



**ORDER NUMBER
E-2-20**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Hydro and Power Authority
Application for 2019 Letter Agreement with Powerex Corp.

BEFORE:

T. A. Loski, Panel Chair

on February 21, 2020

ORDER

WHEREAS:

- A. On August 2, 2019, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of a letter agreement dated June 6, 2019, (2019 Letter Agreement) between BC Hydro and Powerex Corp. (Powerex), pursuant to section 71 of the *Utilities Commission Act* (UCA) (Application);
- B. The 2019 Letter Agreement enables BC Hydro to enter into forward electricity purchase transactions by which Powerex agrees to sell and deliver and BC Hydro agrees to purchase and receive wholesale electricity (Agreement);
- C. By Order G-61-12 dated May 17, 2012, the BCUC established the Rules for Energy Supply Contracts (ESC) for Electricity (Rules). The Rules are intended to facilitate the BCUC's review of ESCs and proposed ESCs for electricity;
- D. By Orders G-204-19, G-243-19, G-288-19 and G-301-19, the BCUC established and subsequently amended the regulatory timetable for review of the Application;
- E. By September 12, 2019, Clean Energy Association of B.C. (CEABC), Association of Major Power Customers of B.C. (AMPC), BC Old Age Pensioners' Organization et. al (BCOAPO) and the Commercial Energy Consumers Association of B.C. (CEC) registered as interveners;
- F. On October 24, 2019, BC Hydro filed its responses to BCUC and intervener information requests (IR) pursuant to Order G-243-19;
- G. BC Hydro, in response to IRs regarding the 2019 Letter Agreement, committed that it would not specify Delivery Terms (as defined in the 2019 Letter Agreement) greater than three years, consistent with the operational time horizon within which the Agreement is meant to be used (Delivery Term Commitment);

- H. BC Hydro, in response to IRs regarding the 2019 Letter Agreement, committed that it would not amend the Contract Price other than as follows: 1) if the estimate of the fixed and variable transmission costs are no longer reasonable; and 2) to change the wholesale market price to a different wholesale market price if the original is no longer published (Contract Price Commitment);
- I. On November 21, 2019, BC Hydro filed its responses to Panel IR No. 1 pursuant to Order G-288-19;
- J. On December 5, 2019, BC Hydro filed its responses to Panel IR No. 2 pursuant to Order G-301-19;
- K. On December 5, 2019, BC Hydro filed its Final Argument;
- L. On December 18, 2019, CEABC, AMPC, BCOAPO and CEC filed their Final Arguments;
- M. On January 18, 2020, BC Hydro filed its Reply Argument; and
- N. The BCUC has reviewed the evidence and arguments submitted in this proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 71 of the UCA, and for reasons attached as Appendix A to this order, the BCUC orders as follows:

1. The 2019 Letter Agreement between BC Hydro and Powerex is accepted for filing.
2. BC Hydro is directed 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 occurred during the relevant calendar quarter pursuant to Directive 3(a) of Order E-15-19.
3. BC Hydro is directed to file monthly reports to monitor water levels and inflows at each of the Kinbasket and Williston reservoirs pursuant to Directive 4 of Order E-15-19.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of February 2020.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

British Columbia Hydro and Power Authority
Application for 2019 Letter Agreement with Powerex Corp.

Reasons for Decision

February 21, 2020

Before:
T. A. Loski, Panel Chair

TABLE OF CONTENTS

Page no.

1.0	INTRODUCTION	3
1.1	Application and Approvals Sought	3
1.2	Legislative Framework.....	3
1.3	Regulatory Process	4
2.0	RELATIONSHIP WITH THE 2018 LETTER AGREEMENT	4
3.0	2019 LETTER AGREEMENT AND THE 2003 TRANSFER PRICING AGREEMENT	5
4.0	TOPICS OF DISCUSSION	8
4.1	Contract Term and Revised TPA.....	8
4.2	Operating Time Horizon and Delivery Term Commitment and Contract Price	9
4.3	Reporting.....	10
5.0	POSITION OF THE PARTIES.....	10
5.1	CEC.....	10
5.2	BCOAPO.....	11
5.3	AMPC.....	11
5.4	CEABC	13
6.0	PANEL DETERMINATION	15

1.0 Introduction

1.1 Application and Approvals Sought

On August 2, 2019, British Columbia Hydro and Power Authority (BC Hydro) filed an application with the British Columbia Utilities Commission (BCUC) seeking acceptance of a letter agreement dated June 6, 2019, (2019 Letter Agreement) between BC Hydro and Powerex Corp. (Powerex), pursuant to section 71 of the *Utilities Commission Act* (UCA) (Application).

The 2019 Letter Agreement provides BC Hydro with the ability to make a ‘Purchase Interest Request’ to Powerex, which is a binding written offer by BC Hydro to purchase firm wholesale electricity on a forward basis from Powerex, on BC Hydro’s terms, including the maximum price, volumes and delivery periods(s). In response to a Purchase Interest Request, Powerex is obliged to use commercially reasonable efforts to sell and deliver firm wholesale forward electricity to BC Hydro.

