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December 1, 2020

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

Dear Ms. Tresoglavic:

**RE: Project No. 1598990
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Application to Reconsider and Vary Directives Relating to Powerex Net
Income in the Fiscal 2020 to Fiscal 2021 Revenue Requirements Decision**

BC Hydro writes to request that the BCUC reconsider and vary two directives from its Fiscal 2020 to Fiscal 2021 Revenue Requirements Decision. The Directives, which relate to the inclusion of Powerex net income in the Trade Income Deferral Account (**TIDA**), are:

Therefore, the Panel directs that no actual Powerex net income be captured in the Trade Income Deferral Account absent further review and approval by the BCUC.

Therefore, in its next RRA, BC Hydro is required to file, in confidence if necessary, a summary of Powerex's net income, in sufficient detail to enable the BCUC to determine whether any amount of actual Powerex net income is appropriate for inclusion in the Trade Income Deferral Account.¹

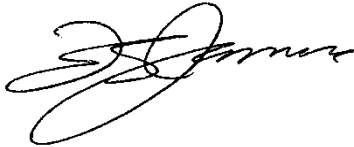
Our submission with regard to this request is attached.

¹ Order No. G-246-20, p. 55.

December 1, 2020
Ms. Marija Tresoglavic
Acting Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Application to Reconsider and Vary Directives Relating to Powerex Net Income in the
Fiscal 2020 to Fiscal 2021 Revenue Requirements Decision

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

cs/rh

Enclosure

**Fiscal 2020 to Fiscal 2021
Revenue Requirements Application**

**Application to Reconsider and Vary Directives
Relating to Powerex Net Income in the Fiscal 2020 to
Fiscal 2021 Revenue Requirements Decision**

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1 Introduction

BC Hydro requests that the BCUC reconsider and vary two directives (**Directives**) from its Fiscal 2020 to Fiscal 2021 Revenue Requirements Decision (**Decision**). The Directives, which relate to the inclusion of Powerex net income in the Trade Income Deferral Account (**TIDA**), are:

Therefore, the Panel directs that no actual Powerex net income be captured in the Trade Income Deferral Account absent further review and approval by the BCUC.

Therefore, in its next RRA, BC Hydro is required to file, in confidence if necessary, a summary of Powerex's net income, in sufficient detail to enable the BCUC to determine whether any amount of actual Powerex net income is appropriate for inclusion in the Trade Income Deferral Account.¹

The BCUC referred to the first of these Directives as "Directive 17". We will refer to the second directive, which had no number designation, as "Directive 17A".

BC Hydro respectfully submits that these Directives warrant reconsideration and rescission or variance.

The Directives are founded on the Panel's determinations about the extent to which BC Hydro ratepayers should assume risk for, and automatically receive the benefit of, Powerex trading activities. BC Hydro respectfully submits that the BCUC's reasoning and determinations were flawed and inconsistent with the BCUC's prior determinations in the 2003 Heritage Contract Inquiry Report (**Heritage Contract Report**).² A full and fair hearing of the issues, which did not occur, would have made that clear.

¹ Decision, p. 55.

² October 17, 2003, Report and Recommendations in the Matter of British Columbia Hydro and Power Authority and An Inquiry into a Heritage Contract for British Columbia Hydro and Power Authority's Existing Generation Resources and Regarding Stepped Rates and Transmission Access. Available at: <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/111690/1/document.do>.

1 While the BCUC’s overall process for the Revenue Requirements Application was
2 comprehensive, the way in which it addressed this matter was procedurally unfair.
3 The Directives were issued with insufficient notice that the matter was in issue,
4 affording parties insufficient opportunity to be heard. The Directives were based on
5 materials not in the evidentiary record. The BCUC did not reconcile the
6 inconsistency between the BCUC’s underlying determinations and its prior
7 determinations in the Heritage Contract Inquiry, as principles of administrative law
8 governing consistency in decisionmaking require. As a result of the procedural
9 shortcomings in respect of this matter, available information that could and should
10 have been considered was not considered. There is also just cause to have a full
11 hearing of the underlying issues, with input from affected stakeholders, before
12 requiring BC Hydro to take the steps inherent in the Directives. The BCUC should
13 rescind the Directives and instead direct that a hearing of the underlying issues
14 occur as part of the Fiscal 2023 Revenue Requirements Application.³
15 **(Fiscal 2023 RRA)**. Regardless, the BCUC needs to address a disconnect between
16 how the Directive is worded and how the TIDA works.

17 **1.1 Overview**

18 The Directives flow from the BCUC’s determinations regarding the appropriate
19 regulatory treatment of Powerex’s net income. BC Hydro respectfully submits that
20 the BCUC erred in issuing the Directives. The BCUC’s underlying reasoning and
21 determinations were flawed in key respects, and the procedural fairness
22 shortcomings precluded BC Hydro from being able to articulate why.

23 The determinations and Directives are related to the regulatory principle of
24 “ring-fencing” non-regulated activities from regulated utility activities. Powerex is,
25 and operates as, a separate company. It generates net income through activities
26 related and unrelated to the BC Hydro system. The BCUC determined that

³ For clarity, the Fiscal 2023 Revenue Requirements Application is expected to cover multiple years, but the length of the test period is yet to be determined.

1 ratepayers are entitled to the full value of any transaction involving BC Hydro
2 electricity, including that portion reflecting the difference between Powerex’s market
3 transaction price and the Transfer Price that Powerex pays to BC Hydro for the
4 electricity under the Transfer Pricing Agreement (**TPA**) between BC Hydro and
5 Powerex, or receives from BC Hydro under the TPA for purchased electricity.⁴ The
6 BCUC determined that BC Hydro ratepayers “should assume no risk whatsoever for
7 Other Powerex Transactions [i.e., Powerex’s trading activities unrelated to
8 BC Hydro’s system.] There is no regulatory justification to find otherwise.”⁵

9 The Directives that are the subject of this reconsideration application represent, in
10 effect, a step in implementing these determinations in the context of the Fiscal 2022
11 Revenue Requirements Application (**Fiscal 2022 RRA**). The Directives contemplate
12 a process whereby the BCUC would examine Other Powerex Transactions
13 (i.e., transactions not involving BC Hydro) to determine whether any of those
14 transactions are eroding the value of transactions involving BC Hydro electricity and
15 should be excluded from the TIDA. The BCUC also confirmed that there is no
16 regulatory impediment to including the remaining transactions. Conceptually, this
17 means that customers would no longer take on any risk associated with Other
18 Powerex Transactions, but they would not automatically receive the associated net
19 income through the TIDA either.

20 Although the BCUC sees no “regulatory justification” for any other treatment of
21 Powerex net income, the BCUC had already articulated a regulatory justification for
22 the current approach in the Heritage Contract Report. The BCUC’s 2003 findings
23 have formed the basis of the regulatory framework for the past 17 years. Under this
24 longstanding framework, Powerex seeks to maximize trade benefits and BC Hydro
25 flows those benefits to ratepayers. Powerex has generated over a billion dollars in
26 net income for the benefit of ratepayers over the last six years alone, and this has

⁴ Decision, p. 47.

⁵ Decision, p. 55, e.g., “The Panel finds that BC Hydro ratepayers should assume no risk whatsoever for Other Powerex Transactions.”

1 flowed from transactions both related and unrelated to BC Hydro electricity. The TPA
2 is, in effect, the mechanism for “ring-fencing” Powerex’s activities. The TPA ensures
3 that BC Hydro ratepayers receive appropriate benefits from BC Hydro electricity and
4 the BC Hydro system. Its transfer price is based on the stand-alone value of
5 BC Hydro electricity.

6 The determinations, and the associated Directives under reconsideration, have
7 significant implications for BC Hydro and customers, Powerex and the
8 Government of B.C. in that they:

- 9 • Reject the Heritage Contract Report framework that included an allocation of
10 risk associated with Powerex trade activity and used the TPA, with a Transfer
11 Price representing the stand-alone value of BC Hydro electricity, to “ring-fence”
12 Powerex’s activities;
- 13 • Draw distinctions among Powerex activities that are currently managed as a
14 portfolio to maximize overall benefit;
- 15 • Change how the financial impacts of each category of activities are allocated as
16 between ratepayers and the Government of B.C., and raise the potential that
17 different risk profiles must be applied to each category; and
- 18 • To the extent that Powerex must make business changes to manage its
19 portfolio differently to facilitate artificial segregation of the portfolio for regulatory
20 purposes and to account for the potential for different risk tolerances, the
21 determinations have the potential to affect Powerex’s ability to maximize overall
22 trade benefits for BC Hydro customers and (based on this Decision) the
23 Government of B.C.

24 Despite the significant change of course the Decision represents and its
25 implications, the BCUC made its determinations and issued the Directives without
26 notice, without giving parties an opportunity to be heard, and based on information
27 that was not in evidence. The Decision stated that there is “no regulatory

1 justification⁶ for the current allocation of Powerex net income without referencing the
2 BCUC’s Heritage Contract Report, when principles of administrative law require a
3 regulatory body to at least rationalize and explain marked departures from past
4 decisions. There are also several operational reasons why BC Hydro would struggle
5 to file the type of information contemplated in Directive 17A, whether in the
6 Fiscal 2022 RRA or otherwise.

