon

verification of successful transmission and notice in person shall be deemed given upon actual delivery.

18. **MISCELLANEOUS**

18.1. **No Partnership or Agency**

This Agreement does not create an association, joint venture or partnership between parties or impose any partnership obligation or liability upon either of them. Neither party will have any right, power or authority under this Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other.

18.2. **Waiver by Agreement**

This Agreement and any provision hereof may only be amended, waived, discharged, or terminated by an instrument in writing signed by the party against whom enforcement of the amendment, waiver, discharge, or termination is sought. No waiver or successive waivers by a party of any provision of this Agreement shall operate as a discharge of such covenant, agreement, or condition or render the same invalid or impair the right of one party to enforce the same in the event of any subsequent breach or breaches by the other.

18.3. **Amendments**

If at any time during this Agreement the parties consider it necessary or expedient to make an amendment, supplement, waiver, or other modification to this Agreement they may do so only by means of a written agreement between them.

18.4. **Severability**

If any term, covenant, or condition of this Agreement or application thereof to any person or circumstances shall to any extent be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement or application of such term, covenant, or condition to such person or circumstance other than those as to which it is held invalid, illegal or unenforceable shall not be affected thereby, and each term, covenant, or condition of this

Agreement and this Agreement shall be valid and legal and shall be enforced to the fullest extent permitted by law.

18.5. **Complete Agreement**

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and for greater certainty, replaces and supersedes the 2020 TPA in its entirety.

18.6. **Other Agreements**

If there is any conflict between the provisions of this Agreement and any other agreement entered into prior to this Agreement, then the provisions of this Agreement shall control.

18.7. **Governing Laws**

This Agreement and the rights and obligations of the parties hereto shall be governed by and be construed in accordance with the laws of the Province of British Columbia.

18.8. **Assignment**

This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party.

18.9. **Successors And Assigns**

This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.10. **Counterparts**

This Agreement may be executed and delivered by electronic means and in two or more counterparts, each of which shall be deemed an original but all of which shall constitute but one instrument.

18.11. **Third Party Beneficiaries**

Except as provided expressly by this Agreement, nothing in this Agreement nor its performance shall be relied upon by third parties or create any rights or obligations to third parties.

[Remainder of page intentionally blank.]

18.12. Non Restriction

Nothing in this Agreement is intended to limit Powerex from conducting transactions outside of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**

By:  _____

POWEREX CORP.

By:  _____

APPENDIX A

CALCULATION OF ELECTRICITY TRANSFER PRICE

1. **INTERPRETATION**

1.1. **Interpretation**

In this Appendix A, a reference to a section is a reference to a section of this Appendix A unless otherwise specified as referring to the Agreement, in which case the reference refers to a section in the main body of the Agreement.

1.2. **Definitions**

For purposes of this Appendix A, the following words and terms shall have the following meanings:

- 1.2.1. “Annual Price” means, for any Transfer Period, the price determined under Section 8.
- 1.2.2. “Annual Flexible Surplus/Deficit” means, for each Transfer Period, the amount of energy determined as set forth in Section 9.1.
- 1.2.3. “BPA” means Bonneville Power Administration.
- 1.2.4. “Deficit Multiplier” means a mutually agreed multiplier included in the Annual Price when the Annual Flexible Surplus/Deficit for a Transfer Period is a negative number, such that the parties agree that the impact on the Electricity Transfer Price resulting from the adjustment of the Weighted Average Price at the end of the Transfer Period reflects the Electricity Transfer Pricing Principle; the Deficit Multiplier will be a value in the range of 0.75-0.95 and is initially 0.85.
- 1.2.5. “Electricity Transfer Pricing Principle” means the pricing principle established by Section 9.1 of the Agreement;

- 1.2.6. “Flexible Export Price” means, for any hour during a Transfer Period, the price determined under Section 4.3.
- 1.2.7. “Flexible Import Price” means, for any hour during a Transfer Period, the price determined under Section 4.2.
- 1.2.8. “Flexible Price” means, for an hour during a Transfer Period, the price determined under Section 4.1.
- 1.2.9. “Hourly Index Price” means, for any hour during a Transfer Period, the price determined under Section 6 for that hour.
- 1.2.10. “Losses” means the BPA average system-wide loss factor (as a percentage) charged under BPA’s tariff multiplied by the On-Peak Price or the Off-Peak Price, as the case may be, for the applicable hour, plus any other charges for ancillary services.
- 1.2.11. “NERC” means the North American Electric Reliability Council or any successor organization.
- 1.2.12. “Net Scheduled Flexible Quantity to B.C. Hydro” has the meaning set forth in Section 3.1;
- 1.2.13. “Net Scheduled Flexible Quantity to Powerex” has the meaning set forth in Section 3.1;
- 1.2.14. “Non-Flexible Export Price” means, for any hour during a Transfer Period, the price determined under Section 5.3.
- 1.2.15. “Non-Flexible Import Price” means, for any hour during a Transfer Period, the price determined under Section 5.2.
- 1.2.16. “Non-Flexible Price” means, for any hour during a Transfer Period, the price determined under Section 5.1.

- 1.2.17. “Off-Peak Hours” means the hours ending 1 through 6 and the hours ending 23 and 24, Monday through Saturday, and all hours on Sunday and NERC holidays.
- 1.2.18. “Off-Peak Price” means, for an Off-Peak Hour, the ICE Mid-C Off-Peak Index price (in US\$/MWh) for that hour.
- 1.2.19. “On-Peak Hours” means the hours ending 7 through 22, Monday through Saturday, excluding NERC holidays.
- 1.2.20. “On-Peak Price” means, for an On-Peak Hour, the ICE Mid-C Peak Index price (in US\$/MWh) for that hour.
- 1.2.21. “Scheduled Non-Flexible Quantity to B.C. Hydro” has the meaning set forth in Section 3.2;
- 1.2.22. “Scheduled Non-Flexible Quantity to Powerex” has the meaning set forth in Section 3.2;
- 1.2.23. “System Adjustment Value” means, for any Transfer Period, the value determined in accordance with Section 10.
- 1.2.24. “Surplus Multiplier” means a mutually agreed multiplier included in the Annual Price when the Annual Flexible Surplus/Deficit for a Transfer Period is a positive number, such that the parties agree that the impact on the Electricity Transfer Price resulting from the adjustment of the Weighted Average Price at the end of the Transfer Period reflects the Electricity Transfer Pricing Principle; the Surplus Multiplier will be a value in the range of 1.05-1.25 and is initially 1.15.
- 1.2.25. “Transfer Volume Account” means, at any time from the first hour on the Commencement Date until the end of term of the Agreement, the volume of electricity (in MWh) determined in accordance with Section 7.

1.2.26. “Transmission Costs” means the rate under the prevailing BPA tariff for hourly non-firm transmission in the applicable hour.

1.2.27. “Weighted Average Price” means, at any time from the first hour on the Commencement Date until the end of term of the Agreement, the weighted average price (in US\$/MWh) of each MWh comprising the Transfer Volume Account, determined in accordance with Section 7.

2. **CALCULATION OF ELECTRICITY TRANSFER PRICE**

2.1. **Electricity Transfer Price**

For each hour during a Transfer Period, the Electricity Transfer Price will be the weighted average of:

2.1.1. the Flexible Price associated with the volume (if any) of the Net Scheduled Flexible Quantity for that hour; and

2.1.2. the Non-Flexible Price associated with the volume (if any) of the Scheduled Non-Flexible Quantity for that hour.

3. **NET SCHEDULED QUANTITIES**

3.1. **Net Scheduled Flexible Quantities**

The parties shall for each hour determine the quantity (in MWh) of:

3.1.1. all electricity scheduled by Powerex to B.C. Hydro pursuant to a Flexible Import Schedule within the hour; and

3.1.2. all electricity scheduled by B.C. Hydro to Powerex pursuant to a Flexible Export Schedule within the hour.

If in an hour the amount (in MWh) of electricity referred to in Section 3.1.1 exceeds the amount of electricity referred to in Section 3.1.2, such excess will be a “Net Scheduled Flexible Quantity to B.C. Hydro”, and if in an hour the amount (in MWh) of electricity referred to in Section 3.1.2 exceeds the amount of electricity referred to in Section 3.1.1,

such excess will be a “Net Scheduled Flexible Quantity to Powerex”. In each hour during a Transfer Period, the “Net Scheduled Flexible Quantity” will be the Net Scheduled Flexible Quantity to B.C. Hydro or the Net Scheduled Flexible Quantity to Powerex, whichever is applicable.

3.2. Scheduled Non-Flexible Quantities

The parties shall for each hour determine the quantity (in MWh) of:

3.2.1. electricity scheduled by Powerex to B.C. Hydro pursuant to a Non-Flexible Import Schedule within the hour, the quantity (in MWh) of such electricity will be a “Scheduled Non-Flexible Quantity to B.C. Hydro”; and

3.2.2. electricity scheduled by B.C. Hydro to Powerex pursuant to a Non-Flexible Export Schedule within the hour, the quantity (in MWh) of such electricity will be a “Scheduled Non-Flexible Quantity to Powerex”;

and the “Scheduled Non-Flexible Quantity” for the hour will be the Scheduled Non-Flexible Quantity to B.C. Hydro or the Scheduled Non-Flexible Quantity to Powerex, whichever is applicable.

4. FLEXIBLE PRICE

4.1. Flexible Price

In each hour during a Transfer Period, the “Flexible Price” will be:

4.1.1. where there is a Net Scheduled Flexible Quantity to B.C. Hydro in that hour, the Flexible Import Price; and

4.1.2. where there is a Net Scheduled Flexible Quantity to Powerex in that hour, the Flexible Export Price.

4.2. Flexible Import Price

In any hour during a Transfer Period in which there is a Net Scheduled Flexible Quantity to B.C. Hydro, the “Flexible Import Price” will be:

- 4.2.1. if at the beginning of the hour the Transfer Volume Account is zero or a positive amount, the applicable Hourly Index Price specified in Section 6.1; and
- 4.2.2. if at the beginning of the relevant hour the Transfer Volume Account is a negative amount, the Weighted Average Price, unless and until the Transfer Volume Account during that hour becomes positive as the volume of the associated Net Scheduled Flexible Quantity to B.C. Hydro is added to the Transfer Volume Account, in which case, the “Flexible Import Price” for each MWh of electricity thereafter scheduled as a Net Scheduled Flexible Quantity to B.C. Hydro in that hour shall be the Hourly Index Price applicable thereto.

4.3. **Flexible Export Price**

In any hour during a Transfer Period in which there is a Net Scheduled Flexible Quantity to Powerex, the “Flexible Export Price” will be:

- 4.3.1. if at the beginning of the relevant hour the Transfer Volume Account is zero or a positive amount, the Weighted Average Price, unless and until the Transfer Volume Account during that hour becomes negative as the volume of the associated Net Scheduled Flexible Quantity to Powerex is subtracted from the Transfer Volume Account, in which case, the “Flexible Export Price” for each MWh of electricity thereafter scheduled as a Net Scheduled Flexible Quantity to Powerex during that hour shall be the Hourly Index Price applicable thereto; and
- 4.3.2. if at the beginning of the relevant hour the Transfer Volume Account is a negative amount, the applicable Hourly Index Price specified in Section 6.2.

5. NON-FLEXIBLE PRICE

5.1. Non-Flexible Price

In each hour during a Transfer Period, the “Non-Flexible Price” will be:

5.1.1. where there is a Scheduled Non-Flexible Quantity to B.C. Hydro in that hour, the Non-Flexible Import Price; or

5.1.2. where there is a Scheduled Non-Flexible Quantity to Powerex in that hour, the Non-Flexible Export Price.

5.2. Non-Flexible Import Price

In any hour during a Transfer Period in which there is a Scheduled Non-Flexible Quantity to B.C. Hydro, the Non-Flexible Import Price will be the applicable Hourly Index Price specified in Section 6.1.

5.3. Non-Flexible Export Price

In any hour during a Transfer Period in which there is a Scheduled Non-Flexible Quantity to Powerex, the Non-Flexible Export Price will be the applicable Hourly Index Price specified in Section 6.2.

6. HOURLY INDEX PRICE

6.1. Net Delivered or Scheduled Quantities to B.C. Hydro

In any hour during a Transfer Period, the Hourly Index Price applicable to a Net Delivered Quantity to B.C. Hydro, a Net Scheduled Flexible Quantity to B.C. Hydro or a Scheduled Non-Flexible Quantity to B.C. Hydro will be:

6.1.1. for each On-Peak Hour, the price (in US\$/MWh) obtained by adding to the On-Peak Price the Transmission Costs and Losses; and

6.1.2. for each Off-Peak Hour, the price (in US\$/MWh) obtained by adding to the Off-Peak Price the Transmission Costs and Losses.

6.2. Net Delivered or Scheduled Quantities to Powerex

In any hour during a Transfer Period, the Hourly Index Price applicable to a Net Delivered Quantity to Powerex, a Net Scheduled Flexible Quantity to Powerex or a Scheduled Non-Flexible Quantity to Powerex shall be:

- 6.2.1. for each On-Peak Hour, the price in (US\$/MWh) obtained by subtracting from the On-Peak Price for that hour, the Transmission Costs and Losses; and
- 6.2.2. for each Off-Peak Hour, the price (in US\$/MWh) obtained by subtracting from the Off-Peak Price for that hour, the Transmission Costs and Losses.

7. TRANSFER VOLUME ACCOUNT AND WEIGHTED AVERAGE PRICE

7.1. Initial Values of Transfer Volume Account and Weighted Average Price

- 7.1.1. The volume of the Transfer Volume Account at 12:00 a.m. on the Commencement Date will be the volume (in MWh) of the Trade Account under the 2003 TPA at 11:59 p.m. on March 31, 2020.
- 7.1.2. The “Weighted Average Price” at 12:00 a.m. on the Commencement Date will be the weighted average price of each MWh in the Trade Account under the 2003 TPA at 11:59 p.m. on March 31, 2020.

