

Fred James

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January 8, 2020

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

Dear Mr. Wruck:

RE: Project No. 1599038
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Application for 2019 Letter Agreement with Powerex Corp.
BC Hydro Reply Argument

BC Hydro writes to provide its Reply Argument in this proceeding.

For further information, please contact Geoff Higgins at 604-623-4121, or at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



(for) Fred James
Chief Regulatory Officer

gh/ma

Enclosure

**BRITISH COLUMBIA UTILITIES
COMMISSION**

**2019 Letter Agreement with Powerex Corp
Project No. 1599038**

**BC Hydro
Reply Argument**

January 8, 2020

PART I: INTRODUCTION AND OVERVIEW

1. These are BC Hydro's submissions offered in reply to the final arguments of AMPC, BCOAPO, CEC and CEABC.
2. BCOAPO and CEC support the primary relief sought by BC Hydro, namely that the 2019 Letter Agreement be accepted for filing without any further process.
3. AMPC provides conditional support for acceptance of the 2019 Letter Agreement. Although BC Hydro has some concerns with the specific language used to describe the proposed conditions, and the legal basis for conditional approvals in the context of an energy supply contract (**ESC**) filing, it can accept them in substance and as more fully described below.
4. The CEABC in the opening words of its argument states that the 2019 Letter Agreement should not be approved "without material modifications". The proposed modifications are not clearly set out in the CEABC argument and in any event the Commission has no authority to modify an ESC,¹ including the 2019 Letter Agreement, as explained below. Accordingly, BC Hydro replies to the CEABC on the basis that the CEABC is opposed to an approval of the 2019 Letter Agreement regardless of any modifications.
5. BC Hydro also proposed reporting requirements in regard to the 2019 Letter Agreement. Only the CEC addressed the proposed reporting requirements, and it was supportive of them. BC Hydro submits they ought to be approved as requested.²

¹ As defined in UCA section 68.

² The first report to the Commission pursuant to this proposal was filed on January 3, 2020, and a copy is attached (Attachment 1).

PART II: REPLY TO AMPC

A. Introduction

6. AMPC says it does not oppose the Commission approval of the 2019 Letter Agreement, subject to three conditions as follows:³
 - (a) confirmation that the 2019 Letter Agreement does not preclude the assessment of load curtailment or similar rate structures;
 - (b) confirmation that the results of the 2019 Letter Agreement will be subject to review in future Commission proceedings; and
 - (c) confirmation that the 2019 Letter Agreement be incorporated into BC Hydro's next Integrated Resource Plan (**IRP**) proceeding.
7. The legal issue raised by the AMPC submission is that at this stage of the proceeding the Commission does not have the authority to make conditional orders. In its August 2, 2019 filing,⁴ at page 11, BC Hydro was clear that it was inviting a preliminary enquiry for the purpose of allowing the Commission, with the input of interveners, to determine whether to accept the 2019 Letter Agreement as filed, or to set it down for the “hearing” contemplated by UCA section 71(2). Only if the Commission decides to hold such a hearing, and after that hearing decides that the 2019 Letter Agreement is not in the public interest, does the possibility of making conditional orders arise, under UCA section 71(3)(b).⁵
8. BC Hydro has participated in this proceeding on the basis that it is the preliminary enquiry requested in the August 2, 2019 filing. Accordingly, it would be procedurally unfair if the Commission were now, at final argument stage, to treat this proceeding as a UCA section 71(2) “hearing” and consider issuing

³ Paragraph 34, page 7 of AMPC Final Argument.

⁴ Exhibit B-1.

⁵ The scope of orders the Commission may issue pursuant to UCA section 71(3)(b) has not to BC Hydro's knowledge ever been litigated. However, if there is a power in the Commission to issue conditional orders in regard to ESC filings under UCA section 71, it can only be found in UCA section 71(3)(b).

orders that can only issue after such hearing.⁶ To be clear, BC Hydro submits that if the Commission is unwilling to accept this 2019 Letter Agreement as filed, then it must establish a “hearing” as contemplated by UCA section 71(2). BC Hydro notes that it expects it would have an opportunity to make submissions regarding the form and scope of such a hearing.

