

December 18, 2019

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**Attention: Patrick Wruck, Commission Secretary**

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Our reference 1001093475

Dear Mr. Wruck:

**British Columbia Hydro and Power Authority Application for 2019 Letter Agreement  
with Powerex Corp. ~ Project No. 1599038  
Association of Major Power Customers of British Columbia (AMPC) – Final Argument**

We are legal counsel to AMPC and write to submit AMPC's Final Argument.

Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen

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CAN DMS: \130982268\1

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**BRITISH COLUMBIA UTILITIES COMMISSION**

**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY APPLICATION FOR  
2019 LETTER AGREEMENT WITH POWEREX CORP.**

**PROJECT NO. 1599038**

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**ASSOCIATION OF MAJOR POWER CUSTOMERS OF BC**

**FINAL ARGUMENT**

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**December 18, 2019**

**British Columbia Utilities Commission (“BCUC” or “Commission”)**

**BC Hydro Application for Approval of 2019 Letter Agreement with Powerex**

**Final Argument of the Association of Major Power Customers of BC (“AMPC”)**

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**I. INTRODUCTION AND OVERVIEW**

1. AMPC is a longstanding industry association that represents major industrial operators in BC, including the pulp and paper, forestry, mining, electrochemical and petrochemical industries, in matters of electricity regulation. AMPC’s members provide many natural resources and industrial sector jobs throughout BC. Many of these operators are energy intensive and trade-exposed customers who are disproportionately affected by changes to industrial electricity rates. AMPC’s mandate is to ensure that industrial customers’ electricity rates in BC are competitive, fair, and efficient.
2. AMPC files this argument in response to BC Hydro’s final argument<sup>1</sup> in support of its application for BCUC approval of the 2019 Letter Agreement it entered with Powerex to enable BC Hydro to acquire physical deliveries of electricity from Powerex on a forward basis (“**Application**”).<sup>2</sup>
3. Where AMPC does not address a specific point in BC Hydro’s final argument, its silence should not be taken for agreement or disagreement.
4. AMPC confirms that this final argument contains no confidential information, and that it will not be filing a confidential final argument.
5. AMPC’s final argument focuses on three key issues of significance to industrial customers:
  - a. Load curtailment as a flexible and cost-effective option to meet operational needs, including a request for the Commission to reject any suggestion from BC Hydro that it cannot meet at least some of its electricity supply needs using volumes from load curtailment;
  - b. Ongoing concerns about the total costs and impacts on ratepayers and concerns from the F2011 Negotiated Settlement Agreement (“**F2011 NSA**”) regarding BC Hydro’s forward electricity transactions with Powerex, including a recommendation for the Commission to directly state that the 2019 Letter Agreement is in scope for future proceedings that may assess its financial performance, e.g., relative to other resource options; and
  - c. A specific Commission direction for BC Hydro to incorporate the 2019 Letter Agreement and 2003 Transfer Pricing Agreement (“**2003 TPA**”) into the forthcoming Integrated Resource Plan (“**IRP**”) proceeding, which is broadly scoped and should consider the viability of these agreements to meet future supply deficits.
6. AMPC elaborates on each of these points below.

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<sup>1</sup> BC Hydro Final Argument dated December 5, 2019.

<sup>2</sup> Ex. B-1.