7.2. Hourly Adjustments

- 7.2.1. In each hour of a Transfer Period, the Transfer Volume Account will be adjusted by adding the volume of any Net Scheduled Flexible Quantity to B.C. Hydro in that hour or subtracting the volume of any Net Scheduled Flexible Quantity to Powerex in that hour, as the case may be.
- 7.2.2. At the time of each hourly adjustment of the Transfer Volume Account, the Weighted Average Price will be adjusted on a weighted average basis, applying the applicable Flexible Price to each MWh of the volume of the adjustment.

- 7.2.3. There will be no hourly adjustment to the Transfer Volume Account or the Weighted Average Price to account for a Scheduled Non-Flexible Quantity in any hour.

7.3. **Annual Adjustments**

- 7.3.1. Immediately before the end of each Transfer Period, the Transfer Volume Account will be adjusted by adding the Annual Flexible Surplus/Deficit for the Transfer Period to the Transfer Volume Account (each, an “Annual Surplus Adjustment” if the Annual Flexible Surplus/Deficit for the Transfer Period is a positive amount, or an “Annual Deficit Adjustment” if the Annual Flexible Surplus/Deficit for the Transfer Period is a negative amount).

- 7.3.2. At the time of each Annual Surplus Adjustment, the Weighted Average Price will be adjusted on a weighted average basis, applying the following price to each MWh of the volume of the Annual Surplus Adjustment:

7.3.2.1.the applicable Annual Price; less

7.3.2.2.the System Adjustment Value divided by the volume of the Annual Surplus Adjustment.

- 7.3.3. At the time of each Annual Deficit Adjustment, the Weighted Average Price will be adjusted on a weighted average basis, applying the following prices to each MWh of the volume of the Annual Deficit Adjustment:

7.3.3.1.the applicable Annual Price; plus

7.3.3.2.the System Adjustment Value divided by the volume of the Annual Deficit Adjustment.

8. **ANNUAL PRICE**

8.1. **Annual Flexible Surplus/Deficit – Deficit**

The Annual Price for a Transfer Period when the applicable Annual Flexible Surplus/Deficit is a negative number will be:

8.1.1. the simple average of the On-Peak Prices and Off-Peak Prices, as applicable to each hour, for all hours during the Transfer Period, multiplied by the Deficit Multiplier; plus

8.1.2. the applicable Transmission Costs and Losses.

8.2. **Annual Flexible Surplus/Deficit – Surplus**

The Annual Price for a Transfer Period when the applicable Annual Flexible Surplus/Deficit is a positive number will be:

8.2.1. the simple average of the On-Peak Prices and Off-Peak Prices, as applicable to each hour, for all hours during the Transfer Period, multiplied by the Surplus Multiplier; less

8.2.2. the applicable Transmission Costs and Losses.

9. **ANNUAL FLEXIBLE SURPLUS/DEFICIT**

9.1. **Calculation of Annual Flexible Surplus/Deficit**

For each Transfer Period, the Annual Flexible Surplus/Deficit will be determined, for the purposes of this Agreement, as follows:

9.1.1. the total stored energy at B.C. Hydro's large basin reservoirs at the end of the Transfer Period; less

9.1.2. the total stored energy at B.C. Hydro's large basin reservoirs at the beginning of the Transfer Period; less

9.1.3. the net scheduled imports into British Columbia at the British Columbia-United States border during the Transfer Period; plus

- 9.1.4. the net scheduled third-party imports into British Columbia at the British Columbia-United States border during the Transfer Period, as may be adjusted to appropriately account for net third-party imports occurring within British Columbia; less
- 9.1.5. the net scheduled imports into British Columbia at the British Columbia-Alberta border during the Transfer Period; plus
- 9.1.6. the net scheduled third-party imports into British Columbia at the British Columbia-Alberta border during the Transfer Period, as may be adjusted to appropriately account for net third-party imports occurring within British Columbia; less
- 9.1.7. any electricity purchased in British Columbia by Powerex and sold to B.C. Hydro, including for greater certainty electricity purchased from B.C. Hydro under Sections 5.1 or 5.2 of the Agreement or from independent power producers or other entities; plus
- 9.1.8. the aggregate amount of Scheduled Non-Flexible Quantities to B.C. Hydro during the Transfer Period; less
- 9.1.9. the aggregate amount of Scheduled Non-Flexible Quantities to Powerex during the Transfer Period; less
- 9.1.10. the net amount of electricity scheduled by Powerex to satisfy B.C. Hydro's obligations under Interutility Agreements.

10. **SYSTEM ADJUSTMENT VALUE**

10.1. **System Adjustment Value**

At the end of each Transfer Period, B.C. Hydro will determine the net financial value (the "System Adjustment Value") of:

10.1.1. the impact resulting from Powerex's decisions on the timing and hourly volume of imports and exports on head gains and losses and on spill in the B.C. Hydro System during the Transfer Period; and

10.1.2. the incremental financial impact on B.C. Hydro associated with Powerex's decisions on the timing and hourly volume of imports and exports on the Scheduled Non-Flexible Quantity in each hour during the Transfer Period.

A positive System Adjustment Value will indicate that the impact of Powerex's decisions on the timing and hourly volume of imports and exports on head gains and losses and on spill in the B.C. Hydro System and the incremental financial impact on B.C. Hydro associated with Powerex's decisions on the timing and hourly volume of imports and exports on the Scheduled Non-Flexible Quantities were net positive during the Transfer Period, and a negative System Adjustment Volume will indicate that such impacts were net negative during the Transfer Period.

11. **ICE MID-C INDEX PRICE**

For purposes of the calculations in this Appendix A, it is assumed that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price are determined in the manner specified in the "ICE Futures U.S. Rulebook Subchapter 18B – Power Futures Contracts" for those indices and published by ICE in the ICE Day Ahead Power Report for transactions reported at the Mid-C hub. In the event that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price referred to in this Appendix A are no longer determined in the manner described in the foregoing publications, then, if the change is material, either party may, by notice to the other party, seek to renegotiate the then current pricing methodology using the process set out in Section 9.4 of the Agreement.

APPENDIX B

CALCULATION OF GAS TRANSFER PRICE

1. **INTERPRETATION**

1.1. **Definitions**

For purposes of this Appendix B the following words and terms shall have the following meanings:

1.1.1. “Agreement” means the Amended and Restated Transfer Pricing Agreement to which this Appendix B is attached and of which it forms a part.

1.1.2. “Bid Week” means the last 5 trading days of each calendar month, where a trading day is defined as any day that the Intercontinental Exchange (ICE) is trading physical natural gas.

1.1.3. “Daily Index Price” means any one of the following daily index prices applicable to the sale of Gas from Powerex to B.C. Hydro pursuant to this Agreement, as determined by Powerex in accordance with Section 7.5 of the Agreement:

- (a) The “NGX SPECTRA - Stn2 DAY AHEAD AVERAGE” index, as published by Canadian Gas Price Reporter Daily, being the weighted average of all daily fixed price trades at Station 2 on the ICE/NGX platform;
- (b) The Midpoint of Northwest, Canadian border (Sumas) index price set out in Gas Daily, as published by Platts, a division of The McGraw-Hill Companies Inc., being the weighted average of all daily fixed price trades at Sumas daily, reported by index participants.

- (c) The AECO-NIT Daily Spot gas index price set out in the Canadian Gas Price Reporter, as published by Canadian Enerdata Ltd., being the volume-weighted average of all gas trades that occur on the NGX trading platform for a particular delivery day.
- (d) The Midpoint of PG&E-GTNW, Kingsgate index price, set out in Gas Daily as published by Platts, a division of The McGraw-Hill Companies Inc. being the weighted average of all daily fixed trades at Kingsgate daily, reported by index participants.

1.1.4. “Monthly Index Price” means any one of the following monthly index prices applicable to the sale of Gas from Powerex to B.C. Hydro pursuant to this Agreement, as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.3 of the Agreement:

- (a) The Station 2 one-month spot gas index price as set out in Canadian Gas Price Reporter, published by Canadian Enerdata Ltd., being the volume-weighted average of all monthly fixed price trades as reported by index participants.
- (b) The Northwest Pipeline Corp., Canadian Border Index price as set out in FERC’s gas market report monthly prices of spot gas delivered to pipelines at Sumas, as published by Platts, a division of The McGraw-Hill Companies Inc., being the weighted average of all monthly fixed price trades reported at Sumas during the Bid-Week prior to the month of delivery.
- (c) The AECO-NIT One-Month spot gas index price set out in the Canadian Gas Price Reporter, as published by Canadian Enerdata Ltd., being a volume-weighted average of all gas trades that occur on the NGX trading platform for a particular prompt delivery month.

1.2. Interpretation

In this Appendix B, references to Sections are references to Sections of this Appendix B unless otherwise specified.

1.3. Conversion

Any references to MMBtu's in any Daily Index Price or Monthly Index Price, shall be converted to GJ on the basis that one MMBtu equals 1.055056 GJ's.

1.4. Index Prices

In the event that a Monthly Index Price or Daily Index Price, or any other published index price on which the Gas Transfer Price may be based ceases to exist, or ceases to be representative of the price for daily or monthly, as the case may be, fixed price Gas trades, at the applicable trading hub, or the manner of determining such index price materially changes, or if either party wish to use another such index price for any reason, then either party may, by notice to the other party, seek to renegotiate the applicability of that Monthly Index Price or Daily Index Price and a suitable replacement therefore, using the process set out in Section 9.4 of the Agreement.

1.5. Gas Transfer Price

The Gas Transfer Prices payable by B.C. Hydro to Powerex are as follows:

- 1.5.1. the Monthly Index Price as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.3 of the Agreement, for each day in which B.C. Hydro has requested a Specified Contract Quantity for use at a Thermal Generation Plant or for the purpose of serving a Gas Utility Contract, as the case may be; and
- 1.5.2. the Daily Index Price as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.5 of the Agreement, for each day in which B.C. Hydro has requested an Additional Daily Quantity for use at a

Thermal Generation Plant or for the purpose of serving a Gas Utility Contract, as the case may be.

APPENDIX C

1. **FORWARD CAPACITY COMMITMENT**

1.1. B.C. Hydro will make available to Powerex a minimum quantity of capacity forming part of the Residual System Capability in the months of March to October of each year from 2024 until and including 2055 (the “Capacity Period”), or in such other months or during such other Capacity Period as may be agreed by the parties from time to time, to support firm exports of electricity by Powerex (collectively, the “Forward Capacity Commitment”), subject to the following:

1.1.1. B.C. Hydro’s obligation to make the quantity of capacity available to Powerex under the Forward Capacity Commitment on the terms set out in this Agreement will be subject to an aggregate maximum quantity limit of 1000MW and Powerex having notified B.C. Hydro of the amount of capacity pursuant to the Forward Capacity Commitment that it requires and the relevant term;

1.1.2. In the months of March, April, May and October, the aggregate maximum quantity limit of 1000MW will be reduced by the amount (in MW) of the capacity component of the Canadian Entitlement in the applicable month and year.

1.1.3. Powerex will be solely responsible to schedule electricity on the terms set out in this Agreement to make use of the Forward Capacity Commitment, and such electricity may be scheduled by Powerex under Section 4.3.1 of the Agreement at its discretion.

1.1.4. B.C. Hydro expects that there will be sufficient Residual System Capability in the months of March to October to support the Forward Capacity Commitment until at least 2040 and will monitor the expected Residual System Capability on a rolling ten-year timeframe to confirm whether the Residual System Capability is expected to be able to support the Forward Capacity Commitment in that timeframe. If B.C. Hydro anticipates at any

time that the Residual System Capability will be unable to support the Forward Capacity Commitment within the then current ten-year timeframe, B.C. Hydro will notify Powerex of the amount and timing of the anticipated Residual System Capability shortfall at least five years before the shortfall is anticipated to come into effect or as soon as reasonably practicable after B.C. Hydro determines that it expects the Residual System Capability to be unable to support the Forward Capacity Commitment.

- 1.1.5. Powerex acknowledges that B.C. Hydro is under no obligation to make changes to its resource planning or increase the Residual System Capability to accommodate the Forward Capacity Commitment, including by adding or procuring new capacity to or for the B.C. Hydro System. B.C. Hydro will have no liability to Powerex in the event that it is unable to satisfy the Forward Capacity Commitment from time to time during the Capacity Period, and in such circumstances, Powerex assumes all associated costs and risks, including any regulatory requirements, associated with procuring any additional capacity that may be necessary.
- 1.1.6. To the extent that, as a result of making Residual System Capability available to Powerex pursuant to the Forward Capacity Commitment, Powerex schedules electricity to B.C. Hydro under Section 4.2 of the Agreement for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), or responding to System Constraints, any such schedule will be deemed to be a “Flexible Import Schedule” for the purposes of Section 4.2 of the Agreement.
- 1.1.7. The parties agree that, if the term of this Agreement ends prior to the end of the Capacity Period, the Forward Capacity Commitment will be a commitment of the parties that exists on and extends beyond the termination of this Agreement for the purposes of Section 2.4 of the Agreement.

**BC Hydro 2020 Transfer Pricing Agreement
Amendments**

Attachment 3

**Black-lined Version Comparing the 2020 TPA to the
Amended and Restated 2020 TPA**

AMENDED AND RESTATED TRANSFER PRICING AGREEMENT

This Agreement ~~is dated effective~~originally made as of April 1, 2020 is amended and restated effective as of December 1, 2023:

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, a
corporation continued under the Hydro and Power Authority Act

(**“B.C. Hydro”**)

AND:

POWEREX CORP., a company duly incorporated under the laws of
the Province of British Columbia

(**“Powerex”**)

WHEREAS:

- A. B.C. Hydro carries on electrical utility operations in the Province of British Columbia and operates the B.C. Hydro System to: (i) ensure sufficient energy and capacity is available to serve B.C. Hydro’s Domestic Load, satisfy B.C. Hydro’s obligations under Interutility Agreements and respond to System Constraints; (ii) minimize the cost of serving Domestic Load, satisfying obligations under Interutility Agreements and responding to System Constraints; and (iii) maximize the value of the Residual System Capability;
- B. Powerex is engaged in the sale and purchase of energy products, principally with customers and suppliers in other Canadian provinces and the United States, and purchases transmission and transportation capacity in order to support energy product transactions;
- C. The parties wish to confirm the relationship between B.C. Hydro and Powerex under which B.C. Hydro will make the Residual System Capability available exclusively to Powerex, including selling exclusively to Powerex electricity that is surplus to B.C.