7 BC Hydro respectfully submits that, before BC Hydro is required to undertake the
8 steps required by the Directives, the reasoning and determinations forming the basis
9 for those Directives warrants a full and fair review with meaningful input from
10 affected stakeholders. The Directives should be rescinded and replaced with a
11 directive that the subject matter of the treatment of Powerex net income will be
12 canvassed in the Fiscal 2023 RRA proceeding. The BCUC should also direct that, in
13 the meantime, the forecast favourable balance in the TIDA be available to be
14 returned to customers for the benefit of customers in fiscal 2022,⁷ which can be done
15 without prejudicing the BCUC’s ability to determine the underlying matter later.

16 In any event, the wording of Directive 17 must be varied to avoid an unintended
17 adverse consequence for customers. It is evident that the BCUC had intended to
18 address the *amortization of the TIDA balance*. However, Directive 17 precludes
19 BC Hydro from *recording* amounts in the TIDA. The Directive will have the effect of
20 preventing the favourable forecast variance related to actual fiscal 2020 results and
21 forecast fiscal 2021 results from being recorded in the TIDA so as to be available for
22 customers in future years.

⁶ Decision, p. 55: “The Panel finds that BC Hydro ratepayers should assume no risk whatsoever for Other Powerex Transactions. There is no regulatory justification to find otherwise.”

⁷ The manner in which BC Hydro would return the balance to customers will be the subject of a proposal in the Fiscal 2022 RRA, since the treatment approved in the Decision was only approved for use in the current test period. As foreshadowed in the last proceeding, BC Hydro intends to propose a return to the Deferral Account Rate Rider (**DARR**). Under that framework, balances in the TIDA (and the other Cost of Energy Variance Accounts) are returned to, or recovered from, ratepayers based on whether the combined balances of these accounts meet specific thresholds. Accordingly, the balance in any one account may or may not be returned to or recovered from ratepayers in any given year (i.e., they may remain in the accounts for that year) depending on whether the thresholds are met.

1.2 Order Sought on Reconsideration

BC Hydro therefore respectfully requests that the BCUC rescind the Directives and vary them as follows:

1. BC Hydro should file (in confidence if necessary⁸), as part of the Fiscal 2023 RRA, a proposal, with supporting rationale, as to how to treat Powerex's net income for regulatory purposes going forward. BC Hydro should include sufficient information to permit the BCUC to assess the extent to which the current regulatory approach based on the BCUC's Heritage Contract Report (including an allocation of risk associated with Powerex trade activity and the use of transfer pricing to "ring-fence" Powerex) remains valid or whether any adjustments are necessary.
2. With respect to the TIDA:
 - (a) BC Hydro should continue to record variances between forecast and actual Trade Income in the TIDA;
 - (b) BC Hydro should include a proposal in the Fiscal 2022 RRA for the disposition of any balance in the TIDA from the current test period;⁹ and
 - (c) The outcome of the BCUC's Fiscal 2023 RRA determinations regarding Powerex net income will be reflected in the TIDA for future disposition.

For clarity, from a legal standpoint, this Reconsideration Application is addressing the Directives, rather than the underlying findings. Revisiting the underlying findings in the context of this reconsideration proceeding would compound the identified procedural fairness issues. The substantive issues should be addressed *de novo*, unencumbered by issues about the standard of review, grounds of review and scope

⁸ Maintaining the strictest of confidentiality will be necessary when it comes to discussing Powerex's commercial activities, whether general strategy or specific types of transactions. Entities with adverse interests to Powerex and/or BC Hydro could be expected to use this information - in several potential ways - to the detriment of BC Hydro's customers and the shareholder.

⁹ As stated in footnote [7](#) above, BC Hydro to propose the DARR mechanism. The footnote explains how the DARR mechanism works in this context.

1 of evidence on reconsideration. Moreover, an important basis for the
2 Reconsideration Application is that BC Hydro requires more time to (a) develop
3 evidence, including evidence about the Heritage Contract Inquiry, so as to
4 demonstrate the unreasonableness of the BCUC's determinations and Directives,
5 and (b) consult with the Government of B.C. on a topic of this significance.

6 **2 The BCUC Directives Under Reconsideration**

7 The Directives are found on page 55 of the Decision. They flow from the BCUC's
8 prior discussion of regulatory "ring-fencing" of unregulated activity, the sources of
9 Powerex net income, and the BCUC's findings about what portions of Powerex net
10 income should, and should not, flow to BC Hydro customers. Notable passages are
11 quoted below.¹⁰ We have included in [Appendix A](#) lengthier excerpts from the
12 Decision for ease of reference and context.

13 [Page 47]

14 In determining how these sales of electricity should be treated,
15 we consider the reverse situation when the utility is short supply,
16 for whatever reason, and electricity is purchased. In cases of
17 short supply, it is not expected that the shareholder would,
18 absent a finding of imprudence, pay anything toward the
19 acquisition of electricity to meet ratepayer demand. The same
20 logic applies in reverse; if the utility has surplus energy, it is not
21 expected that the ratepayer would be expected to share any
22 earnings from the surplus with anyone else. We therefore find
23 that unless the shareholder paid for a generation asset, it is not
24 entitled to the proceeds from sales of any electricity generated
25 by that asset.

26

27 For these reasons, we find it appropriate that all proceeds from
28 sales of BC Hydro electricity are on the account of the
29 ratepayer.

¹⁰ Decision, pp. 54 and 55.

1 [Page 54]

2 Typically regulators, including the BCUC, attempt to “ring fence”
3 any non-regulated activities of a utility to protect its ratepayers
4 from risk. However, in this case some of the unregulated
5 activities involve BC Hydro’s regulated assets and operations.
6 We have previously discussed the appropriateness of the
7 inclusion of proceeds from transactions involving BC Hydro
8 electricity with Powerex. At that time we observed that a portion
9 of the economic value of these transactions may be captured in
10 Powerex’s net income. We now consider that economic value,
11 along with other components of Powerex’s net income.

12

13 In many cases, Powerex derives economic value from
14 transactions involving BC Hydro electricity. In doing so, it may
15 simply resell at a price higher than the transfer price or by
16 making offsetting purchases and sales that are timed to take
17 advantage of market prices. This part of the economic value of
18 these transactions contributes to Powerex’s net income. The
19 portion of the transactions between Powerex and the market,
20 unlike the portion of the transactions between BC Hydro and
21 Powerex, is unregulated. However, the Panel found in
22 section 4.2.5 that proceeds from sales of BC Hydro electricity
23 are on the account of the ratepayer. Therefore, the portion of
24 Powerex net income that arises from transactions involving
25 BC Hydro electricity should accrue to BC Hydro ratepayers.

26 Given BC Hydro’s proposal to continue with the definition of
27 Trade Income from Direction No. 7, in a circumstance where
28 there is a net loss on all Other Powerex Transactions (as shown
29 in the table above), the benefits ratepayers receive of any
30 positive Powerex net income arising from transactions involving
31 BC Hydro electricity are at risk of erosion.

32 The Panel finds that BC Hydro ratepayers should assume no
33 risk whatsoever for Other Powerex Transactions. There is no
34 regulatory justification to find otherwise.

35 There is no regulatory impediment to the inclusion of positive
36 income from Powerex transactions that do not involve BC Hydro
37 electricity, and the Panel has no objections to their inclusion in
38 BC Hydro’s Trade Income Deferral Account.

1 However, in light of the concerns raised above, only the
2 proceeds, less associated overhead costs, for transactions
3 involving BC Hydro electricity and associated with the
4 acquisition of natural gas for BC Hydro should be included in the
5 Trade Income Deferral Account. Therefore, the Panel directs
6 that no actual Powerex net income be captured in the Trade
7 Income Deferral Account absent further review and approval by
8 the BCUC.

9 Therefore, in its next RRA, BC Hydro is required to file, in
10 confidence if necessary, a summary of Powerex's net income, in
11 sufficient detail to enable the BCUC to determine whether any
12 amount of actual Powerex net income is appropriate for
13 inclusion in the Trade Income Deferral Account.

14 [Emphasis added.]

15 It is evident from these passages, and others, that the Directives are premised on
16 the determination and assumption summarized in the left-hand column of the table
17 below. BC Hydro takes issue with the determination and assumption for the reasons
18 summarized in the right-hand column and discussed in greater detail in section [5](#).
19 The procedural fairness shortcomings on this topic, also articulated in section [5](#),
20 prevented BC Hydro from expressing its views in advance. The reasonableness of
21 the determinations and assumptions should be tested based on a well-developed
22 evidentiary record, stakeholder input and consideration of the BCUC's Heritage
23 Contract Report. This should occur in the Fiscal 2023 RRA.

BCUC Determination or Implicit Assumption	Why Finding Requires Full Assessment in Fiscal 2023 RRA
<p>Determination that ratepayers should be subject to no risk in respect of certain Powerex activities (i.e., the activities should be “ring-fenced” for rate setting purposes), and that the relevant distinction for “ring-fencing” purposes is between Powerex’s activities related to BC Hydro electricity and Other Powerex Transactions.</p>	<p>Distinguishing among Powerex’s activities in this manner changes how the Government of B.C. is financially impacted, and (depending on the Government of B.C.’s willingness to assume financial risk) raises the potential for Powerex having to apply different risk profiles to different activities. The uncertainty this has created at present, and the potential adjustments that could be required to facilitate the artificial division of its portfolio going forward, could impact Powerex’s ability to maximize revenues for the benefit of customers. (See sections 4.2 and 4.3)</p> <p>This problematic segregation for regulatory purposes should be unnecessary, given the BCUC’s findings in the Heritage Contract Report. The BCUC’s Heritage Contract Report recognized that the TPA Transfer Price reflects the stand-alone value of the BC Hydro electricity. That is, the current Decision is incorrect to attribute to BC Hydro ratepayers the value associated with the difference between the TPA Transfer Price and the price that Powerex can secure in the market. In reality, the only reason the additional value can be realized is due to Powerex’s own investments, particularly its investments in transmission rights and market access. This is no different than Other Powerex Transactions. (See section 5.3.1 below)</p>
<p>Implicit assumption that Powerex can, under its current business model, identify activities and net income as being specifically attributable to BC Hydro electricity or Other Powerex Transactions.</p>	<p>This is an inaccurate assumption, given how Powerex operates its business. It would be very difficult to retrospectively seek to allocate activities and achieve meaningful results. Powerex will need time to assess further the practicality of doing so on a go-forward basis and the extent to which it would require adjustments to Powerex’s business model. (See section 5.3.4 below)</p>

1 **3 Grounds for Reconsideration**

2 The grounds for reconsideration and variance of the Directives are:

- 3 1. The BCUC erred in law in issuing the Directives, and making the underlying
 4 findings, in a procedurally unfair manner;¹¹
- 5 2. The procedural shortcomings resulted in facts material to the Decision not
 6 being placed in evidence;¹²

¹¹ Rule 26.05(a): “the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision”.

