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October 27, 2020

Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

RE: Project No. 1598969
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro,
Brown Lake Hydro, and Walden North Hydro

BC Hydro writes, in compliance with Directive 2 of BCUC Order G-148-20, to file with the BCUC all existing but unfiled agreements entered into after and including October 1, 2001, that are associated with and materially affect existing Electricity Purchase Agreements (**EPAs**), within 30 days of the date of Order G-148-20.

By Order G-185-20, dated July 10, 2020, the BCUC approved an extension to vary the filing deadline set out in Directive 2 from July 10, 2020 to August 10, 2020.

On August 6, 2020, BC Hydro submitted to the BCUC a request to reconsider and vary Directive 3 of Order G-148-20, pursuant to section 99 of the *Utilities Commission Act (UCA)* and also requested the BCUC to: (i) confirm the intended scope of Directive 2; and (ii) further vary and extend the filing deadline for Directive 2 to 60 days after the date of the BCUC's decision on the Reconsideration Application or 60 days after the date of a BCUC letter clarifying the intended scope of Directive 2.

In its August 6, 2020 submission, BC Hydro indicated that,

1. given Directive 2 does not make reference to section 71 of the *UCA*, it understands that the BCUC intended for the materials submitted in response to Directive 2 to be filed for information purposes only to support the BCUC keeping itself informed about the conduct of BC Hydro; and

Ms. Marija Tresoglavic
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British Columbia Utilities Commission
Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro, Brown
Lake Hydro, and Walden North Hydro

2. BC Hydro understands that the BCUC did not intend for the materials to be filed or reviewed pursuant to section 71, nor for materials related to EPAs that are exempt from section 71 to be filed or reviewed pursuant to section 71.

On August 28, 2020, the BCUC confirmed BC Hydro's understanding of Directive 2. The BCUC also approved BC Hydro's request for a further extension to the filing deadline in Directive 2 to October 27, 2020.

BC Hydro Electricity Purchase Agreements

As of October 1, 2020, BC Hydro has 131 EPAs with Independent Power Producers (**IPPs**), 124 of which are with facilities that are operating and 7 of which are with facilities in development. Of these 131 EPAs, 53 are non-exempt and 78 are exempt from section 71 of the UCA. In response to the Commission's directive, BC Hydro has focused its efforts on these EPAs, and accordingly is not providing information for those EPAs which have expired or have terminated prior to October 1, 2020. In addition, if an EPA has been superceded by an amended and restated EPA, we have not provided information regarding the historical agreements related to the superceded EPA nor are we providing information for other agreements that have clearly expired or terminated. We also note we have only identified agreements - i.e., we have not identified notices or waivers as they are not agreements although they may materially affect an EPA (e.g., a termination notice). This criteria was applied to help manage the volume of information.

For the purpose of administering its IPP contracts, BC Hydro has a contracts database specifically maintained for its EPAs and agreements related to its EPAs. This contracts database was first implemented in 2005 and is our most complete source of information for EPAs executed and administered by us. We note that information related to the management and administration of EPAs dating back to October 2001 may also be stored on our other IT systems, such as email, or in hard copy files and for the purpose of this submission we have relied on the data being transferred or input appropriately into the contracts database over the past 19 years. However, human errors occur and practices may change. While we believe the contracts database is the best source of information for our EPAs and that it is generally complete and reliable, there may be instances of missing information. Due to the breadth of the Commission's request, we have only used our contracts database as our data source.

Agreements Materially Affecting an EPA

To review the database entries associated with each of the 131 EPAs has been a significant undertaking in that we use this database to store a myriad of agreements which may be related to each IPP project. Although BC Hydro has taken a broad

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Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro, Brown
Lake Hydro, and Walden North Hydro

interpretation in identifying those agreements which may “materially affect” an existing EPA, we have made certain assumptions to reduce the volume of information which may potentially fall within this request. Subject to the criteria noted above, for this compliance submission we have identified amending agreements which materially affect an EPA, and have also identified the following types of agreements which may also materially affect an EPA:

- EPA-related agreements: During the term of an EPA, various issues may arise which give rise to certain side agreements related to an EPA. Such agreements are generally temporal and do not amend the terms of an EPA but are put into place to address certain issues which need to be addressed pertaining to the EPA. Some examples of EPA-related agreements are: operational and implementation agreements, dispatch/turn-down agreements, curtailment agreements, forbearance agreements, release agreements, settlement agreements, etc; and
- Waiver agreements: Sometimes a party will choose to waive its rights under certain provisions of the EPA. Although an agreement may not be required for a party to waive its rights, at times we have documented such waivers pursuant to an agreement and have required certain conditions related to providing a waiver.

Although agreements are not always necessary, they are often preferred so there is no ambiguity. Where a party has a sole option to exercise a right under an approved EPA, an amendment is not strictly required in order for that right to be exercised. However, at times the parties will enter in to an agreement to either document the consequences of that decision or to provide additional detail or context necessary to implement the right. In most cases, these type of developments are reported as contractual developments to the BCUC because either they simply document the outcome of an amendment that was already determined to be in the public interest (by virtue of its inclusion in the original EPA) or they do not amend, but rather provide more granularity, to the EPA terms. Notwithstanding this view, we have included those documents that fall into this category and were entitled “agreements” since the BCUC has requested all “agreements” and we wanted to err on the side of caution.