Hydro's requirements to serve Domestic Load, satisfy obligations under Interutility Agreements and respond to System Constraints, and purchasing exclusively from Powerex electricity required by B.C. Hydro to serve Domestic Load, satisfy obligations under Interutility Agreements and respond to System Constraints that is not supplied from the B.C. Hydro System, and to confirm the manner in which the parties will otherwise purchase and sell electricity to each other to enable B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and to enhance B.C. Hydro's energy reliability;

- D. B.C. Hydro is a purchaser of natural gas and wishes to confirm the relationship between B.C. Hydro and Powerex under which B.C. Hydro will purchase its requirements for natural gas exclusively from Powerex and sell exclusively to Powerex its surplus natural gas; and
- E. ~~Both~~ B.C. Hydro and Powerex wish to amend and restate the 2020 TPA in its entirety to set out their respective obligations in connection with the foregoing.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. DEFINITIONS

1.1. Definitions

In this Agreement:

1.1.1. "2003 TPA" means the Transfer Pricing Agreement dated as of April 1, 2003 between B.C. Hydro and Powerex, as amended;

1.1.2. "2020 TPA" means the Transfer Pricing Agreement dated effective as of April 1, 2020 between B.C. Hydro and Powerex;

1.1.3. ~~1.1.2.~~ "Additional Daily Quantity" has the meaning set forth in Section 7.4;

1.1.4. ~~1.1.3.~~ "Agreement" means this amended and restated transfer pricing agreement, together with any appendices, as amended from time to time;

- 1.1.5. ~~1.1.4.~~ “B.C. Hydro System” means the reservoirs and all generating resources and related facilities that are owned or controlled by B.C. Hydro, and includes long-term supply contracted by B.C. Hydro from time to time from independent power producers or others;
- 1.1.6. ~~1.1.5.~~ “Canadian Entitlement” means at any time the downstream power benefits to which Canada is then entitled as described in ~~Articles V(1) and VII of~~ the Columbia River Treaty;
- 1.1.7. ~~1.1.6.~~ “Columbia River Treaty” means the “Treaty between Canada and the United States of America relating to the Cooperative Development of the Water Resources of the Columbia River Basin” including its Annexes A and B” signed at Washington, District of Columbia, United States of America on the 17th day of January, 1961, and the Protocol brought into force by exchange of instruments of ratification and an exchange of notes on September 16, 1964, as may be amended, supplemented or replaced;
- 1.1.8. ~~1.1.7.~~ “Commencement Date” means April 1, 2020;
- 1.1.9. ~~1.1.8.~~ “Domestic Gas Requirements” means the quantity of Gas required by B.C. Hydro for its Thermal Generation Plants to serve Domestic Load, satisfy B.C. Hydro’s obligations under Interutility Agreements and Gas Utility Contracts, and respond to System Constraints;
- 1.1.10. ~~1.1.9.~~ “Domestic Load” means load that B.C. Hydro is obligated to serve under its electricity tariffs by reason of its status as a public utility, including transmission losses within the Province of British Columbia;
- 1.1.11. ~~1.1.10.~~ “Electricity Transfer Price” means, ~~for an hour,~~ the price ~~(in US\$/MWh)~~ set forth in Appendix A for electricity and any associated products and services that are delivered, sold or purchased on or after the Commencement Date between B.C. Hydro and Powerex pursuant to ~~Section 4.9 of~~ this Agreement;

1.1.12. “Environmental Attributes” means all environmental characteristics, credits, allowances, claims, reductions, offsets, and benefits created by, resulting from or associated with the generation of electricity;

1.1.13. ~~1.1.11.~~ “Flexible Export Schedule” means a schedule of electricity described in Section 4.3.1 and, subject to Section 4.6, any schedule deemed to be a Flexible Export Schedule in Section 4.5;

1.1.14. ~~1.1.12.~~ “Flexible Import Schedule” means a schedule of electricity described in Section 4.2.1, a Skagit Schedule, any schedule deemed to be a Flexible Import Schedule in Section 1.1.6 of Appendix C, and, subject to Section 4.6, any schedule deemed to be a Flexible Import Schedule in Section 4.5;

1.1.15. ~~1.1.13.~~ “Force Majeure” means any event or circumstance not within the reasonable control of the party seeking to suspend its performance of an obligation, and not avoidable by that party’s reasonable diligence, and subject to the foregoing includes: a strike, lockout or labour dispute; an act of God; inability to obtain labour or (other than as set out below relating to supply of electricity or Gas) materials; laws, ordinances, rules, regulations or orders of governmental authorities; enemy or hostile action; civil commotion; fire or other casualty, but does not include: (i) any condition or cause which is the result of the negligence of the claiming party, or which by the exercise of due diligence, the claiming party is or would be able to avoid, cause to be avoided, or overcome; or (ii) lack of finances; (iii) any inability of the claiming party to use or resell the electricity or Gas purchased hereunder; or (iv) the loss or failure of the claiming party’s supply of electricity or Gas, if the claiming party is the seller;

1.1.16. ~~1.1.14.~~ “Fort Nelson” means the gas-fired generating plant owned by B.C. Hydro and located in Fort Nelson, British Columbia;

1.1.17. ~~1.1.17.~~ “Forward Capacity Commitment” has the meaning set forth in Section 1.1 of Appendix C;

1.1.18. ~~1.1.15.~~ “Gas” means natural gas;

1.1.19. ~~1.1.16.~~ “Gas Delivery Point” means:

1.1.19.1. ~~1.1.16.1.~~ for Gas purchased for use at a Thermal Generation Plant, the recognized custody transfer point between the applicable Thermal Generation Plant and the gas pipeline that serves it; and

1.1.19.2. ~~1.1.16.2.~~ for Gas purchased for the purpose of serving the Gas Utility Contracts, the delivery point(s) specified in the Gas Utility Contracts;

1.1.20. ~~1.1.17.~~ “Gas Losses” means for each day, all lost and unaccounted for Gas and Gas burned to fuel compressors, from the applicable Gas Transfer Point to the applicable Gas Delivery Point;

1.1.21. ~~1.1.18.~~ “Gas Transfer Point” means:

1.1.21.1. ~~1.1.18.1.~~ with respect to Gas forming part of a Specified Contract Quantity, any of the points at which the index prices set out in Section 1.1.4 of Appendix B are determined; and

1.1.21.2. ~~1.1.18.2.~~ with respect to Gas forming part of an Additional Daily Quantity, any of the points at which the index prices set out in Section 1.1.3 of Appendix B are determined;

1.1.22. ~~1.1.19.~~ “Gas Transfer Price” means the price determined in accordance with Section 1.5 of Appendix B;

1.1.23. ~~1.1.20.~~ “Gas Utility Contracts” means any agreement between B.C. Hydro and one or more third parties in effect from time to time that provides for

the supply of Gas by B.C. Hydro on a firm or interruptible basis, but excludes agreements whose purpose is the purchase and sale of gas or gas transportation for profit;

1.1.24. ~~1.1.21.~~ “Island Generation” means the gas-fired generating plant located at Elk Falls, British Columbia;

1.1.25. ~~1.1.22.~~ “Imbalance Charges” means any fees, penalties, costs or charges (in cash or in kind) assessed by the applicable transportation provider(s) in respect of the Transportation Capacity, for failure to satisfy the transportation balance and nomination requirements;

1.1.26. ~~1.1.23.~~ “Interutility Agreement” means:

1.1.26.1. ~~1.1.23.1.~~ an agreement between B.C. Hydro and one or more third parties related to the coordination of generation, transmission and/or reservoir operations;

1.1.26.2. ~~1.1.23.2.~~ an agreement between B.C. Hydro and one or more balancing authorities or reliability entities for the purpose of maintaining transmission and generation system reliability;

1.1.26.3. ~~1.1.23.3.~~ an agreement between B.C. Hydro and one or more third parties relating to international treaty obligations of Canada;

1.1.26.4. ~~1.1.23.4.~~ an agreement under which B.C. Hydro exports electricity pursuant to a border accommodation electricity export permit issued by the National Energy Board or any successor permit; or

1.1.26.5. ~~1.1.23.5.~~ any other agreement with one or more third parties under which B.C. Hydro imports or exports electricity to or from the B.C. Hydro System,

but excludes agreements whose purpose is the purchase and sale of transmission or electricity and any associated products and services for B.C. Hydro's profit;

1.1.27. ~~1.1.24.~~ "Net Delivered Quantity to B.C. Hydro" has the meaning set forth in Section 4.8;

1.1.28. ~~1.1.25.~~ "Net Delivered Quantity to Powerex" has the meaning set forth in Section 4.8;

1.1.29. ~~1.1.26.~~ "Non-Flexible Export Schedule" means a schedule of electricity described in Section 4.3.2 and any schedule deemed to be a Non-Flexible Export Schedule in Section 4.6;

1.1.30. ~~1.1.27.~~ "Non-Flexible Import Schedule" means a schedule of electricity described in Section 4.2.2 and any schedule deemed to be a Non-Flexible Import Schedule in Section 4.6;

1.1.31. ~~1.1.28.~~ "Open Access Transmission Tariff" means the tariff under which B.C. Hydro provides open-access non-discriminatory services on the Transmission System, as amended from time to time, and including any successor tariff;

1.1.32. ~~1.1.29.~~ "Prime Rate" means the annual rate of interest published by B.C. Hydro's principal banker from time to time as its prime rate;

1.1.33. ~~1.1.30.~~ "Residual System Capability" means, at any time and as determined by B.C. Hydro in its sole discretion, the capability of the B.C. Hydro System (including all power and non-power attributes of the B.C. Hydro System, which includes energy, capacity, flexibility and Environmental Attributes), while all Domestic Load requirements and Interutility Agreement obligations (including pursuant to operating procedures) are being satisfied and System Constraints are being responded to, to allow purchases of electricity and any associated products and services by B.C.

Hydro from Powerex and/or to allow sales of electricity and any associated products and services from B.C. Hydro to Powerex;

1.1.34. ~~1.1.31.~~ “RPG” means the gas-fired generating plant owned by B.C. Hydro and located in Prince Rupert, British Columbia;

1.1.35. ~~1.1.32.~~ “Senior Executive” means, for a party, its Chief Executive Officer or such other senior executive with primary responsibility for this Agreement from time to time, or duly appointed delegate;

1.1.36. ~~1.1.33.~~ “Skagit Schedule” has the meaning set forth in Section 4.7;

1.1.37. ~~1.1.34.~~ “Specified Contract Quantity” has the meaning set forth in Section 7.2;

1.1.38. ~~1.1.35.~~ “Specified Quantity Request” has the meaning set forth in Section 4.5;

1.1.39. ~~1.1.36.~~ “System Constraints” means any outage, suspension, constraint or curtailment in the operation of the B.C. Hydro System or the Transmission System, including forced outages on the B.C. Hydro System, forced outages on the Transmission System, and constraints arising as a result of minimum or maximum generation requirements or environmental, regulatory, or reservoir management requirements;

1.1.40. ~~1.1.37.~~ “Thermal Generation Plants” means the gas-fired generation plants owned or under the control of B.C. Hydro from time to time including Fort Nelson, Island Generation and RPG;

1.1.41. ~~1.1.38.~~ “Transfer Period” means, commencing on the Commencement Date, any one-year period from April 1st until March 31st;

1.1.42. ~~1.1.39.~~ “Transfer Pricing Principle” means the pricing principles established by Sections 9.1 and 9.2;

1.1.43. ~~1.1.40.~~ “Transmission System” means the transmission system owned or operated by B.C. Hydro;

1.1.44. ~~1.1.41.~~ “Transportation Capacity” has the meaning set forth in Section 7.8;

1.1.45. ~~1.1.42.~~ “Variable Operating Costs” means all incremental costs incurred by B.C. Hydro in respect of generation at the Thermal Generation Plants at the request of and for purchase by Powerex pursuant to Sections 5.1 or 5.2, as determined in good faith from time to time by B.C. Hydro; and

1.1.46. ~~1.1.43.~~ “Variable Transportation Costs” means all incremental transportation costs incurred by B.C. Hydro in respect of the use of the Transportation Capacity by Powerex for the purposes of trade.

1.2. Other Defined Terms

Capitalized words or phrases appearing in this Agreement that are defined in the appendices to this Agreement shall have the meanings ascribed to them in the appendices.

1.3. Interpretation

References in this Agreement to sections are references to sections of the body of the Agreement, unless otherwise specified as referring to a section in an appendix. All references in this Agreement to appendices are to the appendices attached to this Agreement. Reference to any party includes any permitted successor or assignee. The term “including” followed by descriptive words is used in this Agreement by way of example only and is not intended to limit the scope of the provision. The headings used in this Agreement are for convenience and reference purposes only.

2. TERM

2.1. Term

The ~~effective date~~term of this Agreement ~~is~~is commenced on April 1, 2020; ~~notwithstanding the actual date of execution or the Commencement Date. This~~

Agreement and shall continue in full force and effect until terminated by mutual agreement of the parties or as provided in Section 2.3.

2.2. Transitional Payment

2.2.1. If there is a positive balance in the Trade Account under the 2003 TPA at 12:00 a.m. on April 1, 2020, B.C. Hydro will pay to Powerex in a timely manner the amount obtained by multiplying the volume in MWh of the positive balance in the Trade Account under the 2003 TPA by the weighted average price of each MWh in the Trade Account under the 2003 TPA, in each case at 12:00 a.m. on April 1, 2020.