¹² Rule 26.05(b): “facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding.”

- 1 3. There is just cause¹³ to allow the issues and findings underlying the Directives
2 to instead be considered *de novo* in the Fiscal 2023 RRA; and
- 3 4. There is, in any event, just cause to rescind Directive 17 to avoid an unintended
4 consequence flowing from an inconsistency between the wording and how the
5 TIDA works.

6 As described in section [1.2](#) above, this Reconsideration Application is addressing
7 the Directives, rather than the underlying findings, and seeks a procedural remedy of
8 a full and fair hearing *de novo* in the Fiscal 2023 RRA. The grounds for
9 reconsideration stated above reflect that procedural focus. BC Hydro will ultimately
10 argue in the context of any substantive hearing of the issue (whether that occurs in
11 the Fiscal 2023 RRA or as otherwise directed by the BCUC) that the BCUC's
12 determinations and Directives are erroneous and/or unreasonable, and that the
13 current Heritage Contract Inquiry framework should continue.

14 **4 The Directives Have Material Implications**

15 The BCUC Rules of Procedure require an applicant to address the materiality of the
16 decision under reconsideration. This section identifies four reasons why the
17 Directives are material to BC Hydro and its customers, Powerex and the
18 Government of B.C.

19 **4.1 Procedural Fairness is an Important Matter of Principle**

20 Procedural fairness is an important matter of principle that affects all parties and the
21 integrity of the BCUC's process generally. As we explain in section [5.1](#), the parties
22 had no notice that the BCUC intended to determine how Powerex should be
23 "ring-fenced" and its net income allocated. The repeal of Direction No. 7, in and of
24 itself, did not necessitate determining these issues in the proceeding because the
25 underlying BCUC orders remained in effect. The issue was never explored in any

¹³ Rule 26.05(e): "where there is otherwise just cause."

1 event. The evidentiary record was insufficient to support the BCUC's determinations,
2 and the BCUC instead cited information filed in another proceeding. The BCUC did
3 not reference the Heritage Contract Report. We respectfully submit that the
4 Directives rest on an unfair process and should be rescinded and varied to ensure
5 parties have a meaningful opportunity to address the underlying subject matter.

6 **4.2 The Determinations Change a Regulatory Framework that Has** 7 **Been in Place for 17 Years and is Founded on a BCUC Report**

8 The BCUC's determinations, upon which the Directives are premised represent a
9 significant departure from a long-standing regulatory framework rooted in the
10 BCUC's determinations in the Heritage Contract Report.

11 The TIDA captures the difference between the forecast and actual Trade Income
12 during the Test Period. The forecast is determined based on a five-year average and
13 is used as the basis for the requested rates. The variance to forecast is recorded in
14 the TIDA once actual Trade Income is known. The variance is then reflected in
15 future rates; a positive balance (i.e., actual Trade Income exceeds forecast) flows as
16 a benefit to customers, since customers have not seen the full benefit of the actual
17 Trade Income. Conversely, a negative balance (i.e., forecast Trade Income was
18 higher than actual) is recovered from customers, since customers have received
19 credit for more Trade Income than actually materialized.

20 Actual Trade Income is a function, in large part, of Powerex's trading activities. All of
21 Powerex's net income currently benefits BC Hydro customers via the inclusion of
22 forecast Trade Income in rates and flowing the variance between forecast and actual
23 Trade Income through the TIDA. It has a significant favourable impact on
24 BC Hydro's rates. The forecasted annual Trade Income for each of the test years

1 was \$176.1 million.¹⁴ Powerex actual net income in fiscal 2019 was \$435.7 million. It
2 was \$189.2 million in fiscal 2020.

3 Under the BCUC's analysis, the BCUC may disallow some or all of the Other
4 Powerex Transactions so that they flow to the Government of B.C. This represents a
5 fundamental change in the risk framework for Powerex and for the
6 Government of B.C. As explained in section [5.3.1.1](#), the BCUC's approach is
7 inconsistent with the BCUC's prior determinations in the Heritage Contract Report
8 that have been the basis for the regulatory framework for the past 17 years. The
9 legislated directions related to Trade Income that have recently been repealed gave
10 effect to the BCUC's prior findings in the Heritage Contract Report, not *visa versa*.

11 The Government of B.C.'s Comprehensive Review of BC Hydro: Phase 1 Final
12 Report addressed the role of Powerex in a manner that signalled the
13 Government of B.C.'s continued support for the existing framework. The Report
14 stated, for instance:

15 Powerex's trade activities earn income which is beneficial to its
16 shareholder (BC Hydro) and therefore to BC Hydro's ratepayers.

17 Powerex operates in competitive wholesale energy markets
18 outside of B.C., where it is subject to regulation by the Federal
19 Energy Regulatory Commission and other regulatory bodies for
20 its wholesale activities. Falling under BCUC oversight would
21 hamper Powerex's ability to compete and earn income in
22 fast-moving and rapidly evolving competitive markets. For this
23 reason, government will continue to restrict the BCUC from
24 regulating the activities of Powerex as an outcome of the
25 Review. It is worth noting that ICBC's optional insurance
26 products, which also operate in a competitive environment, are
27 not regulated by the BCUC.¹⁵

¹⁴ This reflects the methodology of using Powerex's average net income over the previous five years. The fiscal 2020 forecast reflects the inclusion of fiscal 2019 actuals in the average. The fiscal 2021 forecast includes fiscal 2020 actuals in the average.

¹⁵ Comprehensive Review of BC Hydro: Phase 1 Final Report, p. 20.

1 In a similar vein, the Report also addressed the Government of B.C.’s intention to no
2 longer have BC Hydro segregate “expenditures for export” for ratemaking purposes,
3 and the *Clean Energy Act* was amended accordingly.¹⁶ In other words, the original
4 policy of “ring-fencing” these exports was discontinued.

5 Changes to the regulatory framework of this magnitude should be the subject of
6 evidence and input from parties, regardless of whether the BCUC is anticipating that
7 the Government of B.C. would still voluntarily pass on the benefits to customers. As
8 discussed next, this change goes beyond form and may have real implications for
9 the overall amount of net income that Powerex can generate.

10 **4.3 The Determinations Have Implications for Powerex’s** 11 **Operations, Which Could Adversely Impact Customers**

12 While Powerex and BC Hydro are still grappling with the implications of the BCUC’s
13 determinations, it is reasonable to expect that Powerex will be affected in a very real
14 way. BC Hydro and its customers will be adversely impacted to the extent that the
15 BCUC’s determinations adversely affect Powerex’s ability to conduct business.

16 As discussed further below, Powerex operates its business on a portfolio basis.
17 Purchase/sale decisions and delivery locations are most often considered
18 separately. There is, with limited exception, no explicit ex-ante or ex-post allocation
19 of *specific* Powerex market purchases or *specific* Powerex market sales as being
20 transactions that do or do not involve BC Hydro Electricity. This is because such an
21 allocation is not necessary in order to determine the value of BC Hydro Electricity,
22 nor would an objective and accurate allocation even be possible.

23 The implications of the BCUC’s determinations go beyond the challenge of being
24 able to distinguish among transactions for regulatory allocation purposes. The

¹⁶ Comprehensive Review of BC Hydro: Phase 1 Final Report, p. 18. The Report described the original purpose of the segregation of “expenditures for export” as: “To ensure the costs of pursuing such opportunities were not passed along to ratepayers, the BCUC was obliged to ensure that BC Hydro’s rates would not allow BC Hydro to recover “expenditures for export” from ratepayers.”

1 BCUC's decision is not only introducing a new way of categorizing transactions, it is
2 also potentially imposing different risk profiles on different categories of transactions.
3 Powerex has no direction from the Government of B.C. as to its willingness to
4 assume risk under this new framework, and if it is willing, what benefits it would seek
5 in return for assuming the risk. Further, it is currently unclear how Powerex will
6 operate on a portfolio basis without ratepayers being impacted by Other Powerex
7 Transactions. The uncertainty will require Powerex to reassess how it transacts
8 business in the interim. For instance, amongst numerous questions that arise,
9 should Powerex alter its current approach to business to manage the allocation
10 challenges or should it cease certain activities? These choices could impair
11 Powerex's ability to maximize net income on all aspects of its business, which would
12 have a consequential adverse impact on BC Hydro rates.

13 The BCUC's stated rationale for the Directives is that the benefits to which
14 ratepayers are entitled might be eroded.¹⁷ The Directives may, in fact, have the
15 opposite effect by virtue of potential business implications.

