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December 11, 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. 1599102
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
2020 Transfer Pricing Agreement Application
Suspension Request**

BC Hydro writes to request a suspension of this proceeding, pursuant to sections 2.1 and 4(1) of the *Utilities Commission Act*, section 11(1) of the *Administrative Tribunals Act* and section 4.01 of the BCUC's Rules of Practice and Procedure.

The 2020 Transfer Pricing Agreement (**2020 TPA**) was developed within a regulatory framework that has been in place since the 2003 Heritage Contract Enquiry.¹ In its recent decision on BC Hydro's Fiscal 2020 to Fiscal 2021 Revenue Requirements Application (**F2020-F2021 RRA**), the BCUC made certain directives with regard to this framework. On December 1, 2020, BC Hydro applied to the BCUC seeking a reconsideration and variance of those directives to allow a full hearing *de novo* into the merits of the BCUC's underlying findings as part of the Fiscal 2023 Revenue Requirements Application (**Reconsideration Application**).

The directives at issue in the Reconsideration Application are related to the relationship between Powerex, BC Hydro and the Province and the regulatory principle of "ring-fencing" non-regulated activities from regulated utility activities (the **Directives**²). As BC Hydro explains in its Reconsideration Application, a Transfer Pricing Agreement

¹ 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.

² Refer to Directive 17 of BCUC Order No. G-246-20 and an associated un-numbered directive that we refer to as Directive 17A. For further information, refer to page 1 of the Reconsideration Application.

is the mechanism to achieve this “ring-fencing” between Powerex’s activities and BC Hydro.³

As a result of the Directives and associated statements in the BCUC’s Decision on the F2020-F2021 RRA as well as BC Hydro’s subsequent Reconsideration Application, the regulatory framework upon which the 2020 TPA is based, is uncertain. Specifically:

- The BCUC has stated “we find it appropriate that all proceeds from sales of BC Hydro electricity are on the account of the ratepayer”⁴. However, the Transfer Price in the 2020 TPA reflects the “stand-alone” value of BC Hydro electricity. The Transfer Price does not include the value associated with the difference between the Transfer Price and the price that Powerex can secure in the market because any profit Powerex generates is due to its own expertise and investments (e.g., its investments in transmission rights and market access)⁵.
- The BCUC also stated “the Panel finds that BC Hydro ratepayers should assume no risk whatsoever for Other Powerex Transactions. There is no regulatory justification to find otherwise.”⁶ However, the BCUC has previously endorsed the fact that an allocation to customers of all of Powerex’s net income includes an allocation of risk associated with Powerex trade activity.⁷

In the Reconsideration Application, BC Hydro requests that the BCUC vary the Directives and allow a hearing *de novo* on the key issues in BC Hydro’s Fiscal 2023 Revenue Requirements Application. If accepted by the BCUC, BC Hydro would include in that application sufficient information for the BCUC to assess the extent to which the current regulatory framework remains valid or whether any adjustments are necessary.⁸

BC Hydro is currently required to file responses to round one information requests in this proceeding by January 14, 2021. However, depending on the outcome of the *de novo* hearing that BC Hydro has requested, BC Hydro’s answers to round one information questions may be different and BC Hydro may need to consider revisions to the 2020 TPA in the future.

Accordingly, BC Hydro submits that this proceeding should be suspended and should not proceed until there is sufficient clarity on the issues raised in the Reconsideration Application, including the extent to which the current regulatory framework regarding the relationship between Powerex, BC Hydro and the Province remains valid. Providing answers based on a regulatory framework that is uncertain and may change is unlikely to provide sufficient information to inform subsequent steps in this proceeding. It would be an inefficient use of BC Hydro, BCUC and intervener time and resources.

³ Reconsideration Application, pages 3 to 4.

⁴ Refer to page 47 of BCUC Order No. G-246-20.

⁵ Reconsideration Application, page 10.

⁶ Refer to page 55 of BCUC Order No. G-246-20.

⁷ Reconsideration Application, page 24.

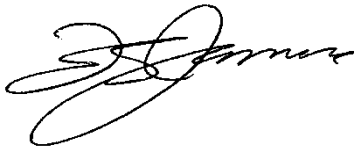
⁸ Reconsideration Application, page 6.

Suspending the proceeding, at this time, is an appropriate and beneficial procedural step because:

- All legal requirements were met when BC Hydro filed the 2020 TPA under section 71 of the *Utilities Commission Act*. In the Application, BC Hydro asked for a preliminary review of the 2020 TPA to allow the BCUC to determine whether a hearing under section 71 of the *Utilities Commission Act* was required.⁹ However, BC Hydro and Powerex have been operating under the agreement since April 1, 2020 and, in law, neither a preliminary review nor a hearing is required, for BC Hydro and Powerex to continue to operate under the agreement;
- Suspending the current proceeding pending the resolution of issues raised in the F2020-F2021 RRA Decision and the Reconsideration Application supports regulatory efficiency which benefits customers and does not harm any party; and
- If adjustments to the current regulatory framework are brought into force, BC Hydro and Powerex can assess whether and, to what extent, the 2020 TPA is consistent with the new framework, and can then make submissions on appropriate next steps in this proceeding.

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

Yours sincerely,



Fred James
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⁹ Refer to section 3 of Exhibit B-1.