2.2.2. If there is a negative balance in the Trade Account under the 2003 TPA at 12:00 a.m. on April 1, 2020, Powerex will pay to B.C. Hydro in a timely manner the amount obtained by multiplying the volume in MWh of the negative balance in the Trade Account under the 2003 TPA by the weighted average price of each MWh in the Trade Account under the 2003 TPA, in each case at 12:00 a.m. on April 1, 2020.

2.3. Early Termination

Either party may terminate this Agreement at the end of a Transfer Period provided that written notice is given to the other party at least 60 days prior to the end of the applicable Transfer Period; for greater certainty, notice of termination given in the 60-day period prior to the end of a Transfer Period will have no effect. A termination effected by notice given in accordance with this section will take effect immediately following the annual adjustments for the Transfer Period provided for in Section 7.3 of Appendix A (the “Early Termination Time”).

2.4. Negotiation of New Transfer Pricing Agreement

Following the delivery of a notice of termination by either party under Section 2.3, the parties will negotiate a new agreement to confirm the relationship under which the parties will purchase and sell electricity and natural gas to each other following termination of

this Agreement, including provisions to address any existing commitments or liabilities of the parties that exist on and extend beyond the termination of this Agreement.

2.5. Effect of Termination

Notwithstanding any termination of this Agreement, provisions respecting obligations which have arisen or accrued prior to the date of termination will continue in full force and effect in accordance with their respective terms until such obligations have been fully satisfied.

2.6. Calculation of Net Settlement Amount on Termination

- 2.6.1. Within seven days of the Early Termination Time, the parties will, in good faith and in a commercially reasonable manner, determine the value of the gains or losses applicable to the Transfer Volume Account. The parties will determine the value of any such gains and losses by (i) calculating the market value of the volume in the Transfer Volume Account at the replacement or resale price (as applicable) at the British Columbia-United States border, relative to (ii) the value of the Transfer Volume Account determined by multiplying the volume in the Transfer Volume Account by the Weighted Average Price, discounted to present value. If consideration for any such gains or losses is included in the terms of a new or replacement transfer pricing agreement, then any gains or losses under this Agreement will be zero.
- 2.6.2. The parties will aggregate such gains or losses and any other amounts then owing but unpaid in respect of the period prior to the Termination Date into a single net amount (the “Net Settlement Amount”).
- 2.6.3. The party owing the Net Settlement Amount will pay the party owed the Net Settlement Amount such amount, in cash, within three business days of the parties agreeing to such calculation.

3. RESIDUAL SYSTEM CAPABILITY

3.1. Residual System Capability

B.C. Hydro shall make the Residual System Capability available exclusively to Powerex to support the sale and purchase to or from third parties of electricity and any associated products and services by Powerex. For greater certainty, B.C. Hydro is not providing any storage services to Powerex under this Agreement.

3.2. Attributes

Powerex's ability to sell to third parties electricity and any associated products and services with or without any of the specific attributes of the B.C. Hydro System comprising the Residual System Capability remains subject to B.C. Hydro's determination of the Residual System Capability at any time and the scheduling and other constraints set out in this Agreement. Each party will work in good faith with the other party, and prepare or provide such documentation, information and other assistance as is reasonably requested and necessary, to support current and future legal, regulatory and other requirements of each party, including as needed by Powerex to support its sales of electricity and any associated products and services.

3.3. Forward Capacity Commitment

Without limiting Sections 3.1 and 3.2, B.C. Hydro will make available to Powerex capacity forming part of the Residual System Capability on the terms set out in Appendix C.

4. PURCHASE AND SALE OF ELECTRICITY

4.1. Purchase and Sale of Electricity

B.C. Hydro shall purchase and sell electricity exclusively from and to Powerex as contemplated by this Agreement, and in doing so, B.C. Hydro will make electricity available to Powerex and Powerex will make import and export decisions, both acting in good faith and with the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro's energy reliability. In support of this

objective, B.C. Hydro will communicate to Powerex on a regular basis forecasts of the anticipated electricity surplus or deficit and the Residual System Capability in the B.C. Hydro System and Powerex will communicate to B.C. Hydro on a regular basis forecasts of its anticipated electricity import and export activities, and both parties will regularly communicate to each other any anticipated constraints referred to in Section 4.4 on their abilities to satisfy their obligations under this Part 4, all in accordance with Section 10.1.

4.2. Schedules to B.C. Hydro

Subject to Sections 4.4 and 4.5:

- 4.2.1. Powerex may at any time and in its discretion schedule electricity to B.C. Hydro on an hourly or sub-hourly basis, including electricity that Powerex has purchased from B.C. Hydro under Sections 5.1 or 5.2 or from independent power producers or other entities within British Columbia (each, a “Flexible Import Schedule”); and
- 4.2.2. Powerex will schedule electricity to B.C. Hydro on an hourly or sub-hourly basis as requested by B.C. Hydro for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), and responding to System Constraints, and, for greater certainty, Powerex may schedule for that purpose electricity that Powerex has purchased from B.C. Hydro under Sections 5.1 or 5.2 or from independent power producers or other entities within British Columbia (each, a “Non-Flexible Import Schedule”).

4.3. Schedules to Powerex

Subject to Sections 4.4 and 4.5:

- 4.3.1. B.C. Hydro will at Powerex’s request at any time schedule electricity to Powerex on an hourly or sub-hourly basis (each, a “Flexible Export Schedule”); and

- 4.3.2. Powerex will accept a schedule of electricity from B.C. Hydro on an hourly or sub-hourly basis as requested by B.C. Hydro for the purposes of responding to System Constraints (each, a “Non-Flexible Export Schedule”).

4.4. Constraints on Scheduling

The rights and obligations of the parties to schedule electricity under Sections 4.2, 4.3, 4.5, 4.6, and 4.7 shall be subject to:

- 4.4.1. availability of Residual System Capability;
- 4.4.2. applicable laws and/or limitations imposed on the parties by regulatory authorities with jurisdiction over their respective operations;
- 4.4.3. B.C. Hydro’s rights under the Open Access Transmission Tariff to use, and any constraints on, the Transmission System;
- 4.4.4. Powerex’s rights to use, and any constraints on, any transmission facilities required for Powerex to deliver or receive electricity to or from B.C. Hydro, as determined by Powerex at the time of the applicable request by B.C. Hydro; and
- 4.4.5. Powerex’s ability, as determined by Powerex at the time of the applicable request by B.C. Hydro, to purchase or sell electricity to or from external markets, provided that Powerex is complying with its obligations under Section 4.1 and, if requested by B.C. Hydro, provides B.C. Hydro with the reason(s) for its inability to satisfy such request.

4.5. Long-Term System Requirements

In addition to and without limiting B.C. Hydro’s rights under Sections 4.2.2 and 4.3.2, B.C. Hydro may in its discretion from time to time request in writing that Powerex schedule a specified aggregate quantity of electricity to or from the B.C. Hydro System over a specified period of time for the purposes of serving Domestic Load requirements,

satisfying Interutility Agreement obligations (including under any operating procedures), and responding to System Constraints (each request, a “Specified Quantity Request”). Subject to the conditions listed in Section 4.4, Powerex will schedule the aggregate amount of electricity subject to a Specified Quantity Request to or from the B.C. Hydro System during the specified period of time, provided that Powerex will in its discretion determine when and in what quantities each hour to schedule such aggregate amount of electricity in order to satisfy its obligation to B.C. Hydro under this Section 4.5. Subject to Section 4.6, any such schedules will be deemed for the purposes of this Agreement to be either a Flexible Import Schedule or Flexible Export Schedule, as the case may be. B.C. Hydro may from time to time revoke or replace any Specified Quantity Request made under this Section 4.5.

4.6. **Extraordinary Event**

If agreed in writing by the Senior Executives of the parties that a Specified Quantity Request was necessary to respond to an extraordinary, significant and reasonably unforeseeable event that would require Powerex to make substantial ongoing imports or exports of electricity outside of the ordinary course of Powerex’s business in order to meet its obligation to import or export the aggregate amount of electricity subject to a Specified Quantity Request, any schedules required to implement the Specified Quantity Request will be deemed for the purposes of this Agreement to be either a Non-Flexible Import Schedule or Non-Flexible Export Schedule, as the case may be. For greater certainty, variations in forecasted load or hydrology or outages occurring in the normal course of business will not be considered to be extraordinary, significant and reasonably unforeseeable events for the purposes of this Section 4.6.

4.7. **External Deliveries to Satisfy B.C. Hydro Interutility Agreement Obligations**

The parties acknowledge that, pursuant to certain agreements among the Province of British Columbia, the City of Seattle (including its division Seattle City Light) and B.C. Hydro, B.C. Hydro is the assignee of certain obligations to deliver electricity to Seattle City Light, and that B.C. Hydro subsequently assigned to Powerex certain of the operating obligations as they relate to delivery of electricity (the “Skagit Agreements”).

In connection with Powerex delivering electricity under the Skagit Agreements, Powerex has the discretion whether to supply electricity to Seattle City Light from the B.C. Hydro System or from sources outside of the B.C. Hydro System. If, in an hour, Powerex schedules energy to Seattle City Light that it has acquired from sources outside of the B.C. Hydro System to satisfy the obligations under the Skagit Agreements (each, a “**Skagit Schedule**”):

- 4.7.1. the Skagit Schedule in that hour will be deemed to be a Flexible Import Schedule for the purposes of Section 3.1.1 of Appendix A; and
- 4.7.2. B.C. Hydro will pay Powerex the amount obtained by multiplying each MWh associated with the Skagit Schedule in that hour by the applicable Flexible Import Price. For greater certainty, the MWh associated with the Skagit Schedule will not be included in the Net Delivered Quantity to B.C. Hydro calculated in Section 4.8.1 for the hour, and no additional amounts will be payable under Section 4.10 in respect of the MWh associated with the Skagit Schedule.

In the event that B.C. Hydro and Powerex enter into any similar agreement whereby Powerex supplies electricity to a party located outside of the B.C. Hydro System and has the discretion to supply such electricity from a source outside of the B.C. Hydro System, the parties agree that the provisions of this Section 4.7 will apply similarly to any such agreement.

4.8. **Determination of Net Delivered Quantities**

The parties shall for each hour determine the quantity (in MWh) of:

- 4.8.1. all electricity actually delivered by Powerex to B.C. Hydro under this Agreement within the hour; and
- 4.8.2. all electricity actually delivered by B.C. Hydro to Powerex under this Agreement within the hour, excluding any electricity delivered to Powerex under Sections 5.1 or 5.2 and any electricity delivered to Powerex and then

scheduled by Powerex to satisfy B.C. Hydro's obligations under Interutility Agreements.

If in an hour the amount (in MWh) of electricity referred to in Section 4.8.1 exceeds the amount of electricity referred to in Section 4.8.2, such excess will be a "Net Delivered Quantity to B.C. Hydro", and if in an hour the amount (in MWh) of electricity referred to in Section 4.8.2 exceeds the amount of electricity referred to in Section 4.8.1, such excess will be a "Net Delivered Quantity to Powerex".

4.9. Purchase and Sale of Electricity

In each hour of a Transfer Period:

4.9.1. B.C. Hydro will purchase from Powerex and Powerex will sell to B.C. Hydro any Net Delivered Quantity to B.C. Hydro; and

4.9.2. Powerex will purchase from B.C. Hydro and B.C. Hydro will sell to Powerex any Net Delivered Quantity to Powerex.

4.10. Payments for Electricity Transactions

The parties acknowledge and agree that:

4.10.1. B.C. Hydro will pay to Powerex the amount obtained by multiplying each MWh associated with the sale of a Net Delivered Quantity to B.C. Hydro by the applicable Electricity Transfer Price; and

4.10.2. Powerex will pay to B.C. Hydro the amount obtained by multiplying each MWh associated with the sale of a Net Delivered Quantity to Powerex by the applicable Electricity Transfer Price.

4.11. Annual Payment for Wear and Tear Associated with Powerex Import and Export Decisions

4.11.1. B.C. Hydro will, acting reasonably, develop and implement a procedure that will: (a) outline the factors that B.C. Hydro will take into account in determining whether or not Powerex's import and export decisions during a Transfer Period will result in increased or decreased wear and tear on the

B.C. Hydro System (each, a “Wear and Tear Determination”); and (b) provide: (i) the method by which wear and tear on the B.C. Hydro System is calculated and attributed to Powerex’s import and export decisions; and (ii) the methodology for determining the cost of, or cost saved in respect of, the increased or decreased wear and tear subject to the Wear and Tear Determination. B.C. Hydro may amend or replace such procedure from time to time, provided that any amended or replacement procedure will only take effect for the purposes of Section 4.11.2 on the first day of the next Transfer Period.

4.11.2. If B.C. Hydro determines, in accordance with a procedure established pursuant to Section 4.11.1, that Powerex’s import and export decisions during a Transfer Period have resulted in increased or decreased wear and tear on the B.C. Hydro System for a Transfer Period, B.C. Hydro will notify Powerex of such determination (including the applicable cost) within 30 days after the end of the Transfer Period. Provided that Powerex received a copy of the procedure referred to in Section 4.11.1 (including any applicable amendments) prior to the beginning of the applicable Transfer Period, Powerex will pay to B.C. Hydro within a further 30 days the amount determined by B.C. Hydro in accordance with such procedure to be the cost of the applicable increase in wear and tear, or B.C. Hydro will pay to Powerex the amount determined by B.C. Hydro in accordance with such procedure to be the cost saved as a result of any ~~the~~ applicable decrease in wear and tear.

4.12. Maintenance Schedules

B.C. Hydro will use commercially reasonable efforts to schedule the maintenance of the B.C. Hydro System in as efficient a manner as possible to optimize the capability of the B.C. Hydro System and to assist the parties in achieving the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro’s energy reliability.