16 **4.4 Misalignment Between Directive 17 Wording and How the** 17 **TIDA Works Results in Unintended Harm to Customers**

18 Directive 17 is also material because, as worded, the Directive will prevent the
19 favourable TIDA balance (representing the difference between forecast fiscal 2020
20 Trade Income and actual fiscal 2020 Trade Income) from being available for
21 customers in future years. We provide further explanation below in the context of
22 Ground 4 (see section [5.4](#)).

23 **5 Basis for Reconsideration**

24 This section addresses each of the grounds for reconsideration. The discussion on
25 Grounds 1 to 3 demonstrates why the BCUC should rescind the Directives and
26 instead direct that a full and fair hearing of the substantive issues occur in the

¹⁷ Decision, p. 55.

1 Fiscal 2023 RRA. The Ground 4 discussion explains why, in any event, the BCUC
2 should rescind Directive 17 to avoid unintended adverse consequences for
3 customers due to the misalignment between the wording of Directive 17 and how the
4 TIDA works.

5 **5.1 Ground 1: Procedural Fairness Required More Notice, an** 6 **Opportunity to Be Heard and Evidence**

7 BC Hydro's first ground for reconsideration is that the BCUC erred in law by making
8 the determinations that underpinned the Directives, and issuing the Directives to
9 implement those determinations, in a procedurally unfair manner. We respectfully
10 submit that procedural fairness required the BCUC to give the parties notice that it
11 intended to address the matter, provide an adequate opportunity to be heard, base
12 its determinations and Directives on evidence. The BCUC was also required to
13 acknowledge the inconsistency of its findings with its its Heritage Contract Report
14 determinations and explain why it was now reasonable to reach a different
15 conclusion on the same matters. BC Hydro would avail itself of any future
16 opportunity to be heard to demonstrate why the determinations and Directives were
17 erroneous and/or unreasonable, such that the current Heritage Contract Report
18 framework should remain in place.

19 **5.1.1 Parties Had Insufficient Notice that the BCUC Was Going to Decide** 20 **How to “Ring-Fence” Powerex Activities**

21 The Directives flowed from the BCUC's analysis and determinations regarding which
22 aspects of Powerex's business should be “ring-fenced” for regulatory purposes. In
23 particular, the BCUC made:

- 24 • A determination that the relevant distinction from a rate setting / “ring-fencing”
25 perspective is between Powerex's activities related to BC Hydro electricity and
26 Other Powerex Transactions; and

-
- 1 • An implicit assumption that Powerex under its current business model can
2 separately identify transactions, and consequently portions of its net income, as
3 belonging to either BC Hydro electricity or Other Powerex Transactions.

4 As demonstrated below, neither “ring-fencing” generally (whether by that
5 nomenclature or otherwise), nor the specific determinations and assumptions that
6 gave rise to the Directives, were identified as issues.

7 In the Application, BC Hydro stated that the existing approach to forecasting and
8 including Trade Income in BC Hydro’s revenue requirements continued to be
9 appropriate.¹⁸ In response to information requests, BC Hydro explained its rationale
10 for maintaining the current approach and confirmed that the BCUC can disallow the
11 deferral of variances between forecast and actual Trade Income and can define
12 Trade Income for the purpose of setting BC Hydro’s rates.¹⁹

13 The proceeding that culminated in the Decision was lengthy and very involved, a fact
14 noted by many parties. It included a number of steps, listed below for reference.²⁰ In
15 the course of these procedural steps, the topics of Powerex, Trade Income and the
16 TPA were raised *in the context of exploring how they worked*.²¹ However, neither the
17 BCUC, nor any other party raised the issue of “ring-fencing”, ratepayer entitlement to
18 the difference between the Transfer Price and Powerex’s sale/purchase price, or
19 whether the BCUC’s approach to Powerex net income should change.

- 20 • A transcribed Workshop;
- 21 • Several community input sessions;
- 22 • A procedural conference to address scoping, among other things;

¹⁸ Application, Chapter 2, p. 2-6; Chapter 8, pp. 8-16 to 8-18.

¹⁹ Refer to BC Hydro’s responses to BCUC IRs 1.143.3, 1.143.4, 1.143.5 (Exhibit B-5) and BCUC IRs 3-295-1, 3-295-2, 3-295-3 and 3-314-6 (Exhibit B-16).

²⁰ The Decision summarizes the process on pages 3 and 4.

²¹ The Decision summarizes this evidence in section 4.2.5.

-
- 1 • Approximately 4,100 BCUC and intervener information requests, issued in four
2 rounds;
- 3 • Two additional rounds of BCUC Panel information requests;
- 4 • Intervener evidence;
- 5 • A 12-day oral hearing, with hearing days spanning a six-week period;
- 6 • Extensive written final submissions from all parties; and
- 7 • A follow-up oral argument phase, for which the Panel posed additional
8 questions on a variety of topics.

9 On this topic, out of the 16 parties in this proceeding (BC Hydro plus 15 registered
10 interveners), the Decision references the submissions of only one party - CEABC.
11 CEABC never argued that Powerex's net income should be segregated for
12 regulatory purposes. Rather, CEABC's submissions were focussed on the value
13 obtained from, and risk involved in, trade involving BC Hydro's system, as compared
14 to a "domestic sales focus". This is evident in the way the BCUC described CEABC's
15 submission in the Decision (set out in full):

16 CEABC notes that BC Hydro describes the use of BC Hydro's
17 system to back Powerex's energy or capacity sales as being
18 only a portion of trade income. CEABC further states that no
19 breakout of trade income, in terms of the utilization of BC Hydro
20 system resources, is ever given, and therefore, the BCUC and
21 interveners have no idea whatsoever of the risk to reward ratio
22 of using the BC Hydro system to allow Powerex to earn trade
23 income.

24 CEABC submits that "BC Hydro spends most of its modelling
25 effort trying to optimize these trade revenues." In CEABC's view,
26 there are a lot of risks associated with BC Hydro's current
27 strategy of trying to optimize its reliance on import and export
28 markets, which are inherently volatile and subject to weather
29 uncertainties and price uncertainties. As an alternative, CEABC
30 views that shifting the strategy from an import/export focus to a
31 domestic sales focus would not only enhance revenues, and

1 help meet the Province’s climate action goals, but would also
2 greatly reduce the company’s business risk exposure. By
3 increasing domestic sales, CEABC views that BC Hydro could
4 mitigate its market risks by reducing its exposure to the volatile
5 export/import market, as well as avoid operational risks
6 associated with drawing its reservoir levels up and down in
7 anticipation of higher and lower market prices.

8 [Emphasis added.]

9 BC Hydro submits that the subject matter of the determinations and the Directives in
10 question never came up, or at best was raised only very tangentially. In light of the
11 significant implications associated with the BCUC’s determinations, we respectfully
12 submit that parties including BC Hydro were entitled to clear notice and a prior
13 opportunity to be heard.

14 **5.1.2 The BCUC Relied on Information that Was Not in Evidence**

15 None of the information the BCUC has quoted or cited in the applicable section of
16 the Decision (section 4.2.7) was part of the evidentiary record. The BCUC’s
17 discussion of this issue starts on page 52 of the Decision. The BCUC cited only two
18 pieces of information:

- 19 • “2020 Transfer Pricing Agreement application, Exhibit B-1, p. 4”; and
- 20 • A webpage on Powerex’s website.

21 The sources the BCUC has cited, and the absence of evidence on the record,
22 reflects the fact that the topic was not a live issue in the RRA proceeding.

23 It is a fundamental principle of procedural fairness and administrative law that a
24 tribunal may only make its decision based on the evidence that is before it. Parties
25 are thus required to confine their final submissions to the evidence on the record.
26 The BCUC, for similar reasons, generally avoids taking judicial notice of evidence
27 filed in other proceedings without notice to the parties. When the BCUC requires

1 information from other proceedings for the determination of an issue, it does one of
2 two things:²²

3 (a) The Panel orders that materials filed in another proceeding will form part of the
4 evidentiary record;²³ or

5 (b) BCUC Staff file other evidence as an “A2” Exhibit.²⁴

6 Either of these methods provides the parties with notice and (depending on when it
7 is done) can provide parties with an opportunity to respond.

8 In short, and respectfully, the approach taken with regard to evidence supporting its
9 findings and Directives fell short of the BCUC’s typical standards for procedural
10 fairness.

11 **5.1.3 The Repeal of Direction No. 7 Did Not Necessitate the BCUC Making** 12 **Determinations in this Proceeding**

13 The BCUC appears to have determined that the repeal of Direction No. 7, in and of
14 itself, necessitated determining these issues at this time, despite those issues never
15 having been explored during the process. The Decision states:

16 The BCUC had no jurisdiction with regard to the inclusion of any
17 Powerex net income or losses in BC Hydro’s revenue
18 requirement as long as Direction No. 7 prescribed that all of
19 Powerex’s net income (provided it was positive) flowed to
20 ratepayers. However, with Direction No. 7 rescinded, the Panel
21 must consider the regulatory principles that apply to the
22 inclusion of subsidiary income and losses in BC Hydro’s rates.²⁵

²² In limited circumstances, the BCUC can take judicial notice of widely known and accepted facts that are not on the record, but specialized and technical information about the treatment of Trade Income and Powerex’s trading activities would not fall within that category.

²³ E.g., The BCUC ordered in the Review of BC Hydro’s PBR Report that portions of the record from the Fiscal 2017 to Fiscal 2019 Revenue Requirements Application proceeding would be incorporated by reference.