BC Hydro entered into the 2019 Letter Agreement to proactively ensure appropriate measures are in place to respond to any potential future physical supply issues and to address short-term operational requirements. The 2019 Letter Agreement is the only mechanism available to BC Hydro to secure physical wholesale electricity on a forward basis and is an additional tool to the 2003 Transfer Pricing Agreement (2003 TPA), that only allows for purchases and sales on a day-ahead, pre-schedule basis.

BC Hydro submits that the 2019 Letter Agreement is cost-effective, allows BC Hydro to better meet its load serving obligations and is in the public interest.

1.2 Legislative Framework

Review of the 2019 Letter Agreement is conducted pursuant to section 71 of the UCA and the BCUC’s Rules for Energy Supply Contracts (ESC) for Electricity (Rules) as established by Order G-61-12, dated May 17, 2012.

Section 71(2) of the UCA states:

The commission may make an order under subsection (3) if the commission, after a hearing, determines that an energy supply contract to which subsection (1) applies is not in the public interest.

Section 71(2.21) of the UCA states:

In determining under subsection (2) whether an energy supply contract filed by the authority is in the public interest, the commission, in addition to considering the interests of persons in British Columbia who receive or may receive service from the authority, must consider

- (a) British Columbia's energy objectives,
- (b) the most recent of the following documents:
 - (i) an integrated resource plan approved under section 4 of the *Clean Energy Act* before the repeal of that section;
 - (ii) a long-term resource plan filed by the authority under section 44.1 of this Act,

- (c) the extent to which the energy supply contract is consistent with the requirements under section 19 of the *Clean Energy Act*,
- (d) the quantity of the energy to be supplied under the contract,
- (e) the availability of supplies of the energy referred to in paragraph (d),
- (f) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (d), and
- (g) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (d).

A list of British Columbia's energy objectives can be found under Section 2 of the *Clean Energy Act* (CEA).¹

1.3 Regulatory Process

By Order G-204-19 dated August 28, 2019, the BCUC established a regulatory timetable for review of the Application. The regulatory timetable was amended by Orders G-243-19, G-288-19 and G-301-19. The review process included the following:

- intervener registration;
- one round of BCUC and Intervener information requests (IR);
- two rounds of Panel IR to BC Hydro;
- BC Hydro Final Argument;
- intervener Final Argument; and
- BC Hydro Reply Argument.

By September 24, 2019, the following parties registered as interveners:

- Clean Energy Association of B.C. (CEABC);
- Association of Major Power Customers of B.C. (AMPC);
- BC Old Age Pensioners' Organization et. al (BCOAPO); and
- the Commercial Energy Consumers Association of B.C. (CEC).

2.0 Relationship with the 2018 Letter Agreement

By Order E-15-19 dated July 11, 2019, the BCUC accepted the 2018 Letter Agreement, which provided for the forward sale and delivery of wholesale electricity by Powerex to BC Hydro for the period December 1, 2018 to June 30, 2019. BC Hydro, in its Application, states that while the 2019 Letter Agreement is similar to the 2018 Letter Agreement in that both are enabling agreements that allow BC Hydro to acquire forward physical wholesale power to manage potential shortfalls in the operational time horizon, there are distinct differences:

- The 2018 Letter Agreement was a short-term arrangement only in effect for seven months, from December 1, 2018 to June 30, 2019;

¹ Clean Energy Act, SBC 2010, Chapter 22, section 2, retrieved from http://www.bclaws.ca/civix/document/id/complete/statreg/10022_01#section2

- The 2018 Letter Agreement was entered into in response to impending physical supply issues as a result of;
 - Low system inflows; and
 - The Westcoast Energy Inc (WEI) Enbridge T-South system rupture, that occurred on October 9, 2018, 13.5 km north of Prince George, BC, and restricted capacity on the T-South System (Enbridge Incident).
- The narrow purpose and short-term nature of the 2018 Letter Agreement required it to be kept confidential whereas the broader purpose of the 2019 Letter Agreement means that confidentiality issue is not present.²

3.0 2019 Letter Agreement and the 2003 Transfer Pricing Agreement

Like the 2018 Letter Agreement, the 2019 Letter Agreement provides BC Hydro with the ability to make a Purchase Interest Request to Powerex. A Purchase Interest Request is a binding written offer by BC Hydro to purchase firm forward wholesale electricity from Powerex on BC Hydro's terms, including the maximum price, maximum volumes and delivery period(s). BC Hydro, in its Application, states that the decisions to acquire forward wholesale electricity from Powerex through the issuance of a Purchase Interest Request are solely BC Hydro's and these decisions are made within the operational management framework used to make all dispatch and system operation decisions for BC Hydro to cost-effectively meet its load serving obligations.³

In response to a Purchase Interest Request, Powerex is obliged to use commercially reasonable efforts to sell and deliver firm wholesale electricity to BC Hydro on a forward basis, which is confirmed in writing (Confirmation).⁴ When deliveries of electricity as per the Confirmation are made, BC Hydro pays for the electricity at the price agreed in the Confirmation. Generally, the price (Contract Price) BC Hydro pays is a wholesale market price⁵ as established at the time Powerex issues the applicable confirmation,⁶ as well as an estimate of transmission costs incurred by Powerex. BC Hydro notes, however, that Powerex independently acquires energy at a variety of locations and has full flexibility in the prices it transacts at in wholesale markets.⁷