4.13. Increase in Residual System Capability

Powerex may from time to time request that B.C. Hydro consider increasing the Residual System Capability over a specified period to support a higher level of electricity import or export activity under Sections 4.2.1 and 4.3.1. B.C. Hydro will review any such request and consider whether there are changes that may be made in the operation of the B.C. Hydro System to accommodate the request. If B.C. Hydro determines in its sole discretion that it is desirable and in keeping with B.C. Hydro's obligations under Section 4.1 to make changes in the operation of the B.C. Hydro [System](#) to increase the Residual System Capability to accommodate the request by Powerex, B.C. Hydro will notify Powerex reasonably in advance of the proposed change in operation and of the associated incremental costs, if any, that B.C. Hydro intends to charge to Powerex. Powerex may retract its request at any time prior to the implementation of the change in operation, provided that Powerex will reimburse B.C. Hydro for any incremental costs incurred by B.C. Hydro in taking steps to implement the change in operation prior to the retraction. Provided that Powerex was notified reasonably in advance of any incremental costs associated with a change of operation of the B.C. Hydro System to accommodate a request made by Powerex under this Section 4.13 and did not retract its request, Powerex will reimburse B.C. Hydro for the associated incremental costs if B.C. Hydro changes the operation of the B.C. Hydro System to increase Residual System Capability as requested by Powerex.

5. GAS-FIRED GENERATION PLANTS

5.1. Transfer to Powerex from B.C. Hydro's Gas-Fired Generation Plants

At any time when the generating capacity of the Thermal Generation Plants is not required to serve Domestic Load, satisfy B.C. Hydro's obligations under Interutility Agreements or respond to System Constraints, B.C. Hydro may, at the request of Powerex, operate such Thermal Generation Plants to generate electricity. If B.C. Hydro agrees to Powerex's request, B.C. Hydro will sell to Powerex and Powerex will purchase all such electricity generated pursuant to Powerex's request, provided that Powerex will supply, at its own cost, all Gas required to generate the requested electricity and pay to

B.C. Hydro the Variable Operating Costs to generate the requested electricity and any Variable Transportation Costs incurred by B.C. Hydro to deliver the Gas to the Thermal Generation Plant and no further payment will be payable by Powerex to B.C. Hydro in respect of the sale and purchase of such electricity. In the event that a Thermal Generation Plant is being operated to generate electricity both for B.C. Hydro's use and at Powerex's request in the same hour, the quantity of electricity generated at Powerex's request shall be the aggregate quantity of electricity measured at the relevant generation meter for the applicable Thermal Generation Plant less the amount of generation requested by B.C. Hydro. Otherwise, the quantity of electricity generated at Powerex's request will be as measured at the relevant generation meter for the applicable Thermal Generation Plant. Electricity purchased by Powerex under this Section 5.1 shall be made available and title and risk of loss shall pass from B.C. Hydro to Powerex at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System.

5.2. **Powerex Option to Purchase Thermal Generation**

At any time when B.C. Hydro is operating any of the Thermal Generation Plants for its own purposes, Powerex will have the option, exercisable by notice in writing to B.C. Hydro, to purchase from B.C. Hydro the electricity generated by that operation on the terms set out in Section 5.1 for the purchase by Powerex of electricity from a Thermal Generation Plant, including with respect to the supply of Gas by Powerex and the payment by Powerex of the Variable Operating Costs and any Variable Transportation Costs. Electricity purchased by Powerex under this Section 5.2 shall be made available and title and risk of loss shall pass from B.C. Hydro to Powerex at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System.

6. **DELIVERY POINT, TRANSMISSION CHARGES, ANCILLARY SERVICES. SCHEDULING**

6.1. **Delivery Point, Title and Risk**

Unless the parties agree otherwise:

- 6.1.1. subject to Sections 6.1.2 and 6.1.3, electricity ~~sold and purchased~~delivered under this Agreement shall be made available, and title and risk of loss shall pass from the seller to the buyer, at either the British Columbia-United States border or the British Columbia-Alberta border, as determined by Powerex;
- 6.1.2. electricity purchased by Powerex under Sections 5.1 or 5.2 and then sold to B.C. Hydro under this Agreement shall be made available and title and risk of loss shall pass from Powerex to B.C. Hydro at the point of interconnection between the applicable Thermal Generation Plant and the Transmission System; and
- 6.1.3. electricity purchased by Powerex from independent power producers or other entities in British Columbia and sold to B.C. Hydro under this Agreement shall be made available and title and risk of loss shall pass from Powerex to B.C. Hydro at the point of interconnection between the third party and the Transmission System.

6.2. **Transmission Charges and Ancillary Services**

B.C. Hydro shall acquire and pay for all necessary wholesale transmission services, including losses and ancillary services, on the Transmission System for electricity transactions under this Agreement. For greater certainty, B.C. Hydro may self-supply losses and ancillary services. Unless otherwise determined by B.C. Hydro, acting reasonably, Powerex will pay to B.C. Hydro an amount equal to the parties' reasonable estimate of:

- 6.2.1. the point-to-point transmission costs incurred by B.C. Hydro presently under the Open Access Transmission Tariff in respect of transactions under this Agreement, but excluding
- 6.2.2. the point-to-point transmission costs incurred by B.C. Hydro for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), responding to System Constraints, satisfying B.C. Hydro's obligation to manage the Annual Flexible Surplus/Deficit (as defined in Appendix A) and delivering electricity pursuant to Non-Flexible Export Schedules, and receiving and/or delivering the Canadian Entitlement,

in accordance with Section 12. Such amount is the parties' reasonable allocation of the point-to-point transmission costs incurred by B.C. Hydro in respect of Powerex's trading activities.

7. **GAS MARKETING**

7.1. **Purchase and Sale of B.C. Hydro's Gas Requirements**

Powerex shall use commercially reasonable efforts to make available to B.C. Hydro, and B.C. Hydro shall purchase exclusively from Powerex, B.C. Hydro's Domestic Gas Requirements. B.C. Hydro shall purchase from Powerex and Powerex shall sell to B.C. Hydro all Gas requested by B.C. Hydro under this Agreement from time to time. In performing their obligations under this Section 7.1, both B.C. Hydro and Powerex will act in good faith with the objectives of enabling B.C. Hydro to maximize benefits to all B.C. Hydro ratepayers and enhancing B.C. Hydro's energy reliability. In support of this objective, B.C. Hydro will communicate to Powerex on a regular basis forecasts of B.C. Hydro's surplus Gas position (if any), demand for Gas and the status of physical storage and delivery for B.C. Hydro's Gas, all in accordance with Section 10.1.

7.2. Notification of Monthly Requirements

B.C. Hydro will notify Powerex (each, a “Monthly Gas Notice”) by the 15th day of each month from and after the Commencement Date until the end of the term of this Agreement (or if that day is not a business day, then the next ensuing business day) of its Domestic Gas Requirements (in GJ/day) for each day of the next following month (or months), specifying the quantity of Gas (in GJ/day) required for each Thermal Generation Plant and for each Gas Utility Contract (the aggregate amount of Gas required for each such day, the “Specified Contract Quantity”). B.C. Hydro agrees to purchase the Specified Contract Quantity from Powerex.

7.3. Monthly Market Indices

To the extent that B.C. Hydro holds firm Transportation Capacity from one or more Gas Transfer Points to a Gas Delivery Point specified in a Monthly Gas Notice, B.C. Hydro may in the Monthly Gas Notice also specify that the Monthly Index Price(s) determined at the applicable Gas Transfer Point(s) will be used during the month in which B.C. Hydro holds such firm Transportation Capacity for the purposes of determining the Gas Transfer Price applicable for any Specified Contract Quantity to be delivered to that Gas Delivery Point during that month. If B.C. Hydro does not hold such firm Transportation Capacity, B.C. Hydro may request that a Monthly Index Price determined at a specified Gas Transfer Point be used for the purposes of determining the Gas Transfer Price applicable for such deliveries during the month, but Powerex will not be obligated to deliver such amounts of Gas at the specified Monthly Index Price. Such request by B.C. Hydro for pricing at a specified Gas Transfer Point shall be for pricing purposes only and shall in no way determine the source from which Powerex is to purchase the Gas to be sold by Powerex to B.C. Hydro hereunder. Otherwise, Powerex shall use commercially reasonable efforts to purchase Gas for delivery to B.C. Hydro under this Agreement at the most favourable Monthly Index Price, taking into account transportation costs and availability and in view of the obligations of the parties under Section 7.1.

7.4. Notification of Daily Requirements

B.C. Hydro may notify Powerex (each, a “Daily Gas Notice”) at any time during a month, of the Domestic Gas Requirements (in GJ/day), in addition to the Specified Contract Quantity, that it projects will be required during any remaining day in the month specified by B.C. Hydro. B.C. Hydro’s notice shall specify the quantity of Gas (in GJ/day) required for each Thermal Generation Plant and for the Gas Utility Contracts (in each case, the “Additional Daily Quantity”). B.C. Hydro agrees to purchase the Additional Daily Quantity from Powerex.

7.5. Daily Market Indices

To the extent that B.C. Hydro holds firm Transportation Capacity from one or more Gas Transfer Points to a Gas Delivery Point specified in a Daily Gas Notice, B.C. Hydro may in the Daily Gas Notice also specify that the Daily Index Price(s) determined at the applicable Gas Transfer Point(s) will be used during the period of time in which B.C. Hydro holds such firm Transportation Capacity for the purposes of determining the Gas Transfer Price applicable for any Additional Contract Quantity to be delivered to such Gas Delivery Point on that day. If B.C. Hydro does not hold such firm Transportation Capacity, B.C. Hydro may request that a Daily Index Price determined at a specified Gas Transfer Point be used for the purposes of determining the Gas Transfer Price applicable for any such deliveries on that day, but Powerex will not be obligated to deliver such amounts of Gas at the specified Daily Index Price. Such request by B.C. Hydro for pricing at a specified Gas Transfer Point shall be for pricing purposes only and shall in no way determine the source from which Powerex is to purchase the Gas to be sold by Powerex to B.C. Hydro hereunder. Otherwise, Powerex shall use commercially reasonable efforts to purchase Gas for delivery to B.C. Hydro under this Agreement at the most favourable Daily Index Price, taking into account transportation costs and availability and in view of the obligations of the parties under Section 7.1.

7.6. Payments for B.C. Hydro's Gas Requirements

B.C. Hydro shall pay to Powerex the amount obtained by multiplying the applicable Gas Transfer Price by:

7.6.1. the Specified Contract Quantity actually delivered by Powerex to B.C. Hydro each day (in GJ) in accordance with this Agreement plus all Gas Losses applicable to such quantities of Gas actually delivered; and

7.6.2. the Additional Daily Quantity actually delivered by Powerex to B.C. Hydro each day (in GJ) in accordance with this Agreement plus all Gas Losses applicable to such quantities of Gas actually delivered.

All quantities of Gas delivered during any day by Powerex to B.C. Hydro under this Agreement shall be deemed for the purpose of this Agreement to be delivered firstly on account of the Specified Contract Quantity up to the Specified Contract Quantity, and thereafter on account of the Additional Daily Quantity.

7.7. Title and Risk

Possession of, title to and all risk of loss respecting the Gas delivered under this Agreement shall pass from Powerex to B.C. Hydro at the applicable Gas Transfer Point, unless Powerex in its sole discretion elects to deliver Gas directly to B.C. Hydro at the Gas Delivery Point in which case title and all risk of loss shall pass from Powerex to B.C. Hydro at the Gas Delivery Point.

7.8. Gas Transportation and Storage

B.C. Hydro shall be responsible for obtaining all third-party Gas transportation and storage capacity required to deliver B.C. Hydro's Domestic Gas Requirements from the Gas Transfer Point to the applicable Gas Delivery Point (such transportation and storage capacity referred to herein as the "Transportation Capacity"), unless Powerex in its sole discretion elects to deliver Gas directly to B.C. Hydro at the Gas Delivery Point. All costs and expenses of transporting and delivering the Gas to the Gas Transfer Point shall be borne by Powerex and all costs and expenses of transporting the Gas beyond the Gas

Transfer Point shall be borne by B.C. Hydro, including all reservation, demand and other charges. Powerex will assist B.C. Hydro, as and when requested by B.C. Hydro and at B.C. Hydro's cost and expense, to obtain the Transportation Capacity. B.C. Hydro hereby grants to Powerex the exclusive right and authority to use any of the Transportation Capacity and B.C. Hydro shall take all necessary steps to enable Powerex to fully use and nominate such Transportation Capacity for Powerex's own use, when not required to deliver B.C. Hydro's Domestic Gas Requirements. Powerex shall pay to B.C. Hydro the Variable Transportation Costs, if applicable, for such use by Powerex of the Transportation Capacity. Powerex shall be responsible for arranging all third-party Gas transportation required to sell Gas that is surplus to B.C. Hydro's Domestic Gas Requirements.

7.9. **B.C. Hydro's Failure to Receive Gas**

If B.C. Hydro fails to receive all or part of the Specified Contract Quantity or Additional Daily Quantity, unless excused by Powerex's failure to perform, then:

7.9.1. B.C. Hydro will pay to Powerex an amount for each GJ of such Gas not received by B.C. Hydro, equal to the positive difference, if any, obtained by subtracting the Sales Price from the applicable Gas Transfer Price; or

7.9.2. Powerex will pay to B.C. Hydro an amount for each GJ of such Gas not received by B.C. Hydro, equal to the positive difference, if any, obtained by subtracting the applicable Gas Transfer Price from the Sales Price,

where "Sales Price" for the purpose of this Section 7.9, means the Daily Index Price contemplated by Section 1.1.3(b) of Appendix B (or otherwise as specified in any amendment thereto).

7.10. **Gas Imbalance Inventory**

B.C. Hydro acknowledges and agrees that all Gas imbalance inventories in the Transportation Capacity recorded with the applicable transportation providers, shall belong to Powerex, to use as it may determine in its sole discretion. If and to the extent

that any Thermal Generation Plant consumes in any day more Gas than has been requested by B.C. Hydro, and such excess quantity of Gas is delivered to the Gas Delivery Point from the Gas imbalance inventories of Powerex on an unscheduled basis, B.C. Hydro shall pay to Powerex the Daily Index Price (which Daily Index shall be determined by Powerex in its sole discretion) for such excess quantity of Gas. Otherwise, Gas scheduled and delivered by Powerex to B.C. Hydro from the Gas Imbalance Inventories shall be priced in accordance with Sections 7.3 and 7.5.