²⁴ E.g., The BCUC used this approach in these proceeding. Exhibits A2-1 and A2-2 were information filed by BC Hydro in a prior proceeding.

²⁵ Decision, p. 54.

1 In actuality, the repeal of Direction No. 7 had no impact on the legal validity of the
2 underlying BCUC orders that implemented the current framework. A direction to the
3 BCUC has the legal effect of circumscribing the BCUC’s discretion but does not
4 remove the requirement for BCUC approvals. As a result, utilities must apply to the
5 BCUC for approvals consistent with a direction, not just rely on the direction as
6 authority to act. The corollary is that the repeal of Direction No. 7 had the effect of
7 restoring the BCUC’s discretion, but did not impact any existing order.

8 BC Hydro did not legally need to propose new treatment of Powerex net income for
9 approval in the Application and affirmed that it was not proposing to change the
10 framework. Respectfully, the BCUC should not have decided to change the
11 framework under the existing orders without first raising its concerns about the
12 current framework during the proceeding and providing parties with an opportunity to
13 be heard.

14 **5.1.4 There Is a Legal Requirement to Explain Inconsistent Decisions**

15 We provide greater detail in section [5.3.1](#) as to why BC Hydro disputes the
16 correctness and/or reasonableness of the BCUC’s determinations and Directives. A
17 key point noted in that section is that the BCUC’s own Heritage Contract Report
18 provided the “regulatory justification” for the current framework that the BCUC has
19 now determined cannot be justified. The existence of a prior BCUC Report on the
20 very same issues being addressed in the Decision, which reached different
21 conclusions, gave rise to procedural fairness requirements.

22 The BCUC is unfettered by the Heritage Contract Report, and must make its
23 “decisions on the merits and justice of the case”.²⁶ Nevertheless, it is also a principle
24 of administrative law that “inconsistency within administrative decision making –
25 whether in outcome or analysis – can indeed constitute an independent ground for

²⁶ *Utilities Commission Act*, section 75.

1 judicial review.”²⁷ This includes circumstances where the change leads to
2 unfairness:

3 First, while it is important that specialist tribunals are able to depart from their
4 previous administrative jurisprudence in light of a changing understanding of
5 conditions and public policies, unanticipated changes may be unfair to the
6 persons who are immediately affected by the decision. If a departure from
7 established internal precedent gives rise to procedural unfairness, the
8 decision may be set aside on that ground.²⁸

9 “[P]rior decisions provide important context”²⁹ and a “valuable benchmark”³⁰ against
10 which to assess the reasonableness of a decision. Where a decision-maker departs
11 from a previous decision, the departure must be accompanied by an explanation
12 justifying the departure.³¹ The Decision is, without question, inconsistent with the
13 Heritage Contract Report, for the reasons discussed in section [5.3.1](#). The necessary
14 explanation for why the BCUC was departing from the Heritage Contract Report, and
15 the party input necessary to found such a decision, was absent in the present
16 instance.

17 **5.1.5 Further Comments on Procedural Fairness Requirements**

18 We respectfully submit that there is a difference between the BCUC identifying in its
19 Decision a matter requiring future consideration (which is often done), and what was
20 done here. The BCUC made unequivocal determinations about how “ring-fencing”
21 should occur. The purpose of the Directives was to collect the information to give
22 effect to those determinations. With respect, the BCUC went beyond what the legal
23 principles of procedural fairness allow it to do without notice, an opportunity to be

²⁷ *Technical Safety BC v. BC Frozen Foods Ltd.*, 2019 BCSC 716 at para. 61, citing *ISH Energy Ltd. v. British Columbia (Finance)*, 2017 BCCA 62 at para. 20.

²⁸ *Technical Safety BC v. BC Frozen Foods Ltd.*, 2019 BCSC 716 at para. 63.

²⁹ *Altus Group Limited v. Calgary (City)*, 2015 ABCA 86 at para. 18.

³⁰ *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 6.

³¹ Paul Daly, *The Principle of Stare Decisis in Canadian Administrative Law* (2016), 2015 CanLII Docs 325, <<http://www.canlii.org/t/287c>>, at p. 7, citing *J.D. Irving, Ltd. v. General Longshore Workers, Checkers and Shipliners of the Port of Saint-John, N.B. Local 273 of the International Longshoremen's Association*, 2003 FCA 266 at paras. 34-37.

1 heard or pertinent evidence. The way to rectify this procedural defect is to rescind
2 the Directives, acknowledge the need for a more robust evidentiary record before
3 determinations are made on this topic, and have a full hearing of the issues in the
4 Fiscal 2023 RRA proceeding.

5 **5.2 Ground 2: Material Facts Were Not Placed in Evidence**

6 The procedural shortcomings described above resulted in facts material to the
7 Decision not being placed in evidence.³² The types of evidence that were required
8 before making the Directives, and reaching the underlying determinations, are
9 discussed in the context of Ground 3. They include evidence on the Heritage
10 Contract Inquiry, the Government of B.C. policy, the role of transfer pricing in
11 “ring-fencing”, the practical challenges associated with the BCUC’s new approach,
12 and its impact on Powerex’s ability to generate net income. This type of evidence will
13 be available to the BCUC if a full and fair hearing of the matter is undertaken in the
14 Fiscal 2023 RRA. BC Hydro will demonstrate, if provided an opportunity to do so,
15 that the BCUC’s determinations are erroneous and/or unreasonable, such that the
16 current framework based on the BCUC’s Heritage Contract Report should remain in
17 place.

18 **5.3 Ground 3: There is Just Cause to Rescind the Directives to** 19 **Provide a Full and Fair Opportunity to Explore the Issues**

20 The Directives contemplate addressing the allocation of Powerex’s net income in the
21 Fiscal 2022 RRA. We submit that, irrespective of the procedural fairness issues
22 described above, there is just cause to rescind the Directives and instead direct that
23 a full hearing of the issues occur in the Fiscal 2023 RRA. It will allow BC Hydro a fair
24 opportunity to assemble and present evidence as to why the BCUC’s determinations
25 and Directives were erroneous and/or unreasonable, and why the current framework

³² Rule 26.05(b): “facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding.”

1 already addresses the BCUC’s concerns about risk and “ring-fencing”. It will allow
2 BC Hydro consult with the Government of B.C. on the proper course of action.

3 **5.3.1 There Is a Regulatory Justification for the Current Framework**

4 BC Hydro submits that there is a legitimate basis to debate the correctness and/or
5 reasonableness of the BCUC’s determinations and the Directives that flow from
6 them, so as to provide just cause to rescind the Directives and direct a full hearing
7 *de novo* of the issue in the Fiscal 2023 RRA. We offer the following high-level
8 discussion to illustrate this point. It should be recognized that BC Hydro would
9 augment this submission considerably if given the time and opportunity to do so.

10 **5.3.1.1 The Directives Contradict the BCUC’s Prior Determinations in the** 11 **Heritage Contract Report Without Reconciliation**

12 The BCUC’s determination regarding the appropriate allocation of Powerex’s net
13 income, and the absence of a regulatory justification for the current approach (both
14 of which underpinned the Directives under reconsideration), contradicted its prior
15 findings in the Heritage Contract Report.

16 The BCUC’s 2003 Heritage Contract Report is a decision that addressed, in part, the
17 central issues that give rise to this Reconsideration Application. In particular, in the
18 Heritage Contract Report the BCUC:

- 19 • Concluded that all of Powerex’s net income between a floor of \$0 and a ceiling
20 of \$200 million should be allocated to BC Hydro ratepayers;³³
- 21 • Expressly addressed and endorsed the fact that an allocation to customers of
22 all of Powerex’s net income included an allocation of risk associated with
23 Powerex trade activity (within the \$0 to \$200 million band);³⁴ and

³³ BCUC Heritage Contract Report, pages 34-36; page 76, Recommendation 18; Appendix D, page 2, BCUC recommended definition of “Trade Income”.

³⁴ BCUC Heritage Contract Inquiry Report, p. 35.

- 1 • In coming to the conclusions it did with regard to the allocation of Powerex’s net
2 income, emphasized the importance the BCUC placed on customer support for
3 that allocation because of the significance of the issue:³⁵

4 The Revenue Requirements model as proposed by BC Hydro introduces significant
5 changes with respect to Trade Income. As stated by BC Hydro’s counsel, the
6 “resolution of that [Trade Income] ... is the biggest change that the regulatory model
7 introduces and it’s far from trivial change. I think it’s a really significant change”
8 (T11: 2253). The Commission Panel agrees. In accepting BC Hydro’s proposed
9 Heritage Contract and treatment of Trade Income, the Commission Panel has
10 placed considerable weight on the support of the customers and the clarity that the
11 BC Hydro model provides on the issue of Trade Income.

12 The legislated directions to the BCUC related to Trade Income were issued after the
13 BCUC’s Heritage Contract Report; the directions reflected the BCUC’s
14 determinations in the Heritage Contract Report, not *visa versa*.³⁶ The BCUC then
15 issued an order in the Fiscal 2004 to Fiscal 2006 Revenue Requirements Application
16 establishing the TIDA pursuant to the direction, which gave effect to the
17 BCUC-recommended allocation to customers of all Powerex net income between \$0
18 and \$200 million.³⁷

19 In the Decision, the BCUC came to a very different conclusion with regard to the
20 allocation of Powerex’s net income than it had reached in 2003. The Decision stated:
21 “The Panel finds that BC Hydro ratepayers should assume no risk whatsoever for
22 Other Powerex Transactions. There is no regulatory justification to find otherwise.”