Agreements which we have identified as agreements not materially affecting an EPA, and therefore are not included as part of this compliance filing, are the following:

- Assignments/Consents: Often assignments and consents will be done in the form of an agreement. These types of agreements are in the normal course of administering an agreement, and even though the result is that there may be minor amendments to the EPA, such agreements are not materially affecting the EPA. For example, if an IPP sells its assets and assigns its EPA as part of a sale, then BC Hydro’s consent is required and minor modification may be required to the EPA to address the change to the counter-party; and
- Other ancillary agreements: Examples of these types of agreements are the following: non-disclosure agreements, lender consent agreements, interconnection

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British Columbia Utilities Commission
Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro, Brown
Lake Hydro, and Walden North Hydro

agreements, facilities agreements, electricity service agreements, meter lease agreements, e-metering agreements, guarantees, letters of credit, etc.

For ease of reference, those agreements which we believe are responsive to the Commission's request are listed in the attached two tables which are further described below. In addition, we have provided supplemental information in these tables to provide context for each listed agreement.

Compliance with Directive 2

Table 1 is a list of BC Hydro's existing Non-Exempt EPAs, and agreements we believe may materially affect each Non-Exempt EPA. For completeness, we have listed those agreements which have been filed with and accepted by the BCUC pursuant to section 71 of the *UCA*; these agreements are shaded in grey and show the applicable BCUC order. Those agreements which do not show a BCUC order (i.e., not shaded in the table) were not filed with the BCUC; however, many of these agreements were reported to the BCUC as contractual developments. In compliance with Directive 2, BC Hydro is submitting electronically those 59 agreements which have not been previously filed with the BCUC pursuant to section 71 of the *UCA*.

Table 2 is a list of BC Hydro's existing Exempt EPAs, and agreements we have determined may materially affect each Exempt EPA. There are a total of 202 agreements listed in Table 2 and, with few exceptions, these agreements have not been filed with the BCUC pursuant to section 71 of the *UCA*. This is because if an EPA falls under an exemption, subsequent amendments and developments to these agreements are also generally exempt. In compliance with Directive 2, and for completeness, BC Hydro is submitting electronically all of the agreements listed in Table 2, including those agreements which were filed with the BCUC.

As there are a number of agreements that BC Hydro will be submitting to the BCUC, and due to the limitations of our respective IT systems, BC Hydro will be transmitting these documents electronically to the Commission as soon as reasonably practicable in a manner that is convenient for the Commission.

Section 71 Filings Are Dependent on Applicable Circumstances

The Commission's request to submit all existing, but unfiled agreements entered after and including October 1, 2001, that are associated with and materially affect existing EPAs, covers a period of almost twenty years. BC Hydro notes that over this period of time both the *UCA* and the BCUC's Rules for Energy Supply Contracts for Electricity have evolved. For example, as we have noted in previous submissions, the version of the Rules in effect from 1993 to 2012, prior to the update pursuant to Order

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British Columbia Utilities Commission
Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro, Brown
Lake Hydro, and Walden North Hydro

No. G-61-12, did not include contractual developments.¹ Accordingly, for our historical agreements that did not amend a related energy supply contract in law, BC Hydro relied on the applicable legislation at the time of executing the agreement and the guidance of the BCUC's Rules when ascertaining its filing and reporting requirements.

Moreover, BC Hydro's understanding of its filing and reporting requirements can change over time, and the facts pertaining to each particular agreement are relevant with respect to determining whether an agreement should be filed or reported to the BCUC. Once the Commission has had an opportunity to review the materials submitted with this compliance filing, we would be pleased to meet with Commission staff to discuss any next steps that may be required.

Confidentiality

BC Hydro is filing Table 1, Table 2, and all agreements listed in these tables in response to Directive 2, in their entirety, on a confidential basis. A redacted public version of the tables and confidential un-redacted versions of these attachments are provided in Attachment 1 and Attachment 2.

BC Hydro believes that the tables and agreements may be disclosing certain information which is commercially sensitive to BC Hydro and/or the Seller Company. This information if publicly disclosed may be harmful to the Seller Company and/or BC Hydro (e.g., if such information is publicly available it may impact the financial position of the Seller or may potentially negatively impact BC Hydro's management of its IPP portfolio). Accordingly, as provided by the General Rules 1.10 of the Rules for Energy Supply Contracts for Electricity, Part IV of the Commission's Rules of Practice and Procedure, and section 42 of the *Administrative Tribunals Act*, BC Hydro is requesting that the Commission hold the un-redacted form of Table 1, Table 2 and all agreements listed in these tables as confidential; whereas the redacted forms are for public review.

¹ That prior version of the Rules stated,

1.1 Each electricity supply contract and any amendments thereto entered into, shall be filed with the Commission pursuant to Section 71, and its approval obtained.

...

1.5 The purchaser is to supply, by April 30 of each year, a report to the Commission providing details of any amendments (expressed or implied) to the terms of the contract.

The update to the Rules in 2012 improved for energy supply contract parties the clarity of the BCUC's expectations in relation to filing information about actions and agreements related to energy supply contracts that do not amend the energy supply contract or where there otherwise might be uncertainty about the filing requirement.

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Regulatory Support
British Columbia Utilities Commission
Electricity Purchase Agreement (EPA) Renewals – Sechelt Creek Hydro, Brown
Lake Hydro, and Walden North Hydro

Page 6 of 6

For further information, please contact Chris Sandve at 604-974-4641 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



Fred James
Chief Regulatory Officer

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Enclosure

**BC Hydro EPA Renewals
Sechelt Creek Hydro Brown Lake Hydro,
and Walden North Hydro**

Attachment 1

Table 1 – Non-Exempt EPAs

PUBLIC

CONFIDENTIAL ATTACHMENT

FILED WITH BCUC ONLY

**BC Hydro EPA Renewals
Sechelt Creek Hydro Brown Lake Hydro,
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Attachment 2

Table 2 – Exempt EPAs

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