7.11. **Imbalance Charges**

The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Imbalance Charges are incurred as a result of B.C. Hydro's actions or inactions (which shall include, but shall not be limited to, B.C. Hydro's failure to accept quantities of Gas equal to the quantities requested by B.C. Hydro), then B.C. Hydro shall pay such Imbalance Charges, or reimburse Powerex for such Imbalance Charges paid by Powerex to the applicable transportation provider. If the Imbalance Charges were incurred as a result of Powerex's actions or inactions (which shall include, but shall not be limited to, Powerex's failure to deliver quantities of Gas equal to the quantities requested by B.C. Hydro), then Powerex shall pay for such Imbalance Charges or reimburse B.C. Hydro for such Imbalance Charges paid by B.C. Hydro to the applicable transportation provider.

7.12. **Taxes**

B.C. Hydro shall pay or reimburse Powerex for all sales, carbon, motor fuel, transfer and other taxes incurred by Powerex in connection with the purchase of Gas by Powerex from third parties for sale to B.C. Hydro under this Agreement or otherwise applicable to the purchase of Gas by B.C. Hydro from Powerex under this Agreement.

8. FORWARD PURCHASES AND SALES FOR B.C. HYDRO

8.1. Forward Purchases and Sales for B.C. Hydro

B.C. Hydro and Powerex may from time to time enter into forward fixed-price, fixed-volume contracts for the purpose of managing market risk associated with expected Annual Flexible Surplus/Deficit volumes or with expected Non-Flexible Import Schedules and Non-Flexible Export Schedules or managing market risk associated with purchases of Gas to meet Domestic Load, satisfy B.C. Hydro's obligations under Interutility Agreements or Gas Utility Contracts or respond to System Constraints. Such forward contracts will be executed at agreed-upon prices based on prevailing market conditions and will be financially-settled against an agreed-upon market index. B.C. Hydro and Powerex may agree to wholly or partially close any resulting forward position by entering into an offsetting forward contract at an agreed-upon fixed price based on then prevailing market conditions.

9. TRANSFER PRICING PRINCIPLES

9.1. Electricity Transfer Pricing Principle

The parties acknowledge and agree that all electricity sold and purchased between B.C. Hydro and Powerex pursuant to this Agreement other than electricity purchased and sold pursuant to Sections 5.1 or 5.2 is deemed for transfer pricing purposes to occur at the British Columbia-United States border. B.C. Hydro and Powerex declare that the Electricity Transfer Price is intended to be established as a sale price that reflects the fair market value of electricity delivered at the British Columbia-United States border during the heavy load hours in a day or the light load hours in a day, whichever is applicable, at which parties acting on an arms-length basis would be willing to transact.

9.2. Gas Transfer Pricing Principle

The parties acknowledge and agree that all Gas sold to B.C. Hydro by Powerex pursuant to Section 7 of this Agreement is deemed for transfer pricing purposes to occur at the Gas Transfer Point corresponding to the applicable index price specified by B.C. Hydro or determined by Powerex in accordance with Sections 7.3 or 7.5. B.C. Hydro and Powerex

declare that the Gas Transfer Price is intended to be established as a sale price that reflects the fair market value of Gas delivered at such applicable Gas Transfer Point on a monthly or daily basis, as applicable, at which parties acting on an arms-length basis would be willing to transact.

9.3. Electricity Transfer Price and Gas Transfer Price

The parties agree that the pricing methodology for determining the Electricity Transfer Price is as set forth in Appendix A and the Gas Transfer Price is as set forth in Appendix B.

9.4. TPA Values

B.C. Hydro and Powerex acknowledge that, from time to time during the term of this Agreement, it may be appropriate or necessary to replace or modify the method of determining one or more of the following terms or values in this Agreement: the Monthly Index Price, the Daily Index Price, the exchange rate described in Section 12.3, the interest rate described in Section 12.3, the Prime Rate, the Deficit Multiplier, the Surplus Multiplier, the Mid-C Index Price, a Bid Week or any other published index price on which the Gas Transfer Price may be based (each, a “TPA Value”). If a party believes that one of the TPA Values then in use under this Agreement should or must be replaced or its method of determination modified, the party may, by notice to the other party, propose a replacement or modification for the applicable TPA Value (or its method of determination). If the proposal is accepted, the agreed replacement or modification of the applicable TPA Value (or its method of determination) will become effective at the beginning of the month immediately following the 90th day after the initial notice or such earlier date as the parties may agree. If the proposal is not accepted, the parties will negotiate in good faith to agree on, within 90 days of such notice, a replacement or modification of the TPA Value (or its method of determination). If the parties are unable to agree on a replacement or modification of the TPA Value (or its method of determination) within such time, either party may submit the matter to dispute resolution pursuant to Section 16. Upon agreement or determination by dispute resolution of a replacement or modification of the TPA Value (or its method of determination), the

replaced or modified TPA Value (or its method of determination) shall become effective at the beginning of the month immediately following the 90th day after the agreement or determination, as the case may be, or such earlier date as the parties may agree, and the parties shall adjust any amounts paid that depend on the TPA Value (or its method of determination) from that date. In no event shall the parties adjust the amounts paid or payable, if applicable, for any period prior to the effective date of the new TPA Value (or new method of determination of the TPA Value).

10. INFORMATION AND FORECASTS

10.1. Information and Forecasts

The parties shall provide information to each other on system and market conditions, including the forecasts to be provided pursuant to Sections 4.1 and 7.1, provided, however that the foregoing and any information sharing with respect to the transmission capabilities of the B.C. Hydro System shall be done only within the information sharing limits set forth in the Standards of Conduct (Transmission) or successor policies of B.C. Hydro published from time to time by B.C. Hydro and applicable information sharing limits regarding transmission system capabilities imposed by pertinent Canadian and United States regulatory authorities.

11. CONFIDENTIAL INFORMATION

11.1. Powerex Information Is Confidential

B.C. Hydro acknowledges that Powerex operates in a highly competitive market and that disclosure of information relating to Powerex, its business and operations could be reasonably expected to significantly harm the competitive position of Powerex or interfere with the negotiating position of Powerex with trading counterparties. Accordingly, information provided by Powerex to B.C. Hydro under this Agreement, including information provided in connection with B.C. Hydro's audit from time to time, is proprietary and is provided only on condition that it shall be kept confidential by B.C. Hydro and not disclosed to any third party, unless Powerex otherwise agrees or except as

required by law or any authority having jurisdiction or if the same has entered the public domain other than through unauthorized disclosure by B.C. Hydro.

11.2. **B.C. Hydro Information Is Confidential**

Information provided by B.C. Hydro to Powerex under this Agreement is proprietary and is provided only on condition that it shall be kept confidential by Powerex and not disclosed to any third party, unless B.C. Hydro otherwise agrees or except as required by law or any authority having jurisdiction or if the same has entered the public domain other than through unauthorized disclosure by Powerex.

12. **BILLING; PAYMENTS.**

12.1. **Powerex to Provide Statement for Electricity and Gas Transactions**

Powerex shall send to B.C. Hydro for each calendar month statements setting forth:

12.1.1. the total electricity that was delivered in each hour during that month, and

12.1.2. the total Gas that was delivered in each hour during that month,

in each case with sufficient detail to enable the parties to determine the amount received and the payments due in connection therewith. Statements shall be sent within 15 days of the end of the month.

12.2. **B.C. Hydro to Provide Statement**

B.C. Hydro shall send to Powerex for each calendar month statements setting forth the amount owing by Powerex to B.C. Hydro or by B.C. Hydro to Powerex pursuant to Sections 4.7.2, 4.10, 5.1 or 5.2 (Variable Operating Costs), 6.2 and 7.8 (Variable Transportation Costs) for that month, with sufficient detail to enable the parties to determine the payment due in connection therewith. Statements shall be sent within 15 days of the end of the month.

12.3. Netting and Payment

The amounts that each party owes to the other as determined under Section 12.2 for electricity and Gas under this Agreement for each month shall be aggregated and the party, if any, owing the greater aggregate amount shall pay to the other party the difference between the amounts owed. Unless otherwise agreed between the parties, payments shall be made by wire transfer or other agreed manner. Payment is due by the 25th calendar day of each month for the prior month. Any late payments will accrue interest at the Prime Rate plus 1.5%. US dollars shall be converted to Canadian dollars using the applicable Bank of Canada Daily Exchange Rate for each day of the month during which the applicable payment obligations were incurred.

12.4. Dispute of Invoices

Each party shall have the right to dispute any amount which is set out in any statement or invoice in accordance with the procedure set out in Section 16. All statement and invoice amounts shall be paid pending resolution of any dispute.

13. REPRESENTATIVES OF THE PARTIES

13.1. Designated Representatives

B.C. Hydro and Powerex may from time to time designate representatives for the purpose of giving or confirming any approval required pursuant to this Agreement. As of the date hereof, the representative of B.C. Hydro shall be its Chief Executive Officer or delegate, and the representative of Powerex shall be its Chief Executive Officer or delegate.

14. FORCE MAJEURE

14.1. Suspension for Force Majeure

If either party is or was wholly or partly unable because of a Force Majeure to perform an obligation arising from this Agreement and claims that a Force Majeure is occurring or

has occurred and reasonably establishes that fact, then the performance of the obligation shall be deemed to be suspended provided always that:

- 14.1.1. the suspension shall be of no greater scope and no longer duration than the Force Majeure;
- 14.1.2. the non-performing party shall make its best efforts to counter the Force Majeure or to otherwise remedy its inability to perform the obligation;
- 14.1.3. a performance required at a time other than when the Force Majeure is occurring shall not be excused by the Force Majeure; and
- 14.1.4. an obligation to pay any fees when due shall not be excused by the Force Majeure; however, to the extent that there are any savings to either party as a result of the Force Majeure, that party shall pass on any savings to the other party so as to reduce its obligation accordingly.

15. **INDEMNITY AND CONSEQUENTIAL DAMAGES**

15.1. **Powerex Indemnity**

Powerex will indemnify B.C. Hydro and hold it harmless against any claims, demands, losses, costs, damages, actions, suits or other proceedings made, sustained, brought or prosecuted against B.C. Hydro by a third party arising out of, or in any way based upon, any act or omission by Powerex in making import or export decisions in respect of electricity or Gas as contemplated under this Agreement [or any inability by B.C. Hydro to satisfy the Forward Capacity Commitment](#) (each, a “B.C. Hydro Claim”), unless caused or contributed to by the gross negligence or wilful misconduct of B.C. Hydro. Powerex will assume, upon request of B.C. Hydro, the defence of all such B.C. Hydro Claims, provided that B.C. Hydro will be entitled to participate in the defence of any such B.C. Hydro Claims and to employ counsel to assist in the handling of any such B.C. Hydro Claims.

15.2. **B.C. Hydro Indemnity**

B.C. Hydro will indemnify Powerex and hold it harmless against any claims, demands, losses, costs, damages, actions, suits or other proceedings made, sustained, brought or prosecuted against Powerex by a third party arising out of, or in any way based upon, any act or omission by B.C. Hydro in its operation of the B.C. Hydro System to ensure sufficient energy and capacity is available to serve B.C. Hydro's Domestic Load, satisfy B.C. Hydro's obligations under Interutility Agreements and Gas Utility Contracts, and respond to System Constraints (each, a "Powerex Claim"), unless caused or contributed to by the gross negligence or wilful misconduct of Powerex. B.C. Hydro will assume, upon request of Powerex, the defence of all such Powerex Claims, provided that Powerex will be entitled to participate in the defence of any such Powerex Claims and to employ counsel to assist in the handling of any such Powerex Claims.

15.3. Consequential Damages

In no event shall either party be liable to the other or to any third party for incidental, indirect, special or consequential damages, howsoever caused and on any theory of liability, arising out of or related to the performance of this Agreement.

16. DISPUTE RESOLUTION

16.1. Disputes Defined

For purposes of this Section 16, "Dispute" means any dispute that arises under or in connection with this Agreement and includes any failure to agree upon the Electricity Transfer Price, the Gas Transfer Price or the amounts contemplated by Section 6.2 or any of the factors that go into determining such prices.

16.2. Senior Executives

The parties shall use reasonable efforts to settle all Disputes. In the event any Dispute is not settled within 30 days after the date such Dispute arises, each party shall within 10 days refer the matter in dispute to its Senior Executive. The Senior Executives shall meet within 21 days to attempt to negotiate a resolution of the Dispute. Settlement offers shall not be admissible in any subsequent dispute resolution process.

16.3. Arbitration

If the parties have not succeeded in negotiating a resolution of the Dispute within 30 days after the first meeting of the Senior Executives or if the Senior Executives do not meet within 21 days, the parties shall be deemed to be at an impasse and either party may commence arbitration procedures in accordance with this Section. Unless the parties otherwise agree, any arbitration commenced in accordance with this Section 16 shall be determined by a single arbitrator and shall proceed in accordance with the Domestic Commercial Arbitration Rules of Procedure of the British Columbia International Commercial Arbitration Centre, as they may be in force at the time of the arbitration. The arbitrator will not have the jurisdiction to amend or vary the terms of this Agreement except as expressly provided in Section 9.4.

16.4. Sole Means of Resolving Dispute

The parties declare that arbitration pursuant to this Section 16 shall be the exclusive means of resolving any Dispute and the determination of the arbitrator shall be final and binding. The parties expressly declare that the arbitrator shall have the express authority to determine the Electricity Transfer Price, the Gas Transfer Price or the amounts contemplated by Section 6.2 in the event of a Dispute.