³⁵ BCUC Heritage Contract Inquiry Report, p. 35.

³⁶ The Inquiry Terms of Reference required the BCUC to consider these issues and recommend the legislative framework to implement them. See Terms of Reference, sections 3(h) and 8. The latter stated: “8. The Commission shall submit a report to the Lieutenant Governor in Council by no later than October 17, 2003, listing its Recommendations and the reasons for the Recommendations, including proposed legislation, regulations, special directions to the Commission or special directives to BC Hydro, as it thinks fit.” https://www.bclaws.ca/civix/document/id/oic/arc_oic/0253_2003.

³⁷ Order No. G-96-04.

1 With respect, the BCUC had already articulated a contrary “regulatory justification” in
2 the Heritage Contract Report.

3 The Decision did not reference the Heritage Contract Report, or the BCUC’s
4 previous conclusion regarding the appropriate allocation of Powerex’s net income.
5 The continued applicability of BCUC’s Heritage Contract Report findings was never
6 questioned in any information request or at the oral hearing. Customer input into the
7 appropriate allocation of Powerex’s net income, which the BCUC had regarded as
8 so important in the Heritage Contract Inquiry because of the magnitude of the issues
9 involved, was absent here because parties had no notice that that the BCUC was
10 considering a new allocation.

11 **5.3.1.2 Powerex Adds Value Even Where Trade Activity Involves BC Hydro**
12 **Electricity**

13 The basis for the Directives is the BCUC’s determination that the relevant distinction
14 from a rate setting perspective is between Powerex’s activities related to BC Hydro
15 electricity and Other Powerex Transactions. BC Hydro remains of the view that
16 Powerex’s market transactions, and associated market transaction prices, do not
17 illuminate the value of BC Hydro electricity. The BCUC’s analysis is failing to
18 account for the fact that, even in the circumstances where BC Hydro electricity is
19 involved, Powerex’s market transactions, and the associated transaction prices,
20 reflect a bundling of the BC Hydro system capabilities with Powerex’s trading,
21 marketing and associated services. They are often also enabled by Powerex’s
22 investments in transmission rights and/or its market development efforts. The
23 Transfer Price that BC Hydro receives or pays under the TPA is the stand-alone
24 value of the BC Hydro energy.

25 **5.3.2 BC Hydro Needs More Time to Compile the Necessary Evidence**

26 BC Hydro would struggle to be able to comply with Directive 17A, simply by virtue of
27 the short time allowed. The Fiscal 2022 RRA is to be filed before the Holiday break

1 in December, less than four weeks from now. Although Directive 17A ostensibly only
2 requires filing summary information, in practice BC Hydro will need to:

- 3 • Consult with the Government of B.C. on the extent to which it is prepared to
4 forego gains and absorb losses in the manner contemplated in the Decision;
- 5 • Set out why BC Hydro disagrees with the BCUC's underlying analysis from the
6 perspective of regulatory principle;
- 7 • Identify the practical challenges associated with seeking to distinguish between,
8 and separate for regulatory purposes, transactions that are heavily integrated;
- 9 • Articulate the potential for attempts to ring-fence particular portions of
10 Powerex's business to place undesirable constraints on the way that Powerex
11 transacts business;
- 12 • Set out jurisdictional limitations on the BCUC's role in relation to Powerex; and
- 13 • Address evidence that underpinned the BCUC's Heritage Contract Inquiry
14 decision and explain why it remains relevant.

15 BC Hydro reasonably requires more time to assemble the necessary evidence to
16 address Directive 17A.

17 **5.3.3 BC Hydro Must Consult with the Government of B.C. on a Change** 18 **of this Magnitude**

19 As we have described above, Powerex generates hundreds of millions of dollars of
20 net income each year. The BCUC's determinations change the treatment of Trade
21 Income after 17 years. The change directly impacts the Government of B.C., as it
22 implies that the Government of B.C. must absorb losses. The determinations have
23 the potential to force Powerex to change the way it approaches its business, which
24 could have significant financial implications for BC Hydro customers and (based on
25 this Decision) the Government of B.C. BC Hydro needs to consult with the

1 Government of B.C. on the extent to which it is prepared to forego gains and absorb
2 losses in the manner contemplated in the Decision.

3 We note that the Government of B.C. has recently expressed the view that
4 Powerex's operations should remain unhindered by regulation. The Phase 1
5 Comprehensive Review report stated:

6 Falling under BCUC oversight would hamper Powerex's ability
7 to compete and earn income in fast-moving and rapidly evolving
8 competitive markets. For this reason, government will continue
9 to restrict the BCUC from regulating the activities of Powerex as
10 an outcome of the Review.³⁸

11 The BCUC's determinations and Directives extend beyond regulating the TPA and
12 Transfer Price that have long represented the ring-fence between BC Hydro and
13 Powerex. Moreover, intended or not, as described in section [4.3](#) above, the findings
14 have real potential to "hamper Powerex's ability to compete and earn income in a
15 fast-moving and rapidly evolving competitive markets".

16 Varying the Directives as sought will provide the necessary time to address these
17 matters with the Government of B.C. and understand its position.

18 **5.3.4 There Are Significant Practical Impediments to Allocating Powerex** 19 **Net Income**

20 The Directives are premised on the expectation that BC Hydro can readily produce
21 information that will allow the BCUC to distinguish between income earned from
22 Powerex's market transactions related to BC Hydro resources and Other Powerex
23 Transactions. That is not the case.

24 There is, with limited exception, no explicit *ex-ante* or *ex-post* allocation of specific
25 Powerex market purchases or specific Powerex market sales as being transactions
26 that do, or do not, involve BC Hydro electricity. An allocation of this nature is
27 unnecessary in order to determine the value of BC Hydro electricity.

³⁸ Phase 1 Report, p. 20.

1 Moreover, there are at least three reasons why it is not possible to allocate, in any
2 meaningful way, Powerex’s specific market transactions (and associated market
3 transaction prices) into “buckets” comprised of (i) transactions involving BC Hydro
4 electricity, and (ii) Other Powerex Transactions:

- 5 • First, Powerex’s market purchases and sales³⁹ are, with limited exceptions,
6 executed independent of subsequent scheduling decisions (which determine
7 where specific market purchases are delivered to, and where specific market
8 sales are delivered from). Whether any individual Powerex market purchase is
9 delivered to the BC Hydro system as opposed to delivered to serve a Powerex
10 market sale reflects Powerex’s efforts to minimize delivery costs, and generally
11 will not reflect the original motivation for each market transaction or the
12 associated market transaction price. In the result:
 - 13 ▶ Market sales delivered from the BC Hydro system cannot be assumed to
14 represent the specific market sales executed for the purpose of managing
15 BC Hydro surplus energy or Trade Activity (i.e., transactions involving
16 BC Hydro Electricity); and
 - 17 ▶ Market purchases delivered to the BC Hydro system cannot be assumed to
18 represent the specific market purchases executed for the purpose of
19 managing a BC Hydro deficit or Trade Activity (i.e., transactions involving
20 BC Hydro Electricity);
- 21 • Second, Powerex’s market purchases and sales are often delivered in some
22 hours to or from the BC Hydro system and delivered entirely off-system in other
23 hours, meaning that neither the purchase/sale, nor the deliveries are entirely
24 attributable to Other Powerex Transactions or BC Hydro Trade Activity;

³⁹ Powerex market purchases refers to wholesale electricity purchases that Powerex executes in the external wholesale electricity markets. This is distinct from the term “Net Market Purchases/Sales from Powerex” that BC Hydro uses in its reporting, which refers to BC Hydro’s purchase and sale transactions with Powerex, such as the transactions that occur when BC Hydro purchases (or sells) wholesale electricity from (or to) Powerex under the Transfer Pricing Agreement framework (e.g., electricity that BC Hydro purchases and imports to meet a BC Hydro domestic need, surplus electricity that is sold and exported).

-
- 1 • Third, there remain significant challenges in identifying specific market
2 purchases or specific market sales as transactions involving BC Hydro
3 electricity, even in the narrow circumstances where (a) specific market
4 purchases or specific market sales are made for the exclusive purpose of
5 delivering energy to or from the BC Hydro system, and (b) the associated
6 energy is indeed delivered exclusively to or from the BC Hydro system. This is
7 because, in a given hour, deliveries to or from the BC Hydro system are not
8 exclusively supported by BC Hydro electricity. Rather, exports to market sales
9 are also supported by the concurrent delivery to the BC Hydro system of
10 imported market purchases and the Canadian Entitlement, among other things.
11 Similarly, market purchases are also used, not only to meet BC Hydro electricity
12 needs (deficits and Trade Activity imports), but also to support concurrent
13 exports to market sales; and
- 14 • These impediments affect BC Hydro’s ability to distinguish among past
15 activities, and also raise questions about whether modifications to the existing
16 business approach will be necessary.

17 **5.3.5 The Directives Will Not Accomplish What the BCUC Seems to Be**
18 **Intending**

19 The BCUC’s intention appears to be to examine the composition of Powerex net
20 income and exclude amounts that it determines are associated with Other Powerex
21 Transactions (i.e., transactions not involving BC Hydro). If the BCUC’s intent is to be
22 achieved, the exercise is much more complicated than the Directives contemplate.

23 The Directives relate only to the TIDA. The TIDA does not capture all of Powerex’s
24 net income; rather, it only captures the *variances* between Powerex’s planned net
25 income (based on a five-year average) and actual net income. There would only be
26 a balance in the TIDA if there is a variance. If, for example, Powerex were to exactly
27 achieve its planned net income in a given year, there would be no amount flowing to
28 the TIDA.