9. As noted, BC Hydro can accept the substance of the proposed conditions. Further, BC Hydro does not object to the Commission noting BC Hydro’s substantive acceptance of the proposed conditions, in BC Hydro’s words, in any written reasons that the Commission might issue.

B. Feasibility of Load Curtailment Programs

10. AMPC asks the Commission to “*clarify that... the 2019 Letter Agreement should neither prevent nor inhibit BC Hydro from assessing the feasibility of optional and innovative rate designs, notably load curtailment programs*” (at paragraph 34a).
11. BC Hydro confirms that the existence of the 2019 Letter Agreement, as well as the existence of the current 2003 TPA and any future New TPA, has not and will not prevent or inhibit BC Hydro’s assessment of optional and innovative rate designs, or load curtailment programs.⁷
12. AMPC supports its request for this condition on the basis of a critique of BC Hydro’s responses to IRs asked of it.⁸ With respect, AMPC seems to have understood BC Hydro to be rejecting load curtailment or similarly-purposed rates generally. To the contrary, BC Hydro believes that such programs can have value, particularly in a planning context to defer new capacity resources. BC

⁶ The CEABC address this point at footnote 2 of its Final Argument. Had the Commission intended to reject BC Hydro’s proposed preliminary enquiry, and instead hold a UCA section 71(2) hearing, procedural fairness required it to do so at the outset of this proceeding. The fact that the BC Hydro proposed and the Commission has allowed interveners to engage in this preliminary enquiry does not turn it into a UCA section 71(2) hearing. See for example the 2015 proceeding regarding the Capacity and Energy Purchase and Sale Agreement (CEPSA) between FortisBC and Powerex, and the related proceeding regarding an amendment to the 2003 TPA, BCUC Orders E-10-15 and E-11-15, respectively.

⁷ Load curtailment programs are not established through Commission rate orders but instead through non-rate contractual arrangements between BC Hydro and customers.

⁸ Paragraphs 7-19 of AMPC’s Final Argument.

Hydro expects to consider such resources in its next IRP. Nevertheless, BC Hydro submits that the evidentiary record does not support a Commission conclusion regarding the relative merits of rate design and load curtailment programs as substitutes, in whole or part, for the 2019 Letter Agreement, the 2003 TPA, or a New TPA.

C. Costs and Ratepayer Impacts

13. AMPC seeks Commission confirmation that the *“impact of and results from the 2019 Letter Agreement will be in-scope for future BCUC proceedings... including but not limited to revenue requirement, IRP and rate design processes”* (at paragraph 34b).
14. Costs incurred by BC Hydro pursuant to the 2019 Letter Agreement will be reflected in BC Hydro’s cost of energy, or cost of energy deferral accounts, in the revenue requirement test period starting April 1, 2021 (that is, the F2022 RRA). BC Hydro confirms it will not object to intervener IRs regarding the 2019 Letter Agreement in that proceeding, nor will it object to any evidence AMPC or others may wish to file in that proceeding regarding the 2019 Letter Agreement.
15. With regard to any future BC Hydro rate design proceeding, BC Hydro confirms that it will not object to intervener IRs regarding the 2019 Letter Agreement, nor will it object to any evidence AMPC or others may wish to file regarding the 2019 Letter Agreement, provided the rate design proceeding is one in which rates are proposed for the purpose of deferring new resources or address load-serving obligations in the operational time horizon. For greater certainty, BC Hydro reserves the right to object to the relevance of such IRs or intervener evidence in proceedings in which no such rates are proposed.
16. With regard to the relationship between the 2019 Letter Agreement and BC Hydro’s forthcoming application regarding its next IRP, BC Hydro refers to its submissions below, paragraphs 19-22.

17. At paragraph 27 of AMPC's Final Argument, it raises a concern regarding the confidential nature of the 2018 Letter Agreement. BC Hydro agrees that transparency is important, but also notes that in a one-year arrangement like the 2018 Letter Agreement transparency is also inconsistent with ratepayer interests because of the information it provides to wholesale electricity market participants about BC Hydro's immediate needs.⁹ In contrast, the indefinite term of the 2019 Letter Agreement means there is no signal to wholesale market participants about when BC Hydro may need purchases under the agreement. Moreover, the proposed reporting requirements in regard to the 2019 Letter Agreement respond to the need for transparency.
18. At paragraph 28 of its Final Argument, AMPC says that the nature of the transactions that are the subject of the 2019 Letter Agreement and that were the subject of BC Hydro's F2011 RRA NSA commitment are the same. This assertion is inconsistent with the facts. The former are for physical delivery of energy to the BC Hydro system, the latter were financial transactions that did not involve the physical delivery of energy at all. Further, the purposes were quite different, namely management of physical supply risk versus management of rate volatility. Nevertheless, BC Hydro confirms it is still bound by the F2011 RRA NSA commitment regarding energy hedges.