17. NOTICES

17.1. Notices

Any notice or other communication provided for herein or given hereunder to a party shall be in writing and shall be delivered by electronic transmission, or in person to the individual listed below:

17.1.1. to Powerex:

Powerex Corp.
Suite 1300, Park Place
666 Burrard Street
Vancouver, British Columbia
V6C 2X8

Attention: Tom Bechard, President and CEO

Email address: tom.bechard@powerex.com

17.1.2. to B.C. Hydro:

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Attention: Heather Matthews, Director, Generation System Operations

Email address: heather.matthews@bchydro.com

or such other address with respect to a party as such party shall notify the other in writing as above provided. Notices by electronic transmission shall be deemed given upon verification of successful transmission and notice in person shall be deemed given upon actual delivery.

18. MISCELLANEOUS

18.1. No Partnership or Agency

This Agreement does not create an association, joint venture or partnership between parties or impose any partnership obligation or liability upon either of them. Neither party will have any right, power or authority under this Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other.

18.2. Waiver by Agreement

This Agreement and any provision hereof may only be amended, waived, discharged, or terminated by an instrument in writing signed by the party against whom enforcement of the amendment, waiver, discharge, or termination is sought. No waiver or successive waivers by a party of any provision of this Agreement shall operate as a discharge of such covenant, agreement, or condition or render the same invalid or impair the right of one party to enforce the same in the event of any subsequent breach or breaches by the other.

18.3. Amendments

If at any time during this Agreement the parties consider it necessary or expedient to make an amendment, supplement, waiver, or other modification to this Agreement they may do so only by means of a written agreement between them.

18.4. Severability

If any term, covenant, or condition of this Agreement or application thereof to any person or circumstances shall to any extent be invalid, illegal, or unenforceable in any respect, the remainder of this Agreement or application of such term, covenant, or condition to such person or circumstance other than those as to which it is held invalid, illegal or unenforceable shall not be affected thereby, and each term, covenant, or condition of this Agreement and this Agreement shall be valid and legal and shall be enforced to the fullest extent permitted by law.

18.5. Complete Agreement

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and for greater certainty, ~~will replace~~replaces and ~~supersede on~~supersedes the ~~Commencement Date the 2003 TPA and the TPA Amending Agreement dated as of March 9, 2015~~2020 TPA in its entirety.

18.6. Other Agreements

If there is any conflict between the provisions of this Agreement and any other agreement entered into prior to this Agreement, then the provisions of this Agreement shall control.

18.7. Governing Laws

This Agreement and the rights and obligations of the parties hereto shall be governed by and be construed in accordance with the laws of the Province of British Columbia.

18.8. Assignment

This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party.

18.9. Successors And Assigns

This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

18.10. Counterparts

This Agreement may be executed and delivered by electronic means and in two or more counterparts, each of which shall be deemed an original but all of which shall constitute but one instrument.

18.11. Third Party Beneficiaries

Except as provided expressly by this Agreement, nothing in this Agreement nor its performance shall be relied upon by third parties or create any rights or obligations to third parties.

[Remainder of page intentionally blank.]

18.12. **Non Restriction**

Nothing in this Agreement is intended to limit Powerex from conducting transactions outside of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**

By: _____

POWEREX CORP.

By: _____

APPENDIX A

CALCULATION OF ELECTRICITY TRANSFER PRICE

19. **INTERPRETATION**

19.1. **Interpretation**

In this Appendix A, a reference to a section is a reference to a section of this Appendix A unless otherwise specified as referring to the Agreement, in which case the reference refers to a section in the main body of the Agreement.

19.2. **Definitions**

For purposes of this Appendix A, the following words and terms shall have the following meanings:

19.2.1. “Annual Price” means, for any Transfer Period, the price determined under Section 8.

19.2.2. “Annual Flexible Surplus/Deficit” means, for each Transfer Period, the amount of energy determined as set forth in Section 9.1.

19.2.3. “BPA” means Bonneville Power Administration.

19.2.4. “Deficit Multiplier” means a mutually agreed multiplier included in the Annual Price when the Annual Flexible Surplus/Deficit for a Transfer Period is a negative number, such that the parties agree that the impact on the Electricity Transfer Price resulting from the adjustment of the Weighted Average Price at the end of the Transfer Period reflects the Electricity Transfer Pricing Principle; the Deficit Multiplier will be a value in the range of 0.75-0.95 and is initially 0.85.

19.2.5. “Electricity Transfer Pricing Principle” means the pricing principle established by Section 9.1 of the Agreement;

- 19.2.6. “Flexible Export Price” means, for any hour during a Transfer Period, the price determined under Section 4.3.
- 19.2.7. “Flexible Import Price” means, for any hour during a Transfer Period, the price determined under Section 4.2.
- 19.2.8. “Flexible Price” means, for an hour during a Transfer Period, the price determined under Section 4.1.
- 19.2.9. “Hourly Index Price” means, for any hour during a Transfer Period, the price determined under Section 6 for that hour.
- 19.2.10. “Losses” means the BPA average system-wide loss factor (as a percentage) charged under BPA’s tariff multiplied by the On-Peak Price or the Off-Peak Price, as the case may be, for the applicable hour, plus any other charges for ancillary services.
- 19.2.11. “NERC” means the North American Electric Reliability Council or any successor organization.
- 19.2.12. “Net Scheduled Flexible Quantity to B.C. Hydro” has the meaning set forth in Section 3.1;
- 19.2.13. “Net Scheduled Flexible Quantity to Powerex” has the meaning set forth in Section 3.1;
- 19.2.14. “Non-Flexible Export Price” means, for any hour during a Transfer Period, the price determined under Section 5.3.
- 19.2.15. “Non-Flexible Import Price” means, for any hour during a Transfer Period, the price determined under Section 5.2.
- 19.2.16. “Non-Flexible Price” means, for any hour during a Transfer Period, the price determined under Section 5.1.

- 19.2.17. “Off-Peak Hours” means the hours ending 1 through 6 and the hours ending 23 and 24, Monday through Saturday, and all hours on Sunday and NERC holidays.
- 19.2.18. “Off-Peak Price” means, for an Off-Peak Hour, the ICE Mid-C Off-Peak Index price (in US\$/MWh) for that hour.
- 19.2.19. “On-Peak Hours” means the hours ending 7 through 22, Monday through Saturday, excluding NERC holidays.
- 19.2.20. “On-Peak Price” means, for an On-Peak Hour, the ICE Mid-C Peak Index price (in US\$/MWh) for that hour.
- 19.2.21. “Scheduled Non-Flexible Quantity to B.C. Hydro” has the meaning set forth in Section 3.2;
- 19.2.22. “Scheduled Non-Flexible Quantity to Powerex” has the meaning set forth in Section 3.2;
- 19.2.23. “System Adjustment Value” means, for any Transfer Period, the value determined in accordance with Section 10.
- 19.2.24. “Surplus Multiplier” means a mutually agreed multiplier included in the Annual Price when the Annual Flexible Surplus/Deficit for a Transfer Period is a positive number, such that the parties agree that the impact on the Electricity Transfer Price resulting from the adjustment of the Weighted Average Price at the end of the Transfer Period reflects the Electricity Transfer Pricing Principle; the Surplus Multiplier will be a value in the range of 1.05-1.25 and is initially 1.15.
- 19.2.25. “Transfer Volume Account” means, at any time from the first hour on the Commencement Date until the end of term of the Agreement, the volume of electricity (in MWh) determined in accordance with Section 7.

19.2.26. “Transmission Costs” means the rate under the prevailing BPA tariff for hourly non-firm transmission in the applicable hour.

19.2.27. “Weighted Average Price” means, at any time from the first hour on the Commencement Date until the end of term of the Agreement, the weighted average price (in US\$/MWh) of each MWh comprising the Transfer Volume Account, determined in accordance with Section 7.

20. CALCULATION OF ELECTRICITY TRANSFER PRICE

20.1. Electricity Transfer Price

For each hour during a Transfer Period, the Electricity Transfer Price will be the weighted average of:

20.1.1. the Flexible Price associated with the volume (if any) of the Net Scheduled Flexible Quantity for that hour; and

20.1.2. the Non-Flexible Price associated with the volume (if any) of the Scheduled Non-Flexible Quantity for that hour.

21. NET SCHEDULED QUANTITIES

21.1. Net Scheduled Flexible Quantities

The parties shall for each hour determine the quantity (in MWh) of:

21.1.1. all electricity scheduled by Powerex to B.C. Hydro pursuant to a Flexible Import Schedule within the hour; and

21.1.2. all electricity scheduled by B.C. Hydro to Powerex pursuant to a Flexible Export Schedule within the hour.

If in an hour the amount (in MWh) of electricity referred to in Section 3.1.1 exceeds the amount of electricity referred to in Section 3.1.2, such excess will be a “Net Scheduled Flexible Quantity to B.C. Hydro”, and if in an hour the amount (in MWh) of electricity referred to in Section 3.1.2 exceeds the amount of electricity referred to in Section 3.1.1,

such excess will be a “Net Scheduled Flexible Quantity to Powerex”. In each hour during a Transfer Period, the “Net Scheduled Flexible Quantity” will be the Net Scheduled Flexible Quantity to B.C. Hydro or the Net Scheduled Flexible Quantity to Powerex, whichever is applicable.

21.2. Scheduled Non-Flexible Quantities

The parties shall for each hour determine the quantity (in MWh) of:

21.2.1. electricity scheduled by Powerex to B.C. Hydro pursuant to a Non-Flexible Import Schedule within the hour, the quantity (in MWh) of such electricity will be a “Scheduled Non-Flexible Quantity to B.C. Hydro”; and

21.2.2. electricity scheduled by B.C. Hydro to Powerex pursuant to a Non-Flexible Export Schedule within the hour, the quantity (in MWh) of such electricity will be a “Scheduled Non-Flexible Quantity to Powerex”;

and the “Scheduled Non-Flexible Quantity” for the hour will be the Scheduled Non-Flexible Quantity to B.C. Hydro or the Scheduled Non-Flexible Quantity to Powerex, whichever is applicable.

22. FLEXIBLE PRICE

22.1. Flexible Price

In each hour during a Transfer Period, the “Flexible Price” will be:

22.1.1. where there is a Net Scheduled Flexible Quantity to B.C. Hydro in that hour, the Flexible Import Price; and

22.1.2. where there is a Net Scheduled Flexible Quantity to Powerex in that hour, the Flexible Export Price.

22.2. Flexible Import Price

In any hour during a Transfer Period in which there is a Net Scheduled Flexible Quantity to B.C. Hydro, the “Flexible Import Price” will be:

22.2.1. if at the beginning of the hour the Transfer Volume Account is zero or a positive amount, the applicable Hourly Index Price specified in Section 6.1; and

22.2.2. if at the beginning of the relevant hour the Transfer Volume Account is a negative amount, the Weighted Average Price, unless and until the Transfer Volume Account during that hour becomes positive as the volume of the associated Net Scheduled Flexible Quantity to B.C. Hydro is added to the Transfer Volume Account, in which case, the “Flexible Import Price” for each MWh of electricity thereafter scheduled as a Net Scheduled Flexible Quantity to B.C. Hydro in that hour shall be the Hourly Index Price applicable thereto.

22.3. Flexible Export Price

In any hour during a Transfer Period in which there is a Net Scheduled Flexible Quantity to Powerex, the “Flexible Export Price” will be:

22.3.1. if at the beginning of the relevant hour the Transfer Volume Account is zero or a positive amount, the Weighted Average Price, unless and until the Transfer Volume Account during that hour becomes negative as the volume of the associated Net Scheduled Flexible Quantity to Powerex is subtracted from the Transfer Volume Account, in which case, the “Flexible Export Price” for each MWh of electricity thereafter scheduled as a Net Scheduled Flexible Quantity to Powerex during that hour shall be the Hourly Index Price applicable thereto; and

22.3.2. if at the beginning of the relevant hour the Transfer Volume Account is a negative amount, the applicable Hourly Index Price specified in Section 6.2.

23. **NON-FLEXIBLE PRICE**

23.1. **Non-Flexible Price**

In each hour during a Transfer Period, the “Non-Flexible Price” will be:

23.1.1. where there is a Scheduled Non-Flexible Quantity to B.C. Hydro in that hour, the Non-Flexible Import Price; or

23.1.2. where there is a Scheduled Non-Flexible Quantity to Powerex in that hour, the Non-Flexible Export Price.

23.2. **Non-Flexible Import Price**

In any hour during a Transfer Period in which there is a Scheduled Non-Flexible Quantity to B.C. Hydro, the Non-Flexible Import Price will be the applicable Hourly Index Price specified in Section 6.1.

23.3. **Non-Flexible Export Price**

In any hour during a Transfer Period in which there is a Scheduled Non-Flexible Quantity to Powerex, the Non-Flexible Export Price will be the applicable Hourly Index Price specified in Section 6.2.

24. **HOURLY INDEX PRICE**

24.1. **Net Delivered or Scheduled Quantities to B.C. Hydro**

In any hour during a Transfer Period, the Hourly Index Price applicable to a Net Delivered Quantity to B.C. Hydro, a Net Scheduled Flexible Quantity to B.C. Hydro or a Scheduled Non-Flexible Quantity to B.C. Hydro will be:

24.1.1. for each On-Peak Hour, the price (in US\$/MWh) obtained by adding to the On-Peak Price the Transmission Costs and Losses; and

24.1.2. for each Off-Peak Hour, the price (in US\$/MWh) obtained by adding to the Off-Peak Price the Transmission Costs and Losses.

24.2. **Net Delivered or Scheduled Quantities to Powerex**

In any hour during a Transfer Period, the Hourly Index Price applicable to a Net Delivered Quantity to Powerex, a Net Scheduled Flexible Quantity to Powerex or a Scheduled Non-Flexible Quantity to Powerex shall be:

24.2.1. for each On-Peak Hour, the price in (US\$/MWh) obtained by subtracting from the On-Peak Price for that hour, the Transmission Costs and Losses; and

24.2.2. for each Off-Peak Hour, the price (in US\$/MWh) obtained by subtracting from the Off-Peak Price for that hour, the Transmission Costs and Losses.