1 To the extent that the BCUC is concerned with the composition of Powerex’s net
2 income as a whole, not just the variance, it would logically mean that the inclusion of
3 the five-year average of Powerex net income in rates is also in issue. In order to
4 permit the BCUC to review all of Powerex’s net income after the fact, it would need
5 to consider an entirely new regulatory account mechanism.

6 **5.3.6 Deferring the Issue to Fiscal 2023 RRA Recognizes the “Gap Year”**
7 **Approach to Fiscal 2022 RRA**

8 The topic that has manifested in the Directives is a very significant regulatory issue
9 that is ill-suited to the expedited and streamlined process that the BCUC envisions
10 for the Fiscal 2022 RRA. By contrast, the Fiscal 2023 RRA could provide a
11 framework in which to “level set” and explore the issues in a meaningful way.

12 **5.3.6.1 The “Gap Year” Proceeding Must Be Resolved in Approximately**
13 **Five Months**

14 The BCUC, during the last proceeding, had proposed that fiscal 2022 would be a
15 “gap year”, and sought comment. The BCUC noted in the Decision that:

16 Based on the submissions received, there is general consensus
17 among the parties that the fiscal 2022 RRA and proceeding
18 should be streamlined to reflect a “gap” or transitional year.
19 Most interveners were supportive of BC Hydro’s proposal in
20 setting rates for fiscal 2022 and beyond, although there is
21 disagreement on some aspects of the review such as the timing
22 of the next application, and the scope and form of the review.⁴⁰

23 The Decision confirmed the “gap year” approach.

24 Addressing the BCUC’s concern about the proceeding cycle requires the
25 Fiscal 2022 RRA process to be completed in approximately five months. The
26 Fiscal 2022 RRA process will be unfolding at the same time BC Hydro is preparing
27 for the Fiscal 2023 RRA.

⁴⁰ Decision, pp. 187-188.

1 An issue of this significance warrants full consideration in a process that allows
2 BC Hydro sufficient time to prepare evidence and the BCUC sufficient ability to
3 explore the implications.

4 **5.3.6.2 Fiscal 2023 RRA Allows Time and Space for Constructive Dialogue**

5 The Fiscal 2023 RRA process will provide more time and space to consider different
6 approaches to building the BCUC's understanding regarding the role of Powerex
7 and its relationship with BC Hydro. The issues and concepts in this area are highly
8 complex. We see the potential for more collaborative mechanisms such as
9 workshops with the BCUC, a negotiated settlement process or perhaps a
10 Streamlined Review Process to be more fruitful avenues for the BCUC to explore
11 these complex issues. BC Hydro would include with the Fiscal 2023 RRA a
12 proposed process in this regard.

13 It should be recognized that confidentiality of information related to Powerex will be
14 an issue regardless of when and how these matters are reviewed. There will be
15 limits on the type of information that can be made available to interveners. BC Hydro
16 would address confidentiality at the time of filing.

17 **5.3.7 BC Hydro's Actual Fiscal 2021 Trade Income Will Not Be Known** 18 **Until After the Fiscal 2022 RRA Process Is Completed**

19 The TIDA balance for fiscal 2021 would have to be addressed in Fiscal 2023 RRA in
20 any event. The Fiscal 2022 RRA proceeding will be completed before Powerex's
21 fiscal 2021 actual net income (and thus BC Hydro's actual fiscal 2021 Trade Income)
22 will be available. The Fiscal 2022 RRA will reflect fiscal 2020 actual Powerex net
23 income but will only reflect a forecast for fiscal 2021. The TIDA, as a variance
24 account, will record the variance between the fiscal 2020 forecast and actuals and a
25 forecast zero variance for fiscal 2021. (Note that this presumes that the BCUC varies
26 Direction 17 to allow BC Hydro to continue recording the actual Trade Income in the
27 TIDA.)

1 **5.3.8 The Forecast TIDA Balance Should Flow to Customers in**
2 **Fiscal 2022 Pending Resolution of the Underlying Issues**

3 The BCUC's assessment of the substantive issues can be deferred to the
4 Fiscal 2023 RRA, while still reflecting the forecast balance in the TIDA when
5 determining fiscal 2022 rates for the immediate benefit of customers. The rescission
6 and variance of the Directives will allow that to occur, subject to the determination of
7 the BCUC panel hearing the Fiscal 2022 RRA.

8 The BCUC's stated rationale for the Directives is that the benefits to which
9 ratepayers are entitled might be eroded by losses on Other Powerex Transactions:

10 Given BC Hydro's proposal to continue with the definition of
11 Trade Income from Direction No. 7, in a circumstance where
12 there is a net loss on all Other Powerex Transactions (as shown
13 in the table above), the benefits ratepayers receive of any
14 positive Powerex net income arising from transactions involving
15 BC Hydro electricity are at risk of erosion.

16 The Panel finds that BC Hydro ratepayers should assume no
17 risk whatsoever for Other Powerex Transactions. There is no
18 regulatory justification to find otherwise.⁴¹

19 Powerex net income exceeded forecast in fiscal 2020, and BC Hydro expects that
20 the forecast TIDA balance to start fiscal 2022 is positive (owing to customers).⁴² If
21 during the Fiscal 2023 RRA proceedings, the BCUC were to reach similar
22 conclusions with regard to Trade Income allocation as it reached in the Fiscal 2020
23 to Fiscal 2021 RRA and it further found that Powerex's trading activity on Other

⁴¹ Decision, p. 55.

⁴² In the Fiscal 2022 RRA, BC Hydro will be proposing to return to using the DARR table mechanism to amortize the TIDA balances (along with the balance in other Cost of Energy variance accounts). BC Hydro will also propose additional details regarding its proposal for how the DARR mechanism should operate in the Fiscal 2022 RRA. Under this proposal, the \$13 million favourable balance in the TIDA would be included as an input in the DARR calculation. Balances remain in the Cost of Energy accounts until such time as the combined balances of the Cost of Energy accounts falls outside the bounds of a dead-band (+\$50 million to -\$50 million), at which point the DARR percentage changes from the current zero percent. The other Cost of Energy account balances have yet to be determined, but the potential exists for the TIDA balance not to impact fiscal 2022 rates at all. If it materializes, this scenario would provide another justification to defer the issue to fiscal 2023.

1 Powerex Transactions had reduced the income that should flow to customers
2 through the TIDA, then the amount to be returned to customers would be *higher*.

3 The existence of a regulatory account (i.e., the TIDA) preserves the BCUC's ability
4 to address additional fiscal 2022 implications at a later date.

5 BC Hydro had already intended to flow all benefits from Powerex's trade activity
6 (specifically, the forecast balance in the TIDA, considering fiscal 2020 actual and
7 fiscal 2021 forecast results) to customers in the Fiscal 2022 RRA. In the event that
8 the BCUC's decision in the Fiscal 2023 RRA changes the amount of Trade Income
9 that BC Hydro must record in the TIDA related to fiscal 2020, fiscal 2021 and
10 (eventually) fiscal 2022, these differences can be addressed as part of the
11 Fiscal 2023 RRA proceeding.

12 **5.4 Ground 4: Directive 17 Needs to Be Amended to Avoid** 13 **Unintended Consequences in Any Event**

14 The fourth ground for reconsideration addresses a misalignment between the
15 wording of Directive 17 and the way that the TIDA operates, which would create
16 harmful unintended consequences for customers. Irrespective of the issues outlined
17 above, the BCUC should rescind and vary Directive 17 to rectify the issue.

18 BC Hydro understands the BCUC's intent in issuing Direction 17 to be that it wants
19 the ability to review the composition of the TIDA balance before any portion of it is
20 amortized in to future rates.⁴³ That is, we believe the BCUC had intended to address
21 the *amortization of the TIDA balance*. This is suggested by the following statement in
22 the Decision:

23 For further clarity, the Panel allows the continuance of the Trade
24 Income Deferral Account to capture variances between forecast
25 and actual income from BC Hydro related transactions and the

⁴³ Decision, p. 55.

1 forecast and actual Other Powerex Transactions, subject to
2 BCUC approval.⁴⁴

3 However, the wording of Directive 17 itself suggests that BC Hydro cannot *record*
4 actual trade income in the TIDA. The inconsistency merits clarification.

5 The TIDA, as designed, captures the difference between the forecast and actual
6 Trade Income during a test period. The forecast is determined based on a five-year
7 average. When the actual amount is known, the difference between the forecast and
8 actual is recorded in the TIDA. It is necessary to *record* the difference in the TIDA so
9 that it would be available for *amortization* in a subsequent test period.

10 The Directive will prevent the favourable forecast TIDA balance (comprising the
11 difference between planned fiscal 2020 Trade Income and actual fiscal 2020 Trade
12 Income, and the difference between planned fiscal 2021 Trade Income and forecast
13 fiscal 2021 Trade Income) from being available for customers in future years. The
14 BCUC's intent would be achieved by rescinding Directive 17 and confirming that
15 BC Hydro can record the actual Trade Income in the TIDA consistent with the
16 pre-existing orders. The issue of how to amortize the balance would be addressed
17 when the underlying issues addressed in Grounds 1 to 3 are heard.

18 **6 Process on Reconsideration Should Be Streamlined**

19 BC Hydro submits that the process to address this Reconsideration Application
20 should be streamlined, consisting of intervener submissions and BC Hydro reply
21 submissions.

22 A streamlined and expeditious process on reconsideration recognizes several
23 important factors:

- 24 • BC Hydro will be filing the Fiscal 2022 RRA within weeks, and the
25 Fiscal 2022 RRA process will itself be time constrained;

⁴⁴ Decision, p. 55.