D. 2019 Letter Agreement and IRP

19. AMPC seeks a Commission direction that "*BC Hydro incorporate the outcome to date of the 2019 Letter Agreement into the forthcoming IRP proceeding*" (at paragraph 34c).
20. BC Hydro confirms that it expects to file an IRP with the Commission, pursuant to UCA section 44.1, in the spring of 2021. That application will be informed by, among other things, the outcome of Phase 2 of the Comprehensive Review of

⁹ That is, the disclosure of immediate needs can adversely affect BC Hydro's cost of energy to the detriment of ratepayers.

BC Hydro,¹⁰ and any legislative changes that follow. In the circumstances, it is premature for the Commission to request BC Hydro to include in the IRP any particular planning resource. Nevertheless, BC Hydro confirms that it currently expects to consider rate design and load curtailment programs as planning resources in the IRP, as noted above. It also confirms that that it does not expect to consider the 2019 Letter Agreement, the 2003 TPA or a New TPA as planning resources subject to the following.

21. At paragraph 31 AMPC correctly notes that certain planning criteria in an IRP will affect the amount of energy that BC Hydro needs to import or export in the operational time horizon. For example, if BC Hydro were to plan on the basis of critical streamflows rather than average streamflows it would (all else equal) secure more long-term resources in the planning time horizon and export more electricity in the operational time horizon. BC Hydro also confirms that its planning criteria will be in scope of its IRP, subject to the outcome of Phase 2 of the Comprehensive Review of BC Hydro. Accordingly, BC Hydro will not object to intervenor IRs or evidence regarding mechanisms that enable imports or exports in the operational time horizon, to the extent they relate to BC Hydro's planning criteria in the IRP, including the 2019 Letter Agreement.
22. BC Hydro notes that regardless of the planning criteria adopted in the IRP, BC Hydro will need a mechanism to transact with Powerex in the operational time horizon. Such a mechanism is necessary to deal with the range of potential operational scenarios that arise because of variability and uncertainty in reservoir inflows regardless of planning criteria and their effect on average reservoir levels. That mechanism has been the 2003 TPA, recently supplemented by the 2018 Letter Agreement and now the 2019 Letter Agreement. As noted in this proceeding, BC Hydro anticipates completing and filing with the Commission a New TPA. In any case, the mechanism (or mechanisms) would not be planning

¹⁰ <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/bc-hydro-review-phase-2>

resources comparable to the long-term resources that BC Hydro will assess in the IRP.

PART III: REPLY TO CEABC

A. Introduction

23. The CEABC's Final Argument rests on a flawed assertion that BC Hydro's need for operational resources can be met by more planning resources. The 2019 Letter Agreement is unnecessary, says the CEABC, because BC Hydro could enter into more long-term energy supply contracts with domestic generators instead, or rely on other resources. The assertion is supported only by argument and not, as it should, by the type of evidence that would be on the record in BC Hydro's impending IRP proceeding. As noted above in paragraph 21, BC Hydro expects that the implications of different planning criteria on its need to import and export during the operational time horizon will be within the scope of the IRP proceeding.
24. Critically the CEABC argument, if accepted, would unnecessarily put BC Hydro customers at risk with no offsetting benefit to anyone, including the members of the CEABC.
25. The CEABC's Final Argument also rests on the proposition that to accept the 2019 Letter Agreement for filing would be inconsistent with the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019 c. 44 (**UNDRIP Act**). This argument has no merit, as explained below.

B. The CEABC's Assertion

26. The CEABC's flawed assertion is revealed in section I of its Final Argument (pages 17 and 18). In that section the CEABC argues that BC Hydro should maintain higher reservoir levels than would be economic: "*To have excessive water merely results in lost opportunity [emphasis added]*".