Since 2003, BC Hydro has purchased wholesale electricity from Powerex to cost-effectively meet its load-serving obligations exclusively through the Transfer Pricing Agreement (2003 TPA).⁸ BC Hydro submits that the 2003 TPA is a robust and flexible mechanism to allow for BC Hydro purchases of wholesale electricity imports from and sales to Powerex for export. Under the 2003 TPA, purchases and sales are made on a day-ahead, pre-schedule basis. BC Hydro submits that the 2003 TPA has worked well in a liquid wholesale day-ahead market and did not need to provide a mechanism to purchase forward physical sales from Powerex.⁹

² Exhibit B-1, pp. 2–3.

³ Ibid., pp. 3–4.

⁴ Ibid, p. 3.

⁵ Ibid., p. 3.

⁶ BC Hydro Final Argument, p. 2.

⁷ Exhibit B-4, BCUC IR 6.1, 6.2.

⁸ BC Hydro Final Argument, p. 3.

⁹ Exhibit B-1, p. 4.

BC Hydro states that the ability to purchase wholesale electricity from Powerex on a forward basis provides a valuable tool to BC Hydro and the intention of entering into the 2019 Letter Agreement was to proactively ensure appropriate measures are in place to respond to physical supply issues; namely the declining liquidity on the wholesale day-ahead market.¹⁰ BC Hydro submits that as this market becomes less liquid, having the ability to make forward market purchases has become more important and other than the 2019 Letter Agreement, there is no other arrangement in effect that would allow BC Hydro to make forward wholesale electricity purchases in the operating time horizon.¹¹

Declining Liquidity in Day-Ahead Market

BC Hydro states that over the past decade there has been a steady decline in the on-peak and off-peak volume of wholesale electricity traded on a day-ahead basis in the Pacific Northwest Mid-C trading hub, as shown in the following graphs.¹²

Figure 10.1: Mid-C Liquidity (Day-Ahead Peak)

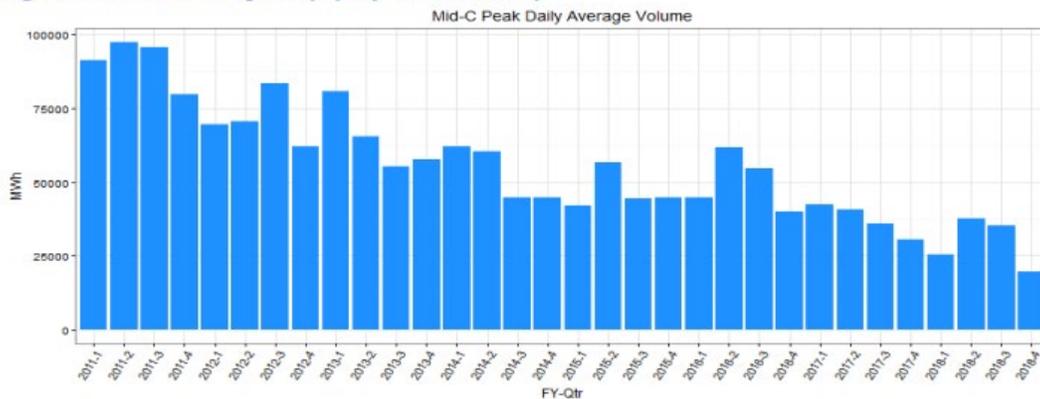
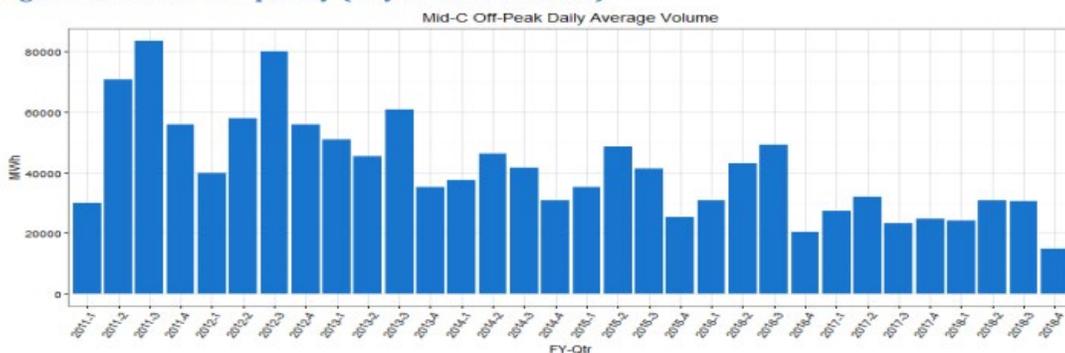


Figure 10.2: Mid-C Liquidity (Day-Ahead Off-Peak)



BC Hydro states that factors contributing to the decline in liquidity on the day-ahead markets may include load serving entities: (i) seeking the security of forward supply contracts to meet their peak loads and operations and,

¹⁰ Exhibit B-1, p. 4

¹¹ BC Hydro Final Argument, p. 3.

¹² Exhibit B-1, pp. 5–6.