## II. ARGUMENT

### A. Load Curtailment

7. The purpose of the Application is to obtain a BCUC determination that its 2019 Letter Agreement with Powerex for forward physical electricity purchases and delivery of wholesale electricity to BC Hydro is in the public interest. BC Hydro describes these purchases as necessary to manage potential electricity shortages in the operational time horizon and aligned with the objectives in the *Clean Energy Act*.
8. Consistent with the practices of neighbouring and comparator jurisdictions, and the recommendations of BC's own Industrial Electricity Policy Review panel, industrial load curtailment is another tool that could allow BC Hydro to meet these needs. Load curtailment offers BC Hydro a means to cost-effectively respond to demand via competitive pricing (by definition, if standard past procurement practices are followed), and reduces industrial operators' unit cost of electricity by taking advantage of their operational flexibility.
9. Load curtailment has been a longstanding AMPC goal for more than 10 years, with two limited pilot programs occurring within that time. It represents a "win-win-win" option as between industrial customers, other rate classes, and BC Hydro. However, BC Hydro has rejected using load curtailment in the near term, preferring to rely instead on capital additions, Electricity Purchase Agreements and, now, more structured power imports through Powerex for short-term demand requirements.
10. AMPC is concerned that if this Application is approved as filed, BC Hydro will rely on that determination to continue to avoid assessing and/or implementing load curtailment programs in the future, even though load curtailment and electricity imports are not mutually exclusive options. Despite BC Hydro's outlier reluctance to seriously consider a load curtailment strategy to address electricity shortages, both it and forward purchases should be tools in BC Hydro's toolbox.
11. AMPC therefore requests the BCUC to clearly state in any approval of the Application that this should not preclude BC Hydro from evaluating industrial load curtailment, and/or other comparable, future optional programs that may both assist BC Hydro in meeting its operational needs and make BC Hydro rate options more competitive.
12. In AMPC IR 1.4.1, AMPC requested that BC Hydro confirm that "at least some of BC Hydro's operational needs could be met by optional programs with industrial customers, such as the Load Curtailment Pilot and other demand response programs."<sup>3</sup> [emphasis added] Yet BC Hydro's response both misapprehends AMPC's suggestion and dismisses the benefits of the load curtailment pilot for reasons that do not withstand scrutiny.
13. AMPC identifies load curtailment in AMPC IR 1.4.1 as an additional tool available to BC Hydro to allow BC Hydro to meet its operational needs in a way that also satisfies some of the provincial energy objectives identified in the *Clean Energy Act*. Nowhere does AMPC suggest that load curtailment is a complete answer to meeting BC Hydro's potential physical supply shortfalls.

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<sup>3</sup> Ex. B-5, pdf p. 28.

14. BC Hydro's response to AMPC IR 1.4.1 states that "[t]he requirement for significant quantities of firm, pre-scheduled, fixed-priced energy deliveries to the system ... cannot be met with the smaller, higher cost quantities of energy that were available under the Load Curtailment Pilot".<sup>4</sup> This response from BC Hydro is overly reductive. In short, BC Hydro is stating that because not all of BC Hydro's electricity shortfalls can be met with load curtailment volumes, none of the shortfalls can be met with these volumes. Such a statement is inaccurate and ignores the clear benefits of this program.
15. BC Hydro's response also imports a new and internally inconsistent criterion to assessing load curtailment volumes against those obtained by way of the 2019 Letter Agreement. Throughout its application, IR responses, and final argument, BC Hydro acknowledges the risks to ratepayer of transacting longer-term wholesale power with Powerex using the 2019 Letter Agreement. For example, BC Hydro acknowledges that is entering forward transactions with Powerex without knowing the average day-ahead price for a given period,<sup>5</sup> and that these prices may well be higher under the 2019 Letter Agreement than purchases made through the 2003 TPA. It states that these risks are "outweighed by the benefit of ensuring that BC Hydro can meet its operational needs".<sup>6</sup>
16. Yet, when assessing the viability of energy supplied from a load curtailment program, BC Hydro states that the load curtailment pilot "would not have been cost effective relative to market prices during the winter of 2018/2019."<sup>7</sup>
17. As a result, BC Hydro appears to apply two different standards for assessing electricity prices resulting from the 2019 Letter Agreement and from load curtailment. BC Hydro critiques load curtailment electricity prices (which are known in advance) based on hindsight comparison to market prices. But it does not apply this analysis to its own forward purchases, the prices of which it admits are unknown and potentially risky. Further, BC Hydro's insinuation that competitively procured load curtailment prices will always exceed market prices during a curtailment event is unsupported and illogical.
18. In dismissing load curtailment volumes in such broad strokes, BC Hydro also ignores the clear benefits of load curtailment and other optional programs. Again, these programs are "win-win-win" for BC Hydro, industrial customers, and other rate classes because they allow BC Hydro to postpone additional capital spending (including both generation and transmission related expenditures), promote conservation, and offer flexibility to industrial customers who face unique economic challenges. Each of these outcomes have broader benefits for other rate classes.
19. All of these benefits align with those objectives identified in the *Clean Energy Act*, including to ensure competitive rates (s. 2(f)) and encourage economic development and the creation and retention of jobs (s. 2(k)). These benefits are also in the public interest. Any BCUC approval should therefore be clear that BC Hydro should continue to assess the potential to implement optional innovative rate programs like load curtailment to help address supply and demand imbalances.

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<sup>4</sup> Ex. B-5, BC Hydro Response to AMPC IR 1.4.1, pdf p. 28.