27. This assertion dovetails with the reason for the CEABC's intervention in this proceeding:

The Clean Energy Association of B.C. represents members who are actively engaged in the development [sic], including operation of electrical generating projects the output of which is sold to BC Hydro. CEABC members are affected by corporate decisions that BC Hydro makes including the purchase of electricity for domestic purposes from it [sic] wholly owned subsidiary Powerex.

28. On page 18 of the CEABC Final Argument, it says that “*if supply shortage [sic] appears to be occurring with some measure of frequency, then the proper solution is more procurement*”.
29. Similarly, in Sections C, F and H of its Final Argument, the CEABC argues, in effect, that variability in reservoir inflows and the inherent uncertainty in predicting them means that BC Hydro should simply maintain high reservoir levels regardless of economics or impacts to ratepayers.
30. The foregoing makes it plain that the thrust of the CEABC's Final Argument is that the 2019 Letter Agreement should be disallowed in light of alternative long-term supply arrangements with its members or generically with IPPs.

Inadequate Record

31. The statement that is the key to the CEABC assertion – “*To have excessive water merely results in lost opportunity*” – is not supported by a proper evidentiary record in this proceeding. For example, the statement does not allow for any measure of the lost opportunity, who will bear the costs of the lost opportunity, and what if any other costs might arise from maintaining reservoir levels at uneconomic levels. In general, high reservoir levels can increase the probability of spill, which can have adverse physical and environmental consequences. AMPC's submission at paragraph 31 of its Final Argument

regarding potential implications for customers is instructive of the scope of evidence and potential view-points that are absent from this proceeding.¹¹

Load Serving Obligation and Risk

32. In addition, the CEABC Final Argument does not offer a cogent argument for prohibiting BC Hydro from using the 2019 Letter Agreement to manage physical supply risks.¹² To say that other means may be adequate is not a reasonable basis to deny BC Hydro the use of a tool that was entered into to ensure it can meet its load-serving obligations. In this regard, it is important to note that contrary to the CEABC's argument the 2019 Letter Agreement is subject to a later review by the Commission, as described above in response to the AMPC Final Argument. Moreover, the 2019 Letter Agreement is an enabling agreement that does not require the purchase of any electricity, and under which BC Hydro has made no general commitment to make purchases. For these reasons, not accepting the 2019 Letter Agreement can only increase risk to BC Hydro's customers.

No Benefit to CEABC

33. Conversely, there is no basis to believe that not accepting the 2019 Letter Agreement would have any impact on BC Hydro's willingness to acquire additional long-term planning resources. It follows that not approving the 2019 Letter would do nothing to meet the objectives of the CEABC.

C. UNDRIP Act

34. As noted in the CEABC Final Argument, the UNDRIP Act became law in British Columbia a little over a month ago, on November 28, 2019. It is an important

¹¹ "If more stringent planning criteria were adopted, this would result in an increase in required exports in most years and would increase the cost to ratepayer..."

¹² BC Hydro reiterates that an ESC is presumptively in the public interest unless and until the Commission declares it otherwise. To argue as CEABC does that BC Hydro bears the burden of demonstrating the public interest at the outset is to misread the UCA and is inconsistent with Commission practice and the *Rules for Energy Supply Contracts for Electricity*.

new statute that reflects a Provincial public policy objective of advancing reconciliation with Indigenous peoples in British Columbia to which BC Hydro is committed. Because of its importance, it is necessary to properly understand the basic legal consequences of the UNDRIP Act. Failure to do so will only hinder the achievement of the public policy objective behind it. It is in that context that BC Hydro offers these reply submissions.

35. The first point to note is that the CEABC's Final Argument does not quote the UNDRIP Act. Instead it quotes sections of the *United Nations Declaration on the Rights of Indigenous Peoples* (the **Declaration**), which is a schedule to the UNDRIP Act. The full text of the UNDRIP Act, including the schedule, is appended to this reply argument for reference (Attachment 2).
36. While the UNDRIP Act, including the schedule, is some 16 pages long, the operative sections of the UNDRIP Act are few. They are set out below, abridged for convenience and with a short explanation of their legal consequences insofar as they are germane to this proceeding.