(ii) seeking forward supply commitments for energy products with specific environmental attributes to comply with clean energy policies.¹³

BC Hydro submits that this decline in liquidity, along with the Enbridge Incident and low system inflows, were the reasons for entering into the 2018 Letter Agreement. Further, BC Hydro states there is no basis to believe that the long-term decline in day-ahead market liquidity will quickly reverse.¹⁴

BC Hydro states that there are numerous other events, such as: (i) significant and prolonged outage of generating equipment at a BC Hydro plant; (ii) unplanned outage along one of BC Hydro's 500 kV transmission corridors, or; (ii) an incident at one of BC Hydro's dams on the Peace or Columbia rivers, that could result in similar supply shortfalls that threatened BC Hydro in winter 2018/19 which may not be reliably addressed using the 2003 TPA.¹⁵ For these reasons, BC Hydro submits that the 2019 Letter Agreement is a prudent mechanism in the interest of ratepayers that allows it to reliably manage potential system shortfalls.¹⁶

BC Hydro states that an alternative solution to the declining liquidity would be an updated TPA, revised to allow for forward transactions. However, given the 2003 TPA's importance in the relationship between BC Hydro and Powerex, this is not a trivial exercise and the 2019 Letter Agreement can be considered a bridging mechanism until the 2003 TPA is revised.¹⁷

Benefits of the 2019 Letter Agreement

BC Hydro states that its paramount obligation is to meet the electricity needs of its customers.¹⁸ The purpose of the 2019 Letter Agreement is to provide BC Hydro the mechanism to purchase forward firm electricity to respond to and manage system conditions and potential shortages in a timely and cost-effective way.¹⁹ BC Hydro notes that on an after the fact basis, surplus energy from purchased from Powerex on a forward basis may be sold to Powerex under the 2003 TPA, however, the transactions made under the 2019 Letter Agreement 'are not executed to arbitrage price differentials.'²⁰

The primary ratepayer benefit of the 2019 Letter Agreement, like the 2018 Letter Agreement, is related to supply risk management and providing certainty that the desired volumes of electricity can be acquired.²¹ BC Hydro does, however, acknowledge that a secondary benefit is price risk management.²²

BC Hydro states that since 2006, the BCUC has used "cost-effectiveness" as the appropriate measure to assess whether a utility's proposal is in the public interest. BC Hydro submits that the Purchase Interest Requests made under 2019 Letter Agreement enables it to meet its load serving obligation on an economic basis because these

¹³ Exhibit B-4, BCUC IR 2.3.

¹⁴ Exhibit B-1, p. 6.

¹⁵ Exhibit B-5, CEC IR 1.4.1.

¹⁶ Exhibit B-1, p. 6.

¹⁷ Ibid.

¹⁸ BC Hydro Final Argument, p. 4.

¹⁹ Ibid, p. 3.

²⁰ Exhibit B-4, BCUC IR 5.5.

²¹ Ibid., BCUC IR 3.5.

²² Exhibit B-5, CEC IR 1.1.

are issued within the same management framework employed to make all dispatch and system operation decisions and this framework is designed to maximise BC Hydro's generation resources.²³

BC Hydro acknowledges that while cost-effective, forward electricity purchased under the 2019 Letter Agreement is not always less costly than electricity purchased on the day-ahead market under the 2003 TPA. BC Hydro submits that the obligation to meet its load outweighs the potential for an 'adverse financial result that may arise.' However, a potential benefit of not relying on the 2003 TPA to purchase electricity on the day-ahead market price is reduced exposure to day-ahead market prices, which have the propensity to trade at higher than expected prices rather than trade at lower than expected prices.²⁴

4.0 Topics of Discussion

4.1 Contract Term and Revised TPA

In the Application, BC Hydro states that the 2019 Letter Agreement is a longer-term enabling agreement that remains in effect until terminated by either party and allows, but does not obligate, BC Hydro to enter into forward physical purchase transactions with Powerex.²⁵ BC Hydro states that such agreements are frameworks under which specific transactions are made and such frameworks do not usually require a termination date.²⁶

BC Hydro submits the 2019 Letter Agreement was entered into proactively to ensure any potential energy supply shortfalls could be addressed as they arose and to avoid having to react to a situation(s) such as those faced by BC Hydro in winter 2018/19. The ability to respond immediately, therefore, requires an agreement with an indefinite term contract instead of a time limited one.²⁷

Further, the 2003 TPA requires revisions to provide BC Hydro a foundation for physical forward purchases and sales of electricity between BC Hydro and Powerex and to reflect current and anticipated market and domestic circumstances. As an intended bridging mechanism, the 2019 Letter Agreement would be terminated to align with the effective date of a revised TPA.²⁸

Given the uncertainty regarding the timing and BCUC acceptance of a future TPA, and upon BCUC Information Requests regarding the indefinite term of the 2019 Letter Agreement, BC Hydro confirmed that it had issued a Termination Notice under section 15 of the 2019 Letter Agreement effective the earlier of; (i) the date upon both BC Hydro and Powerex commence transaction under the new TPA, or (ii) April 1, 2022. BC Hydro states it has provided the Termination Notice because it has more certainty that it will proceed with the revised TPA.²⁹

²³ BC Hydro Final Argument, p. 4.