<sup>5</sup> Ex. B-4, BC Hydro Response to BCUC IR 1.3.5, pdf 69.

<sup>6</sup> Ex. B-4, BC Hydro Response to BCUC IR 1.3.5, pdf p. 69.

<sup>7</sup> Ex. B-5, BC Hydro Response to AMPC IR 1.4.1, pdf p. 28.

## **B. Opportunity for BCUC to Review Impacts of Agreement**

20. AMPC also has ongoing concerns that BC Hydro has not identified any opportunity for ratepayers to examine the financial and other impacts of the 2019 Letter Agreement. To this end, the BCUC should direct an additional opportunity to assess the implications of the 2019 Letter Agreement, either in a standalone proceeding or as part of its review of BC Hydro's IRP, which reviews forecast demand requirements and compares economic resource options for future electricity supply.
21. These concerns remain notwithstanding BC Hydro's characterization of the 2019 Letter Agreement as a "bridging mechanism", and intent to terminate it by the earlier of April 1, 2022 or when the 2003 TPA is amended.<sup>8</sup>
22. AMPC accepts BC Hydro's commitment not to issue Purchase Interest Requests that specify Delivery Terms greater than three years as reasonable, and supports BC Hydro's commitment not to amend the Contract Price except if the estimates of fixed and variable transmission costs used to determine the Contract Price are no longer reasonable or the wholesale market price used to determine the Contract Price is no longer published.
23. Beyond these elements of the Letter Agreement, the following merit ongoing scrutiny in Commission processes.

### ***Total costs to and impacts on ratepayers***

24. BC Hydro has acknowledged that electricity purchased under the 2019 Letter Agreement may be costlier than that purchased on the day-ahead market using the 2003 TPA.<sup>9</sup> BC Hydro has repeatedly characterized the 2019 Letter Agreement as a "mechanism that will allow it to respond to system conditions and reliably manage potential electricity shortages in a timely and cost-effective way".<sup>10</sup>
25. BC Hydro elaborates, suggesting that because it can procure forward physical electricity on the basis of "wholesale market prices", the 2019 Letter Agreement is therefore cost-effective and in the public interest. But this analysis ignores the need to consider the costs of alternatives to the forward purchases (in whole or in part) before making any cost-effectiveness conclusions. Otherwise, BC Hydro's claims are bare assertions.
26. BC Hydro also states that its objective is to "maximize the value to ratepayers ... [and that] remains true whether we are purchasing energy using the 2003 TPA or by using the 2019 Letter Agreement."<sup>11</sup> But Powerex has no requirement to do the same. There is a lack of transparency in BC Hydro's dealings with Powerex due to the highly confidential nature of the pricing mechanisms within the 2019 Letter Agreement and with Powerex's operations more generally.

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<sup>8</sup> BC Hydro Final Argument, paras. 18-19.

<sup>9</sup> Ex. B-5, BC Hydro Response to AMPC IR 1.6.2, pdf pp. 69-70.

<sup>10</sup> Ex. B-1, pp. 4-6; Ex. B-4, BC Hydro Responses to BCUC IRs 1.3.5 and 1.3.6.1, pdf pp. 69 and 77; Ex. B-5, BC Hydro Responses to AMPC IR 1.6.2 and 1.6.3, pdf pp. 69-71.

<sup>11</sup> Ex. B-5, BC Hydro Response to CEC IR 1.1.1, pdf p. 207.

27. The 2018 Letter Agreement exemplifies the secrecy surrounding BC Hydro's arrangements with Powerex. BC Hydro filed a confidential application seeking approval of the agreement on December 6, 2018 that enabled BC Hydro to enter forward electricity purchase and sale transactions from December 1, 2018 to June 30, 2019. Only on May 23, 2019 did BC Hydro file a public version of that application, with no opportunity for ratepayers to submit information requests or make submissions before the Commission issued its final order on June 20, 2019.<sup>12</sup> Setting a clear process and timeline for review is an important way to ensure ratepayer impacts are considered.

### ***2011 NSA concerns regarding energy hedges***

28. BC Hydro was prohibited under the F2011 NSA from entering forward market electricity purchase agreements (energy hedges) without the approval of the BCUC.<sup>13</sup> BC Hydro distinguishes between the circumstances that led to the BC Hydro's F2011 NSA commitment and current circumstances,<sup>14</sup> but the fact that BC Hydro is entering forward transactions with Powerex has not changed, nor has the nature of the transactions. Only the underlying justification has changed (i.e., financial hedging in the past, meeting operational needs with the 2019 Letter Agreement in the future). The Commission and ratepayers should both be able to ensure that those concerns that gave rise to the prohibition on forward purchases have been addressed and have not been revived as a result of the 2019 Letter Agreement.