***2** The purposes of this Act are as follows:*

(a) to affirm the application of the Declaration to the laws of British Columbia;

(b) to contribute to the implementation of the Declaration;

(c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

37. The purpose section of the UNDRIP Act informs its interpretation; by itself section 2 has no legal consequences.

***3** In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.*

38. Section 3 of the UNDRIP Act on its face is applicable to the government,¹³ and obliges government to ensure Provincial laws are consistent with the Declaration. It creates no obligation on the Commission, and does not empower the Commission to do anything more than what it was empowered to do pursuant to the UCA before the UNDRIP Act became law.

4 (1) The government must prepare and implement an action plan to achieve the objectives of the Declaration.

39. Section 4 of the UNDRIP Act on its face is applicable to the government,¹⁴ and obliges government to create an action plan to achieve the objectives of the Declaration. It creates no obligation on the Commission, and does not empower the Commission to do anything more than what it was empowered to do pursuant to the UCA before the UNDRIP Act became law.

5 (1) Each year the minister must prepare a report for the 12-month period ending on March 31... [regarding, among other things, progress on achieving the goals of the plan referred to in section 4]

40. Section 5 of the UNDRIP Act on its face is applicable to the responsible minister,¹⁵ and obliges the minister to prepare an annual report. It creates no obligation on the Commission, and does not empower the Commission to do anything more than what it was empowered to do pursuant to the UCA before the UNDRIP Act became law.

6 (1) For the purposes of this Act, a member of the Executive Council, on behalf of the government, may enter into an agreement with an Indigenous governing body.

¹³ Neither BC Hydro nor the Commission have the authority to change provincial laws, so cannot be “government” within the meaning of the word in this section.

¹⁴ Ibid.

¹⁵ Minister of Indigenous Relations and Reconciliation.

41. Section 6 of the UNDRIP Act on its face is applicable to members of the Executive Council, who are empowered to enter into certain agreements. It creates no obligation on the Commission, and does not empower the Commission to do anything more than what it was empowered to do pursuant to the UCA before the UNDRIP Act became law.

7 (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to one or both of the following:

42. Section 7 of the UNDRIP Act on its face is applicable to the Lieutenant Governor in Council, which is empowered to authorize members of the Executive Council to enter into certain agreements. It creates no obligation on the Commission, and does not empower the Commission to do anything more than what it was empowered to do pursuant to the UCA before the UNDRIP Act became law.
43. In interpreting the UNDRIP Act, indeed any statute, it is necessary to discern the intention of the legislature.¹⁶ Statements by government made in the legislature by government members that speak to an enactment's purposes are used to discern the intention of the legislature.¹⁷ Here are two quotes from Minister Fraser on the UNDRIP Act, when it was before the Legislature as Bill 41:

***Hon. S. Fraser:** Bill 41 doesn't give the UN declaration itself the force of law and doesn't create any new laws and new rights.¹⁸*

***Hon. S. Fraser:** To be clear, this bill doesn't in itself change the laws of B.C. It commits us to an action plan and to aligning our laws with the UN declaration on the rights of Indigenous peoples over time. When legislative changes are*

¹⁶ *Re: Rizzo and Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC), para 21.

¹⁷ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (LexisNexis 2008) at 44-45.

¹⁸ *Hansard*, Nov 25, 2019 – page 10753

*proposed through this process, they will, of course, come to this House for full debate.*¹⁹

44. The following explanation of the UNDRIP Act is provided on the government website:

*The legislation sets out a process to align B.C.'s laws with the UN Declaration. It mandates government to bring provincial laws into harmony with the UN Declaration. It requires development of an action plan to achieve this alignment over time – providing transparency and accountability. And it requires regular reporting to the Legislature to monitor progress. In addition, the legislation allows for flexibility for the Province to enter into agreements with a broader range of Indigenous governments. And it provides a framework for decision-making between Indigenous governments and the Province on matters that impact their citizens.*²⁰