²⁴ Ibid, p. 5.

²⁵ Exhibit B-1, p. 2.

²⁶ Exhibit B-4, BCUC IR 4.2.

²⁷ BC Hydro Final Argument, p. 6.

²⁸ Exhibit B-7, Panel IR 2.1.

²⁹ Exhibit B-8.

4.2 Operating Time Horizon and Delivery Term & Contract Price Commitment

BC Hydro states the 2019 Letter Agreement is an additional tool that can be used to address short-term operational requirements by allowing BC Hydro to secure forward firm wholesale electricity to manage seasonal or longer-term energy deficits within the operating time horizon, which is defined as the balance of the current fiscal year and the following two fiscal years. This ensures the operating time horizon it does not overlap with the planning time horizon.³⁰

BC Hydro confirms that the operating time horizon is the horizon within which the Generating System Operations business group has the ‘accountability to plan the use of BC Hydro’s generation resources to ensure load-serving obligations are met, cost-effectively, in the operating time horizon.’³¹ Further, BC Hydro confirms that the operating time horizon never exceeds three years and is not a rolling period up to three years³² as demonstrated in the below chart:

Year	F20	F21	F22	F23	F24	[...]	F40+
Operating time horizon							
Planning time horizon							

33

BC Hydro states that the 2019 Letter Agreement does not specify a maximum delivery term.³⁴ However, the 2019 Letter Agreement provides BC Hydro the mechanism to manage system storage, which reaches the annual minimum in April to early May.³⁵ In most circumstances, BC Hydro anticipates that it would not specify delivery terms that end more than one year from issuance of the Purchase Interest Request.³⁶ However, there are circumstances where forward physical purchases beyond one year may be required, such as planned system outages.³⁷ Further, BC Hydro submits the 2019 Letter Agreement is not designed to manage energy or capacity deficits that occur intra-month.³⁸

To address concerns regarding the time horizon over which the 2019 Letter Agreement would be employed, in response to BCUC IR, BC Hydro confirmed that the 2019 Letter Agreement would be used to manage short-term supply issues only and committed that it will not specify a delivery term that is greater than three years in length.³⁹

BC Hydro states that the 2019 Letter Agreement provides the parties the right to amend or adjust the Contract Price by agreement in writing which, in theory, could be amended for inappropriate reasons.⁴⁰ In response to a number of BCUC IR related to whether the contract price could be amended to allow for a price other than a wholesale market price, BC Hydro confirmed that it would only amend the Contract Price: (i) if the estimate of

³⁰ Exhibit B-7, Panel IR 1.1.

³¹ BC Hydro Final Argument, p. 2.

³² Exhibit B-7, Panel IR 1.1.1.

³³ Exhibit B-8, Panel IR 2.1.2.

³⁴ Exhibit B-4, BCUC IR 1.6.7.

³⁵ Ibid, BCUC IR 1.3.2.

³⁶ Exhibit B-7, Panel IR 1.2.1.

³⁷ Exhibit B-4, BCUC IR 5.1; Exhibit B-7, Panel IR 1.2.1.

³⁸ Exhibit B-1, p. 3; Exhibit B-4, BCUC IR 3.2.

³⁹ Exhibit B-4, BCUC IR 6.4.

⁴⁰ BC Hydro Final Argument, p. 8.

fixed and variable transmission costs is no longer reasonable; and (ii) in order to change the wholesale market price to a different wholesale market price if the original is no longer published.⁴¹

4.3 Reporting

By Order E-15-19, the BCUC directed BC Hydro file the following reports related to the transactions made under the 2018 Letter Agreement:

- a) All additional transactions made under the Agreement executed between May 23, 2019 and June 30, 2019;
- b) The total volume of purchases made under the Agreement that were re-exported through the Transfer Pricing Agreement (TPA) between BC Hydro and Powerex, and surplus to domestic load requirements;
- c) The dates on which forward purchases made under the Agreement were re-exported through the TPA; and
- d) The total revenues generated by re-exporting volumes purchased under the Agreement through the TPA.

BC Hydro proposes to file a public report that is consistent with directive 3(a) of Order E-15-19, specifying the transactions entered into under the 2019 Letter Agreement made during that calendar quarter within 90 days after the end of each calendar quarter. BC Hydro does not propose to continue reporting requested as per directives 3(b) to 3(d) of Order E-15-19 because BC Hydro manages its system on a portfolio basis and is unable to generate the information requested. BC Hydro confirms it will continue to file monthly reports monitoring water levels at the Kinbasket and Williston reservoirs pursuant to directive 4 of Order E-15-19.⁴²

5.0 Position of the Parties

5.1 CEC

The CEC accepts the evidence that there is declining liquidity in the Mid-C market, and that BC Hydro has established the need and purpose for the 2019 Letter Agreement in managing physical supply risk.⁴³ The CEC submits that the mechanism to secure physical forward wholesale power from Powerex is beneficial to ratepayers and approval of the 2019 Letter Agreement avoids BC Hydro rushing the development of the new TPA.⁴⁴

The CEC is satisfied with BC Hydro's commitment to not issuing Purchase Interest Requests that specify delivery terms greater than three years and not amending the Contract Price except in the conditions identified by BC Hydro and finds the terms of the 2019 Letter Agreement acceptable.⁴⁵

⁴¹ Exhibit B-4, BCUC IR 6.2; BC Hydro Final Argument, p. 8.