25. **TRANSFER VOLUME ACCOUNT AND WEIGHTED AVERAGE PRICE**

25.1. **Initial Values of Transfer Volume Account and Weighted Average Price**

25.1.1. The volume of the Transfer Volume Account at 12:00 a.m. on the Commencement Date will be the volume (in MWh) of the Trade Account under the 2003 TPA at 11:59 p.m. on March 31, 2020.

25.1.2. The “Weighted Average Price” at 12:00 a.m. on the Commencement Date will be the weighted average price of each MWh in the Trade Account under the 2003 TPA at 11:59 p.m. on March 31, 2020.

25.2. **Hourly Adjustments**

25.2.1. In each hour of a Transfer Period, the Transfer Volume Account will be adjusted by adding the volume of any Net Scheduled Flexible Quantity to

B.C. Hydro in that hour or subtracting the volume of any Net Scheduled Flexible Quantity to Powerex in that hour, as the case may be.

25.2.2. At the time of each hourly adjustment of the Transfer Volume Account, the Weighted Average Price will be adjusted on a weighted average basis, applying the applicable Flexible Price to each MWh of the volume of the adjustment.

25.2.3. There will be no hourly adjustment to the Transfer Volume Account or the Weighted Average Price to account for a Scheduled Non-Flexible Quantity in any hour.

25.3. Annual Adjustments

25.3.1. Immediately before the end of each Transfer Period, the Transfer Volume Account will be adjusted by adding the Annual Flexible Surplus/Deficit for the Transfer Period to the Transfer Volume Account (each, an “Annual Surplus Adjustment” if the Annual Flexible Surplus/Deficit for the Transfer Period is a positive amount, or an “Annual Deficit Adjustment” if the Annual Flexible Surplus/Deficit for the Transfer Period is a negative amount).

25.3.2. At the time of each Annual Surplus Adjustment, the Weighted Average Price will be adjusted on a weighted average basis, applying the following price to each MWh of the volume of the Annual Surplus Adjustment:

25.3.2.1. the applicable Annual Price; less

25.3.2.2. the System Adjustment Value divided by the volume of the Annual Surplus Adjustment.

25.3.3. At the time of each Annual Deficit Adjustment, the Weighted Average Price will be adjusted on a weighted average basis, applying the following prices to each MWh of the volume of the Annual Deficit Adjustment:

25.3.3.1. the applicable Annual Price; plus

25.3.3.2. the System Adjustment Value divided by the volume of the Annual Deficit Adjustment.

26. **ANNUAL PRICE**

26.1. **Annual Flexible Surplus/Deficit – Deficit**

The Annual Price for a Transfer Period when the applicable Annual Flexible Surplus/Deficit is a negative number will be:

26.1.1. the simple average of the On-Peak Prices and Off-Peak Prices, as applicable to each hour, for all hours during the Transfer Period, multiplied by the Deficit Multiplier; plus

26.1.2. the applicable Transmission Costs and Losses.

26.2. **Annual Flexible Surplus/Deficit – Surplus**

The Annual Price for a Transfer Period when the applicable Annual Flexible Surplus/Deficit is a positive number will be:

26.2.1. the simple average of the On-Peak Prices and Off-Peak Prices, as applicable to each hour, for all hours during the Transfer Period, multiplied by the Surplus Multiplier; less

26.2.2. the applicable Transmission Costs and Losses.

27. **ANNUAL FLEXIBLE SURPLUS/DEFICIT**

27.1. **Calculation of Annual Flexible Surplus/Deficit**

For each Transfer Period, the Annual Flexible Surplus/Deficit will be determined, for the purposes of this Agreement, as follows:

27.1.1. the total stored energy at B.C. Hydro's large basin reservoirs at the end of the Transfer Period; less

- 27.1.2. the total stored energy at B.C. Hydro's large basin reservoirs at the beginning of the Transfer Period; less
- 27.1.3. the net scheduled imports into British Columbia at the British Columbia-United States border during the Transfer Period; plus
- 27.1.4. the net scheduled third-party imports into British Columbia at the British Columbia-United States border during the Transfer Period, as may be adjusted to appropriately account for net third-party imports occurring within British Columbia; less
- 27.1.5. the net scheduled imports into British Columbia at the British Columbia-Alberta border during the Transfer Period; plus
- 27.1.6. the net scheduled third-party imports into British Columbia at the British Columbia-Alberta border during the Transfer Period, as may be adjusted to appropriately account for net third-party imports occurring within British Columbia; less
- 27.1.7. any electricity purchased in British Columbia by Powerex and sold to B.C. Hydro, including for greater certainty electricity purchased from B.C. Hydro under Sections 5.1 or 5.2 of the Agreement or from independent power producers or other entities; plus
- 27.1.8. the aggregate amount of Scheduled Non-Flexible Quantities to B.C. Hydro during the Transfer Period; less
- 27.1.9. the aggregate amount of Scheduled Non-Flexible Quantities to Powerex during the Transfer Period; less
- 27.1.10. the net amount of electricity scheduled by Powerex to satisfy B.C. Hydro's obligations under Interutility Agreements.

28. **SYSTEM ADJUSTMENT VALUE**

28.1. **System Adjustment Value**

At the end of each Transfer Period, B.C. Hydro will determine the net financial value (the “System Adjustment Value”) of:

28.1.1. the impact resulting from Powerex’s decisions on the timing and hourly volume of imports and exports on head gains and losses and on spill in the B.C. Hydro System during the Transfer Period; and

28.1.2. the incremental financial impact on B.C. Hydro associated with Powerex’s decisions on the timing and hourly volume of imports and exports on the Scheduled Non-Flexible Quantity in each hour during the Transfer Period.

A positive System Adjustment Value will indicate that the impact of Powerex’s decisions on the timing and hourly volume of imports and exports on head gains and losses and on spill in the B.C. Hydro System and the incremental financial impact on B.C. Hydro associated with Powerex’s decisions on the timing and hourly volume of imports and exports on the Scheduled Non-Flexible Quantities were net positive during the Transfer Period, and a negative System Adjustment Volume will indicate that such impacts were net negative during the Transfer Period.

29. **ICE MID-C INDEX PRICE**

For purposes of the calculations in this Appendix A, it is assumed that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price are determined in the manner specified in the “ICE Futures U.S. Rulebook Subchapter 18B – Power Futures Contracts” for those indices and published by ICE in the ICE Day Ahead Power Report for transactions reported at the Mid-C hub. In the event that the ICE Mid-C On-Peak Index Price and the ICE Mid-C Off-Peak Index Price referred to in this Appendix A are no longer determined in the manner described in the foregoing publications, then, if the change is material, either party may, by notice to the other party, seek to renegotiate the

then current pricing methodology using the process set out in Section 9.4 of the Agreement.

APPENDIX B

CALCULATION OF GAS TRANSFER PRICE

30. **INTERPRETATION**

30.1. **Definitions**

For purposes of this Appendix B the following words and terms shall have the following meanings:

30.1.1. “Agreement” means the Amended and Restated Transfer Pricing Agreement to which this Appendix B is attached and of which it forms a part.

30.1.2. “Bid Week” means the last 5 trading days of each calendar month, where a trading day is defined as any day that the Intercontinental Exchange (ICE) is trading physical natural gas.

30.1.3. “Daily Index Price” means any one of the following daily index prices applicable to the sale of Gas from Powerex to B.C. Hydro pursuant to this Agreement, as determined by Powerex in accordance with Section 7.5 of the Agreement:

- (a) The “NGX SPECTRA - Stn2 DAY AHEAD AVERAGE” index, as published by Canadian Gas Price Reporter Daily, being the weighted average of all daily fixed price trades at Station 2 on the ICE/NGX platform;
- (b) The Midpoint of Northwest, Canadian border (Sumas) index price set out in Gas Daily, as published by Platts, a division of The McGraw-Hill Companies Inc., being the weighted average of all daily fixed price trades at Sumas daily, reported by index participants.

- (c) The AECO-NIT Daily Spot gas index price set out in the Canadian Gas Price Reporter, as published by Canadian Enerdata Ltd., being the volume-weighted average of all gas trades that occur on the NGX trading platform for a particular delivery day.
- (d) The Midpoint of PG&E-GTNW, Kingsgate index price, set out in Gas Daily as published by Platts, a division of The McGraw-Hill Companies Inc. being the weighted average of all daily fixed trades at Kingsgate daily, reported by index participants.

30.1.4. “Monthly Index Price” means any one of the following monthly index prices applicable to the sale of Gas from Powerex to B.C. Hydro pursuant to this Agreement, as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.3 of the Agreement:

- (a) The Station 2 one-month spot gas index price as set out in Canadian Gas Price Reporter, published by Canadian Enerdata Ltd., being the volume-weighted average of all monthly fixed price trades as reported by index participants.
- (b) The Northwest Pipeline Corp., Canadian Border Index price as set out in FERC’s gas market report monthly prices of spot gas delivered to pipelines at Sumas, as published by Platts, a division of The McGraw-Hill Companies Inc., being the weighted average of all monthly fixed price trades reported at Sumas during the Bid-Week prior to the month of delivery.
- (c) The AECO-NIT One-Month spot gas index price set out in the Canadian Gas Price Reporter, as published by Canadian Enerdata Ltd., being a volume-weighted average of all gas trades that occur on the NGX trading platform for a particular prompt delivery month.

30.2. Interpretation

In this Appendix B, references to Sections are references to Sections of this Appendix B unless otherwise specified.

30.3. Conversion

Any references to MMBtu's in any Daily Index Price or Monthly Index Price, shall be converted to GJ on the basis that one MMBtu equals 1.055056 GJ's.

30.4. Index Prices

In the event that a Monthly Index Price or Daily Index Price, or any other published index price on which the Gas Transfer Price may be based ceases to exist, or ceases to be representative of the price for daily or monthly, as the case may be, fixed price Gas trades, at the applicable trading hub, or the manner of determining such index price materially changes, or if either party wish to use another such index price for any reason, then either party may, by notice to the other party, seek to renegotiate the applicability of that Monthly Index Price or Daily Index Price and a suitable replacement therefore, using the process set out in Section 9.4 of the Agreement.

30.5. Gas Transfer Price

The Gas Transfer Prices payable by B.C. Hydro to Powerex are as follows:

30.5.1. the Monthly Index Price as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.3 of the Agreement, for each day in which B.C. Hydro has requested a Specified Contract Quantity for use at a Thermal Generation Plant or for the purpose of serving a Gas Utility Contract, as the case may be; and

30.5.2. the Daily Index Price as specified by B.C. Hydro or determined by Powerex in accordance with Section 7.5 of the Agreement, for each day in which B.C. Hydro has requested an Additional Daily Quantity for use at a

Thermal Generation Plant or for the purpose of serving a Gas Utility Contract, as the case may be.

APPENDIX C

31. FORWARD CAPACITY COMMITMENT

31.1. B.C. Hydro will make available to Powerex a minimum quantity of capacity forming part of the Residual System Capability in the months of March to October of each year from 2024 until and including 2055 (the “Capacity Period”), or in such other months or during such other Capacity Period as may be agreed by the parties from time to time, to support firm exports of electricity by Powerex (collectively, the “Forward Capacity Commitment”), subject to the following:

31.1.1. B.C. Hydro’s obligation to make the quantity of capacity available to Powerex under the Forward Capacity Commitment on the terms set out in this Agreement will be subject to an aggregate maximum quantity limit of 1000MW and Powerex having notified B.C. Hydro of the amount of capacity pursuant to the Forward Capacity Commitment that it requires and the relevant term;

31.1.2. In the months of March, April, May and October, the aggregate maximum quantity limit of 1000MW will be reduced by the amount (in MW) of the capacity component of the Canadian Entitlement in the applicable month and year.

31.1.3. Powerex will be solely responsible to schedule electricity on the terms set out in this Agreement to make use of the Forward Capacity Commitment, and such electricity may be scheduled by Powerex under Section 4.3.1 of the Agreement at its discretion.

31.1.4. B.C. Hydro expects that there will be sufficient Residual System Capability in the months of March to October to support the Forward Capacity Commitment until at least 2040 and will monitor the expected Residual System Capability on a rolling ten-year timeframe to confirm whether the Residual System Capability is expected to be able to support the Forward Capacity Commitment in that timeframe. If B.C. Hydro anticipates at any

time that the Residual System Capability will be unable to support the Forward Capacity Commitment within the then current ten-year timeframe, B.C. Hydro will notify Powerex of the amount and timing of the anticipated Residual System Capability shortfall at least five years before the shortfall is anticipated to come into effect or as soon as reasonably practicable after B.C. Hydro determines that it expects the Residual System Capability to be unable to support the Forward Capacity Commitment.

31.1.5. Powerex acknowledges that B.C. Hydro is under no obligation to make changes to its resource planning or increase the Residual System Capability to accommodate the Forward Capacity Commitment, including by adding or procuring new capacity to or for the B.C. Hydro System. B.C. Hydro will have no liability to Powerex in the event that it is unable to satisfy the Forward Capacity Commitment from time to time during the Capacity Period, and in such circumstances, Powerex assumes all associated costs and risks, including any regulatory requirements, associated with procuring any additional capacity that may be necessary.

31.1.6. To the extent that, as a result of making Residual System Capability available to Powerex pursuant to the Forward Capacity Commitment, Powerex schedules electricity to B.C. Hydro under Section 4.2 of the Agreement for the purposes of serving Domestic Load requirements, satisfying Interutility Agreement obligations (including under any operating procedures), or responding to System Constraints, any such schedule will be deemed to be a “Flexible Import Schedule” for the purposes of Section 4.2 of the Agreement.

31.1.7. The parties agree that, if the term of this Agreement ends prior to the end of the Capacity Period, the Forward Capacity Commitment will be a commitment of the parties that exists on and extends beyond the termination of this Agreement for the purposes of Section 2.4 of the Agreement.

Document comparison by Workshare Compare on Monday, December 4, 2023
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Document 2 ID	iManage://dms/Lawson/22994879/8
Description	#22994879v8<Lawson> - FINAL Execution version of 2023 Amendments to Transfer Pricing Agreement (TPA)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Moved to	0
Style changes	0
Format changes	0
Total changes	170