45. In conclusion, while BC Hydro is committed to reconciliation and supporting economic opportunities with Indigenous groups in relation to our business, the UNDRIP Act does not as argued by the CEABC, require that decisions of BC Hydro or the Commission “create economic opportunities for First Nations”. The CEABC’s arguments regarding the obligations of the UNDRIP Act and its applicability to the 2019 Letter Agreement are not relevant to the Commission’s consideration of the 2019 Letter Agreement.
46. The CEABC Final Argument also refers to the “British Columbia energy objective” in section 2(l) of the *Clean Energy Act*, regarding “development of first nation and rural communities”. The CEABC argues that the 2019 Letter Agreement will achieve the exact opposite result. BC Hydro notes that the objective is one that the Commission is obliged to consider in assessing the 2019 Letter Agreement, but is not an objective the Commission is charged with

¹⁹ *Hansard*, Nov 26, 2019 – page 10819

²⁰ <https://www2.gov.bc.ca/gov/content/governments/indigenous-people/new-relationship/united-nations-declaration-on-the-rights-of-indigenous-peoples>, on January 3, 2020.

advancing or being guided by.²¹ In any event not approving the 2019 Letter Agreement would not cause BC Hydro to enter into more long-term supply arrangements and so would not advance the interests of CEABC members or their Indigenous business partners. Instead it would simply increase risks to BC Hydro customers with no off-setting benefit.

D. Other Issues Raised by the CEABC

47. CEABC refers to real-time mid-C markets as an alternative to the 2019 Letter Agreement; BC Hydro fully responded to this assertion in response to CEABC IR 1.3.4 (Exhibit B-5).
48. The CEABC repeatedly refers to an “arbitrary” distinction between the operational time horizon and the planning time horizon. In fact, this issue was squarely addressed in BC Hydro’s response to BCUC IR 1.5.1 (Exhibit B-4).²² To imply as the CEABC does that there is no meaningful difference between utility plans to meet load-serving obligations over the long-term and in the near-term is incorrect. The UCA itself draws the distinction through section 44.1 which is entirely about “long-term resource plans.”
49. In section H of its Final Argument the CEABC asserts that 50,000 GWh of electricity is exchanged at mid-C on an annual basis. CEABC does not explain how it derived the 50,000 GWh/year figure and BC Hydro does not know how it was derived. Based on the unsubstantiated assertion, CEABC argues that BC Hydro should not need the 2019 Letter Agreement. Regardless of the actual quantity, referring to the annual amount is misleading because it ignores the fact that declining annual volumes are associated with increased volatility, increased price risk and, critically, increased risk that on any particular day desired energy volumes are not available at any price.

²¹ The Commission was in the case of BC Hydro obliged to be “guided by” the objectives until 2015 amendments to the statute.

²² See also BC Hydro’s response to BCUC Panel IR 1.1.2.1 (Exhibit B-7).

50. CEABC argues that any arrangement similar to the 2019 Letter Agreement should be established and brought to the Commission on a one-off basis, only when the need is apparent. BC Hydro submits that such a requirement could unnecessarily risk being brought into effect too late, and could be done without adverse financial consequences for BC Hydro customers²³ only if done on a confidential basis (like the 2018 Letter Agreement).
51. The CEABC Final Argument contains numerous additional assertions that are unsupported by the evidence on the record of this proceeding. Examples are as follows:
- (a) Discussion of Canadian Entitlement deliveries, including volumes, assumed to be available to BC Hydro;
 - (b) Island Generation, including volumes, reasons for dispatch (or not) and relationship to the Province's GHG reduction targets;
 - (c) Industrial curtailment arrangements, which AMPC itself does not describe as "simple and straightforward".
52. Finally, the CEABC submits, by implication, that the Commission can order amendments to the 2019 Letter Agreement. BC Hydro does not agree, and refers to its submissions above at paragraphs 7 and 8 regarding the powers the Commission has at this stage of the proceeding.²⁴

PART IV: CONCLUSION

53. The 2019 Letter Agreement, as filed and subject to the commitments BC Hydro has made in regard to it, including issuance of the termination notice, is presumptively in the public interest. In light of BC Hydro's initial request for this

²³ Again, because market knowledge that BC Hydro had an operational deficit requiring forward purchases would adversely affect BC Hydro's cost of energy.