⁴² Exhibit B-1, p. 7; B-4, p. 2.

⁴³ CEC Final Argument, p. 4.

⁴⁴ Ibid, p. 7.

⁴⁵ Ibid, pp. 5–6.

The CEC states that given the Termination Notice issued by BC Hydro, the issue of the 2019 Letter Agreement not having a termination date is moot. In addition, BC Hydro's proposed reporting offers sufficient transparency and protection to ratepayers.⁴⁶

The CEC submits that approval of the 2019 Letter Agreement is in the public interest as it provides additional tools to BC Hydro to respond to system conditions and manage potential shortfalls in a cost-effective way and recommend the BCUC approve the 2019 Letter Agreement as filed.⁴⁷

5.2 BCOAPO

BCOAPO submits that an agreement with Powerex that enables BC Hydro to obtain wholesale electricity on a forward basis to manage potential short-term deficits is in the public interest, has a legitimate role in meeting BC Hydro's needs and subject to future filing requirements, the BCUC should accept the 2019 Letter Agreement.⁴⁸

BCOAPO considers it important that the use of the 2019 Letter Agreement be restricted to addressing physical supply risks and submits that the BCUC should direct BC Hydro to file information for the reasons for any transactions made under the 2019 Letter Agreement as part of any application that seeks recovery of those costs.⁴⁹ While BC Hydro has suggested the Delivery Term would be less than a year, BCOAPO notes it is possible that specific circumstances would require a longer Delivery Term. As such, BCOAPO submits that 'the use of a Delivery Term greater than one year requires particular scrutiny as part of the information filing'.⁵⁰ BCOAPO considers given the Termination Notice, the lack of termination date in the 2019 Letter Agreement is moot.⁵¹

5.3 AMPC

AMPC states that BC Hydro can use industrial load curtailment as another tool to manage potential electricity shortages which align with the objectives of the *Clean Energy Act*. AMPC submits that load curtailment represents a "win-win-win" option between industrial customers, other rate classes and BC Hydro as they allow BC Hydro to postpone additional capital spending, promote conservation and offer flexibility to industrial customers.⁵²

AMPC submits that BC Hydro has rejected using load curtailment in the near term and is instead relying on capital additions, Electricity Purchase Agreements and structured power imports through the 2019 Letter Agreement for short-term demand requirements.⁵³ Further, AMPC has concerns that BC Hydro will 'avoid assessing and/or implementing load curtailment programs in the future, even though load curtailment and electricity imports are not mutually exclusive options'⁵⁴ if the Application is approved as filed. AMPC requests

⁴⁶ Ibid, p. 6.

⁴⁷ Ibid, p. 8.

⁴⁸ BCOAPO Final Argument, pp. 3,5.

⁴⁹ Ibid, p. 4.

⁵⁰ Ibid, p. 4.

⁵¹ Ibid, p. 3.

⁵² AMPC Final Argument, p. 3.

⁵³ Ibid, pp. 3-4.

⁵⁴ Ibid, p. 3.

the BCUC state in any approval that this should not preclude BC Hydro from evaluating industrial load curtailment.⁵⁵

AMPC further states that BC Hydro has not identified an opportunity to examine the financial and non-financial impacts of the 2019 Letter Agreement and the costs of alternatives. AMPC requests the BCUC to direct an additional opportunity to assess the 2019 Letter Agreement in a separate proceeding or as review of BC Hydro's revenue requirements, Integrated Resource Plan (IRP) and rate design processes and setting a clear process and timeline for review ensures ratepayer impacts are considered.⁵⁶

AMPC submits that while BC Hydro asserts the 2019 Letter Agreement is outside the scope of the IRP because of the self sufficiency requirements in section 2(a) of the *Clean Energy Act*, AMPC suggests the BC Hydro IRP, which is intended to be a broadly scoped planning document, considers all tools BC Hydro has at its disposal including the roles and impacts of managing supply through the 2019 Letter Agreement and 2003 TPA.⁵⁷

AMPC accepts BC Hydro's commitment not to issue Purchase Interest Requests with Delivery Terms greater than three years and not to amend the Contract Price except under the conditions identified by BC Hydro as reasonable.⁵⁸

AMPC states that it does not oppose BCUC approval of the 2019 letter Agreement subject to; (i) clarification that any BCUC approval does not prevent or inhibit BC Hydro from assessing load curtailment programs; (ii) the impact and results of the 2019 Letter Agreement will be in scope and subject to review in future BC Hydro proceedings; and (iii) incorporating the outcome to date of the 2019 Letter Agreement into BC Hydro's forthcoming IRP proceeding.⁵⁹

BC Hydro Reply Argument

In reply, BC Hydro confirms that the 2019 Letter Agreement, the 2003 TPA and any new TPA has not and will not preclude BC Hydro from assessing optional and innovative rate designs or load curtailment programs and that such programs can have value when planning capacity resources. Further, BC Hydro expects to consider these resources in its next IRP.⁶⁰

BC Hydro states that costs incurred with transactions made pursuant to the 2019 Letter Agreement will be reflected in BC Hydro's cost of energy or cost of energy deferral accounts in the 2022 Revenue Requirements Application (2022 RRA) and does not object to intervenor IR and evidence related to the 2019 Letter Agreement being filed in the 2022 RRA proceeding or any future rate design proceeding.⁶¹

BC Hydro confirms that an IRP is expected to be filed with the BCUC in the spring of 2021 and that it expects to consider rate design and load curtailment programs as planning resources. BC Hydro does not expect to consider

⁵⁵ Ibid, p. 3.