### **C. Requirement for BCH to Incorporate 2019 Letter Agreement and 2003 TPA into IRP**

29. BC Hydro asserts that the 2019 Letter Agreement will be outside the scope of the IRP because the self-sufficiency requirement in s. 2(a) of the *Clean Energy Act* "effectively prevents BC Hydro from considering import contracts to meet long-term planning criteria", whereas the 2019 Letter Agreement will have a "short-term operational timeframe."<sup>15</sup>

30. AMPC has not suggested that BC Hydro use the 2019 Letter Agreement for long-term resource planning or rely on import contracts to meet its energy supply needs. Rather, AMPC has merely suggested that BC Hydro's IRP consider the role of the 2019 Letter Agreement and 2003 TPA and consider the operational impacts from managing supply in this way, as these have direct bearing on other aspects of BC Hydro's resource planning.

31. As BC Hydro itself acknowledges, variability in energy supply from inflows may be in the range of +/- 7000 GWh and "planning criteria is based on average water and recognizes that there will be supply deficits in some years. Such supply deficits are managed from an operational perspective with imports and withdrawal from storage. If more stringent planning criteria were adopted, this would result in an increase in required exports in most years and

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<sup>12</sup> BCUC Order 2019-06-20, British Columbia Hydro and Power Authority Letter Agreement with Powerex Corp. – Forward Electricity Purchases ~ Final Order dated June 20, 2019.

<https://www.ordersdecisions.bcuc.com/bcuc/orders/en/417291/1/document.do>

<sup>13</sup> B-5, BC Hydro Response to AMPC IR 1.6.3, pdf p. 71; BCUC Order G-180-10, Appendix B and Reasons for Decision dated December 2, 2010.

[https://www.bcuc.com/Documents/Proceedings/2010/DOC\\_26531\\_G-180-10\\_BCH-F2011-Revenue-Requirements-Reasons-WEB.pdf](https://www.bcuc.com/Documents/Proceedings/2010/DOC_26531_G-180-10_BCH-F2011-Revenue-Requirements-Reasons-WEB.pdf)

<sup>14</sup> Ex. B-5, BC Hydro Response to AMPC IR 1.1.3, pdf p. 11.

<sup>15</sup> Ex. B-5, BC Hydro Response to AMPC IR 1.3.2.1, pdf p. 23.

would increase the cost to ratepayers (if the cost of acquiring additional supply in B.C. is greater than the market prices that BC Hydro sells surplus energy to Powerex).<sup>16</sup>

32. Assuming that BC Hydro continues to recognize there may be supply deficits in some years, there may be a continued need for BC Hydro to use the 2019 Letter Agreement or 2003 TPA to meet operational needs. Ultimately, the IRP is intended to be a broadly scoped planning document that considers all the tools that BC Hydro has at its disposal.
33. As a result, these agreements should be incorporated into BC Hydro's long-term planning and IRP. On this basis, AMPC recommends that the BCUC direct BC Hydro to consider both the 2019 Letter Agreement (or equivalent agreement after it is terminated) and 2003 TPA Agreement in its 2021 IRP.

### III. CONCLUSIONS

34. AMPC does not oppose Commission approval of the 2019 Letter Agreement, subject to the following conditions:
- a. Any Commission approval should clarify that the presence of the 2019 Letter Agreement should neither prevent nor inhibit BC Hydro from assessing the feasibility of optional and innovative rate options, notably load curtailment programs – an evaluation that should be continuous and part of BC Hydro's normal course operations.
  - b. Again in the normal course, the impact of and results from the 2019 Letter Agreement will be in-scope for future BCUC proceedings dealing with BC Hydro rates and resource planning, including but not limited to revenue requirement, IRP, and rate design processes.
  - c. The Commission should specifically direct BC Hydro to incorporate the outcome to date of the 2019 Letter Agreement into the forthcoming IRP proceeding.

All of which is respectfully submitted December 18, 2019.

Norton Rose Fulbright LLP



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Matthew D. Keen



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Emily Chan

Counsel to the Association of Major Customers of BC

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<sup>16</sup> Ex. B-5, BC Hydro Response to CEABC 1.2.4, pdf p. 112.