²⁴ For certainty, BC Hydro does not concede that the Commission could order amendments to an ESC under UCA section 71(3)(b), only that there is no other section of the UCA that could possibly vest the Commission with that power.

proceeding to be a preliminary enquiry, rather than a UCA section 71(2) hearing, the Commission is obliged to either accept the agreement as filed, or set the matter down for a public hearing. In considering that question the Commission should consider primarily that the 2019 Letter Agreement allows BC Hydro to better meet its over-arching load serving obligations; that any question of imprudence arising from the use of the agreement can be revisited in future RRA proceedings; and that not approving the agreement would not advance the objectives of the one intervener to oppose its acceptance, namely the CEABC.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF JANUARY
2020,**

A handwritten signature in black ink, appearing to read 'J. Christian', written over a horizontal line.

Jeff Christian, counsel for BC Hydro
Lawson Lundell LLP

Fred James

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January 3, 2020

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

Dear Mr. Wruck:

RE: Project No. 1599038
British Columbia Utilities Commission (BCUC or Commission)
British Columbia Hydro and Power Authority (BC Hydro)
Application for 2019 Letter Agreement with Powerex Corp. (the Application)
Transactions Quarterly Report No. 1

BC Hydro writes pursuant to commitments it made in the current Commission proceeding regarding the Application. BC Hydro committed to file, 90 days after the end of each calendar quarter, a public report that specifies the Transactions (as defined in the 2019 Letter Agreement) that were delivered during the relevant calendar quarter.¹ Accordingly, BC Hydro reports the following, for the calendar quarter ending September 30, 2019 (the first reporting period for the 2019 Letter Agreement):

ID	Delivery Period	Reference Date	Delivery Profile	Contract Price (USD/MWh)	Total Quantity (MWh)	Contract Value (USD)
1	August 2019	July 15, 2019	Off Peak	36.55	31,200	1,140,360
2	August 2019	July 16, 2019	Off Peak	35.02	31,200	1,092,624
3	August 2019	July 18, 2019	Off Peak	36.44	31,200	1,136,928
4	August 2019	July 29, 2019	Off Peak	34.97	31,200	1,091,064
5	August 2019	July 31, 2019	Off Peak	32.62	31,200	1,017,744
6	September 2019	July 03, 2019	Off Peak	34.97	33,600	1,174,992
7	September 2019	July 08, 2019	Off Peak	33.28	33,600	1,118,208
8	September 2019	July 09, 2019	Off Peak	34.30	33,600	1,152,480
9	September 2019	July 11, 2019	Off Peak	34.46	33,600	1,157,856
10	September 2019	July 15, 2019	Off Peak	33.44	33,600	1,123,584
11	September 2019	July 16, 2019	Off Peak	32.72	33,600	1,099,392

¹ See cover letter to BC Hydro's responses to Round 1 information request (Exhibit B-4).

January 3, 2020
Mr. Patrick Wruck
Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Application for 2019 Letter Agreement with Powerex Corp. (the Application)
Transactions Quarterly Report No. 1

ID	Delivery Period	Reference Date	Delivery Profile	Contract Price (USD/MWh)	Total Quantity (MWh)	Contract Value (USD)
12	September 2019	June 18, 2019	Off Peak	36.39	33,600	1,222,704
13	September 2019	June 19, 2019	Off Peak	37.00	33,600	1,243,200
14	September 2019	June 20, 2019	Off Peak	37.05	33,600	1,244,880
15	September 2019	June 28, 2019	Off Peak	35.48	33,600	1,192,128
	Total				492,000	17,208,144
	Average Price			34.98		

BC Hydro confirms that all Transactions delivered in the calendar quarter were consistent with the terms of the Purchase Interest Requests that initiated them.

For further information, please contact Geoff Higgins at 604-623-4121, or at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



(for) Fred James
Chief Regulatory Officer

st/af

Enclosure

PDF Version

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DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

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[effective November 28, 2019]

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DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

CHAPTER 44 [SBC 2019]

[effective November 28, 2019]

Contents

1. Interpretation
2. Purposes of Act
3. Measures to align laws with Declaration
4. Action plan
5. Annual report
6. Agreements
7. Decision-making agreements
8. *Offence Act*
9. Power to make regulations
10. Commencement

SCHEDULE

Interpretation

1. (1) In this Act:

"Declaration" means the United Nations Declaration on the Rights of Indigenous Peoples set out in the Schedule;

"Indigenous governing body" means an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;

"Indigenous peoples" has the same meaning as aboriginal peoples in section 35 of the *Constitution Act, 1982*;

"statutory power of decision" has the same meaning as in the *Judicial Review Procedure Act*.