-
- 1 • The Reconsideration Application is, in substance, a request to defer dealing
2 with the substantive matter for less than a calendar year;
- 3 • Allowing the Reconsideration Application process to expand into a substantive
4 exploration of the correct approach to “ring-fencing” and the TIDA would
5 undermine the very basis of BC Hydro’s Reconsideration Application - i.e., that
6 more time is required to ensure that the merits can be addressed fully and fairly
7 with input from affected stakeholders; and
- 8 • The order sought in this Reconsideration Application will see customers
9 benefitting sooner from a positive balance in the TIDA, without affecting the
10 BCUC’s ability to hear the issue). It will also rectify the unintended
11 consequence due to the inconsistency between the wording of Directive 17 and
12 how the TIDA works.

13 BC Hydro accepts that the BCUC need not address the issue of procedural fairness
14 if it concludes there is, in any event, just cause to rescind and vary the Directives so
15 that the subject matter can be addressed in the Fiscal 2023 RRA. BC Hydro submits
16 that this approach of making the determination based on “just cause” may, in fact,
17 permit a summary determination of the matter. No party is prejudiced by rescinding
18 the directives and deferring the issue to the Fiscal 2023 RRA; in fact, everyone –
19 BC Hydro and customers, Powerex and the Government of B.C. – benefits from the
20 orders sought.

1 **7 Conclusion**

2 BC Hydro respectfully submits that the BCUC grant this request for reconsideration
3 on the terms sought. Rescinding the Directives, and instead allowing the Powerex
4 “ring-fencing” topic to be addressed afresh in the Fiscal 2023 RRA proceeding, will
5 rectify the shortcomings in the BCUC’s process in respect of this issue. It will allow
6 the BCUC to benefit from a comprehensive evidentiary record, submissions from
7 affected parties, and the BCUC’s findings in the Heritage Contract Report.

8 ALL OF WHICH IS RESPECTFULLY SUBMITTED.

**Fiscal 2020 to Fiscal 2021
Revenue Requirements Application**

**Application to Reconsider and Vary Directives
Relating to Powerex Net Income in the Fiscal 2020 to
Fiscal 2021 Revenue Requirements Decision**

Appendix A

Decision Excerpts

Excerpts from Decision

Page 47:

Inclusion of all “Market” Transactions in the Cost of Energy

Should the costs and proceeds from market transactions – including those characterized by BC Hydro as being for “trade” purposes accrue to the ratepayer, or should some other principle apply – such as, for example, should ratepayers be entitled to only recover their costs and any “ profits” or “losses” with respect to those costs accrue to the shareholder? We examine a simplified example of market transactions of sales of electricity surplus to an electric utility’s requirements.

Given the variability of demand and the lumpiness of capital investments in generation assets, it is not uncommon for electric utilities to find themselves long on electricity supply in the short or even medium term. Consider the case of a utility building a dam and power station that is intended to not be fully utilized for 20 years, even though the costs associated with the infrastructure are recovered from ratepayers in that 20 year period. There may be significant surplus electricity available for sale until demand catches up with the new supply. Often, that electricity can be sold at a surplus to its fully embedded cost which is paid by the utility’s ratepayers.

In determining how these sales of electricity should be treated, we consider the reverse situation when the utility is short supply, for whatever reason, and electricity is purchased. In cases of short supply, it is not expected that the shareholder would, absent a finding of imprudence, pay anything toward the acquisition of electricity to meet ratepayer demand. The same logic applies in reverse; if the utility has surplus energy, it is not expected that the ratepayer would be expected to share any earnings from the surplus with anyone else. We therefore find that unless the shareholder paid for a generation asset, it is not entitled to the proceeds from sales of any electricity generated by that asset.

This is consistent with the approvals granted to BC Hydro in the 2017 Waneta Transaction decision.²⁸³ There, the BCUC

approved the inclusion in BC Hydro's revenue requirement of the income flowing from unregulated revenues associated with the Waneta dam, which is a rate base asset. In particular, the BCUC stated: "One may question why BC Hydro's ratepayers should bear the risks of a transaction that does not serve ratepayer needs or interests. However, that question fails to take into account certain benefits to the ratepayer, the most obvious one being the guaranteed Lease payments."²⁸⁴

For these reasons, we find it appropriate that all proceeds from sales of BC Hydro electricity are on the account of the ratepayer.

Pages 54 and 55

The BCUC had no jurisdiction with regard to the inclusion of any Powerex net income or losses in BC Hydro's revenue requirement as long as Direction No. 7 prescribed that all of Powerex's net income (provided it was positive) flowed to ratepayers. However, with Direction No. 7 rescinded, the Panel must consider the regulatory principles that apply to the inclusion of subsidiary income and losses in BC Hydro's rates.

Here, we consider whether it is appropriate for BC Hydro to continue to use the definition of Trade Income from now-repealed Direction No. 7. Doing so provides the appearance of enabling BC Hydro ratepayers to benefit from any positive Powerex net income while being protected from any net losses that may arise.

As noted previously in this Decision, Direction No. 7 directed that all of Powerex's net income, provided it is greater than \$0, defined as "Trade Income," be included in BC Hydro's revenue requirements. BC Hydro proposes to continue this practice even though Direction No. 7 is now repealed. The Panel is concerned that BC Hydro's proposed approach introduces unacceptable risk to ratepayers.

We are concerned about various aspects of the inclusion of Trade Income, as defined by BC Hydro. Generally speaking, regulatory principles require that costs and revenues from unregulated activities not be included in a utility's revenue requirements and as such, it is unusual to do so. The

Regulatory Compact requires that ratepayers pay only the prudently incurred costs to operate the utility, including a fair return for the utility owners. There is no provision in the Regulatory Compact for a risk/reward trade-off when it comes to activities beyond the utility’s own regulated activities.

Typically regulators, including the BCUC, attempt to “ring fence” any non-regulated activities of a utility to protect its ratepayers from risk. However, in this case some of the unregulated activities involve BC Hydro’s regulated assets and operations. We have previously discussed the appropriateness of the inclusion of proceeds from transactions involving BC Hydro electricity with Powerex. At that time we observed that a portion of the economic value of these transactions may be captured in Powerex’s net income. We now consider that economic value, along with other components of Powerex’s net income.

The table below summarizes Powerex’s activities. The activities in the first two columns in the table below are based on the taxonomy provided in BC Hydro’s definition of Market energy.

Table 4-11: Powerex Activities

Transactions involving BC Hydro electricity for Domestic Purposes	Transactions involving BC Hydro electricity for trade related activities	Transactions of non electricity products for BC Hydro	Other Powerex Transactions
Market Electricity Purchases: These represent market purchases of energy from Powerex by BC Hydro to meet domestic load requirements. Surplus Sales: These represent sales of electricity from BC Hydro to Powerex in excess of domestic load requirements.	Net Purchases (Sales) from Powerex: These represent transactions where Powerex purchases from and sells to BC Hydro for the purpose of trade related activities, provided that the BC Hydro system has the ability to accommodate these transactions. These are not purchases (sales) for domestic purposes.	Acquisition of Natural Gas for BC Hydro	All other Activities

Transactions involving electricity and natural gas between BC Hydro and Powerex take place at the transfer price specified in the agreement in effect at the time of the transaction. We have discussed this aspect of electricity related transactions in the previous section where we expressed our concerns about the ratepayer risk inherent in these transactions. We do not have similar concerns about transactions of non electricity products for BC Hydro.

In many cases, Powerex derives economic value from transactions involving BC Hydro electricity. In doing so, it may simply resell at a price higher than the transfer price or by making offsetting purchases and sales that are timed to take advantage of market prices. This part of the economic value of these transactions contributes to Powerex's net income. The portion of the transactions between Powerex and the market, unlike the portion of the transactions between BC Hydro and Powerex, is unregulated. However, the Panel found in section 4.2.5 that proceeds from sales of BC Hydro electricity are on the account of the ratepayer. Therefore, the portion of Powerex net income that arises from transactions involving BC Hydro electricity should accrue to BC Hydro ratepayers.

Given BC Hydro's proposal to continue with the definition of Trade Income from Direction No. 7, in a circumstance where there is a net loss on all Other Powerex Transactions (as shown in the table above), the benefits ratepayers receive of any positive Powerex net income arising from transactions involving BC Hydro electricity are at risk of erosion.

The Panel finds that BC Hydro ratepayers should assume no risk whatsoever for Other Powerex Transactions. There is no regulatory justification to find otherwise.

There is no regulatory impediment to the inclusion of positive income from Powerex transactions that do not involve BC Hydro electricity, and the Panel has no objections to their inclusion in BC Hydro's Trade Income Deferral Account.

However, in light of the concerns raised above, only the proceeds, less associated overhead costs, for transactions involving BC Hydro electricity and associated with the acquisition of natural gas for BC Hydro should be included in the Trade Income Deferral Account. Therefore, the Panel directs that no actual Powerex net income be captured in the Trade Income Deferral Account absent further review and approval by the BCUC.

Therefore, in its next RRA, BC Hydro is required to file, in confidence if necessary, a summary of Powerex's net income, in sufficient detail to enable the BCUC to determine whether any

amount of actual Powerex net income is appropriate for inclusion in the Trade Income Deferral Account.

For further clarity, the Panel allows the continuance of the Trade Income Deferral Account to capture variances between forecast and actual income from BC Hydro related transactions and the forecast and actual Other Powerex Transactions, subject to BCUC approval. [Emphasis added.]