- (2) For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.
- (3) For certainty, nothing in this Act, nor anything done under this Act, abrogates or derogates from the rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.
- (4) Nothing in this Act is to be construed as delaying the application of the Declaration to the laws of British Columbia.

2019-44-1.

Purposes of Act

- 2.** The purposes of this Act are as follows:
- (a) to affirm the application of the Declaration to the laws of British Columbia;
 - (b) to contribute to the implementation of the Declaration;
 - (c) to support the affirmation of, and develop relationships with, Indigenous governing bodies.

2019-44-2.

Measures to align laws with Declaration

- 3.** In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

2019-44-3.

Action plan

- 4.**
- (1) The government must prepare and implement an action plan to achieve the objectives of the Declaration.
 - (2) The action plan must be prepared and implemented in consultation and cooperation with the Indigenous peoples in British Columbia.
 - (3) The action plan must contain the date on or before which the government must initiate a review of the action plan.
 - (4) After the action plan is prepared, the minister must, as soon as practicable,
 - (a) lay the action plan before the Legislative Assembly if the Legislative Assembly is then sitting, or
 - (b) file the action plan with the Clerk of the Legislative Assembly if the Legislative Assembly is not sitting.
 - (5) The government may prepare a new action plan in accordance with this section.

2019-44-4.

Annual report

- 5.**
- (1) Each year the minister must prepare a report for the 12-month period ending on March 31.
 - (2) The report must be prepared in consultation and cooperation with the Indigenous peoples in British Columbia.
 - (3) In the report under subsection (1), the minister must report on the progress that has been made towards implementing the measures referred to in section 3 and achieving the goals in the action plan.
 - (4) On or before June 30 in each year, the minister must
 - (a) lay the report prepared for the 12-month period ending on March 31 in that year before the Legislative Assembly, if the Legislative Assembly is then sitting, or
 - (b) file the report prepared for the 12-month period ending on March 31 in that year with the Clerk of the Legislative Assembly, if the Legislative Assembly is not sitting.

2019-44-5.

Agreements

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

6. (1) For the purposes of this Act, a member of the Executive Council, on behalf of the government, may enter into an agreement with an Indigenous governing body.
- (2) Subsection (1)
- (a) is subject to section 7, and
 - (b) does not limit a power of the member to enter into an agreement under any other enactment.

2019-44-6.

Decision-making agreements

7. (1) For the purposes of reconciliation, the Lieutenant Governor in Council may authorize a member of the Executive Council, on behalf of the government, to negotiate and enter into an agreement with an Indigenous governing body relating to one or both of the following:
- (a) the exercise of a statutory power of decision jointly by
 - (i) the Indigenous governing body, and
 - (ii) the government or another decision-maker;
 - (b) the consent of the Indigenous governing body before the exercise of a statutory power of decision.
- (2) A member authorized under subsection (1) to negotiate an agreement may enter into the agreement without further authorization from the Lieutenant Governor in Council unless the Lieutenant Governor in Council restricts the initial authorization to only the negotiation of the agreement.
- (3) Within 15 days after the Lieutenant Governor in Council authorizes the member to negotiate an agreement under subsection (1), the member must make public a summary of the local governments and other persons the member intends to consult before or during the negotiation.
- (4) An agreement entered into under subsection (1)
- (a) must be published in the Gazette, and
 - (b) is not effective until the agreement is published in the Gazette or a later date specified in the agreement.
- (5) For certainty, subsection (4) applies to an agreement that amends an agreement entered into under subsection (1).

2019-44-7.

Offence Act

8. Section 5 of the *Offence Act* does not apply to this Act.

2019-44-8.

Power to make regulations

9. The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

2019-44-9.

Commencement

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

- 10.** This Act comes into force on the date of Royal Assent.

Schedule

2019-44-Sch.

(Section 1)

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting

13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist,

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights² and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ACT

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

¹ See Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A.

² See resolution 2200 A (XXI), annex.

³ A/CONF.157/24 (Part I), chap. III.

⁴ Resolution 217 A (III).