⁵⁶ Ibid, pp. 5–6.

⁵⁷ Ibid, pp. 6–7.

⁵⁸ Ibid, p. 5.

⁵⁹ Ibid, p. 7.

⁶⁰ BC Hydro Reply Argument, pp. 3–4.

⁶¹ Ibid, pp. 2-3.

the 2019 Letter Agreement, the 2003 TPA or a new TPA as a planning resources comparable to long-term resources that BC Hydro will assess in the IRP. Regardless of the planning criteria adopted in the IRP, BC Hydro submits a mechanism to transact with Powerex to deal with a range of potential operational scenarios is required.⁶²

BC Hydro submits that it filed the Application inviting a preliminary enquiry for the BCUC to determine whether to accept the 2019 Letter Agreement as filed or to undertake a hearing as contemplated by section 71(2) of the UCA. BC Hydro submits it would be procedurally unfair if the BCUC were to treat this proceeding as a hearing at final argument stage and AMPC's conditions for acceptance of the 2019 Letter Agreement could only be included in a conditional order if the BCUC finds the 2019 Letter Agreement not to be in the public interest after a hearing is completed.⁶³

5.4 CEABC

CEABC states that without material modifications, they are opposed to BC Hydro's request for BCUC approval of the 2019 Letter Agreement and BC Hydro has not met the required onus to prove that the 2019 Letter Agreement is in the public interest.⁶⁴

CEABC argues that except in the most unusual circumstances, the resources available to BC Hydro, including purchases from Independent Power Producers (IPPs) and Powerex, are sufficient to meet domestic demand.⁶⁵ CEABC further lists alternatives to the 2019 Letter Agreement as tools to manage exceptional events including the Canadian Entitlement under the Columbia River Treaty, Island Generation, industrial curtailment and purchasing additional IPP supply.⁶⁶

CEABC submits BC Hydro's system storage is 'the bastion of security'⁶⁷ and provides a safety margin to mitigate the effects of unexpected adverse events. With respect to system storage, CEABC submits that the risks to BC Hydro, and ratepayers, is reservoir levels; under-drafting 'merely results in lost opportunity' while over-drafting 'may present a real physical problem for many British Columbians'⁶⁸ and the events of winter 2018/19 highlight the need to maintain a larger operating margin of error of reservoir levels.

CEABC states that the 'anomalous situation' of winter 2018/19 was exacerbated by low reservoir levels as a result of 'unusually low system inflows [which] would have been apparent to BC Hydro as early as May' and BC Hydro's decision to export energy in July and August of 2018, rather than the ability to serve load.⁶⁹ CEABC expects that at least some of the declining liquidity in the day ahead Mid-C spot market 'has simply moved to other markets' including the bi-lateral markets, which BC Hydro can transact in through Powerex. Regardless of

⁶² Ibid, p. 6.

⁶³ Ibid, pp. 2-3.

⁶⁴ CEABC Final Argument, p. .1.

⁶⁵ Ibid, p. 2.

⁶⁶ Ibid, p. 17.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid, p. 10.

the decline in liquidity, CEABC argues that the Mid-C and bi-lateral markets should be ‘more than adequate’ to deal with low reservoir levels.⁷⁰

CEABC argues that BC Hydro’s ‘arbitrary distinction’ between planning and operational horizons means that BC Hydro’s IRP falls within the planning horizon and an IRP should be filed and approved by the BCUC before the 2019 Letter Agreement is rolled into any new TPA. CEABC notes that BC Hydro’s Energy Studies are based on historical studies and unlikely to predict the unusual situation that occurred in winter 2018/19 or the need for supply arrangements longer than one year. Consequently, BC Hydro cannot justify an agreement that has a potential delivery term of up to three years⁷¹ and the 2019 Letter Agreement should have a maximum term of 1 year and maximum delivery term of 6 months.⁷²

CEABC submits these events ‘should not be a precedent for establishing a perpetual new relationship that will, in effect, bypass future BCUC oversight,’⁷³ and if future events are as serious as those that occurred in winter 2018/19, BC Hydro should apply for ‘one-off’ approvals to import electricity in order for the BCUC to understand the circumstances and allow for proper scrutiny.⁷⁴

CEABC submits that BC Hydro has not explained how the Application is compliant with the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA). It argues that the 2019 Letter Agreement is not compliant with DRIPA because it does not create any economic opportunities for First Nations in BC. CEABC states that by allowing BC Hydro to purchase electricity outside of BC, approval of the Application will deny First Nations of their right to develop and control their resources. In support of its argument, it quotes portions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁷⁵

BC Hydro Reply Argument

In reply, BC Hydro submits that CEABC’s Final Argument rests on the flawed assertion that BC Hydro’s needs for operational resources can be met by planning resources and BC Hydro could enter into long-term energy supply contracts with domestic generators or rely on other resources instead of the 2019 Letter Agreement.⁷⁶

BC Hydro states that this assertion, along with those made in CEABC’s argument related to alternatives to the 2019 Letter Agreement such as system storage and the impacts of under-drafting and ‘lost opportunity,’ Canadian Entitlement, Island Generation, industrial curtailments and liquidity on the Mid-C market, are unsubstantiated and supported only by argument and not by a proper evidentiary record. Further, CEABC’s argument for an enabling agreement that is approved by the BCUC on a one-off basis could ‘unnecessarily risk [an agreement] being brought into effect too late’ and ‘be done without adverse financial consequences for BC Hydro customers only if done on a confidential basis.’⁷⁷

⁷⁰ Ibid, p. 17.

⁷¹ Ibid, p. 11.

⁷² Ibid, p. 3.

⁷³ Ibid, p. 7.

⁷⁴ Ibid, pp. 1-2; 12.

⁷⁵ CEABC Final Argument, pp. 6–7.

⁷⁶ BC Hydro Reply Argument, p. 7.

⁷⁷ Ibid, p. 15.

BC Hydro notes CEABC's claim of an 'arbitrary' distinction between the operational and planning time horizons was addressed in IR. Further, BC Hydro's plans to manage short-term and long-term load serving obligations is distinct, highlighted by section 44.1 of the UCA which surrounds long-term resource plans. BC Hydro states that it expects that the implications of different planning criteria on the need to import and export energy within the operational time horizon will be within scope of the next IRP proceeding.⁷⁸

BC Hydro notes that CEABC's reason for intervening in the proceeding is, among other things, to represent members who sell electricity from generating projects to BC Hydro. Given this, together with CEABC's assertions around maintaining higher reservoir levels regardless of economics or impact to ratepayers, makes it clear that CEABC's argument is that the 2019 Letter Agreement should not be approved and long-term supply agreements and/or additional IPP purchases should be used as alternatives.⁷⁹

BC Hydro submits that not accepting the 2019 Letter Agreement would not impact BC Hydro's willingness to acquire additional long-term supply arrangements and would therefore not advance the interests of CEABC members.⁸⁰ Additionally, CEABC offer no clear argument for prohibiting BC Hydro from using the 2019 letter Agreement to manage supply risk and if accepted, CEABC's argument would put BC Hydro customers at risk, with no offsetting benefit.⁸¹

In reply to CEABC's arguments about DRIPA, BC Hydro sets out the operative provisions of DRIPA and points out that UNDRIP is a schedule to DRIPA. BC Hydro submits that CEABC does not identify provisions of the DRIPA that it alleges BC Hydro or the 2019 Letter Agreement breach. BC Hydro submits that DRIPA does not require the decisions of the BCUC, BC Hydro or the 2019 Letter Agreement to create economic opportunities for First Nations.⁸²

BC Hydro states in its reply that ESCs are presumed to be in the public interest unless the BCUC finds otherwise. CEABC's argument that BC Hydro bears the burden of demonstrating that the 2019 Letter Agreement is in the public interest is 'to misread the UCA and is inconsistent with Commission practice and the Rules for Energy Supply Contracts for Electricity.'⁸³ In addition, BC Hydro argues that CEABC's modifications to the 2019 Letter Agreement cannot be ordered by the BCUC at this stage of the proceeding as the BCUC is obliged to either accept the agreement as filed or establish a public hearing pursuant to section 71(2) of the UCA.⁸⁴

6.0 Panel Determination

The Panel notes the BCUC's Rules provide guidelines for the review of ESC and it is the intention of the BCUC to review ESC expeditiously and accept them for filing without a hearing, where sufficient information and evidence has been provided to allow the BCUC to determine whether the ESC is in the public interest.

⁷⁸ Ibid., p. 7.

⁷⁹ Ibid, pp. 7-8.

⁸⁰ Ibid, pp. 9,13.

⁸¹ Ibid, p. 7.

⁸² Ibid., pp. 10-13.

⁸³ Ibid, p .9.

⁸⁴ Ibid, pp. 7,8, 15.

The review of the Application has included one round of BCUC and intervener IRs, two rounds of Panel IRs, final and reply arguments. The Panel notes that acceptance of the 2019 Letter Agreement is generally supported by CEC, BCOAPO and AMPC; only CEABC has raised objections to the BCUC accepting the 2019 Letter Agreement as being in the public interest. The Panel further notes that issues raised throughout the proceeding, namely the term of the 2019 Letter Agreement, the Delivery Term and Contract Price transacted under a Purchase Interest Request, have been addressed through BC Hydro's commitments, which are on the record.

Pursuant to the Rules and section 71(3) of the UCA, the Panel further notes that conditional orders as contemplated by AMPC and CEABC may only be made following a hearing which determines the 2019 Letter Agreement is not in the public interest. As such, the Panel is to determine whether it can accept the 2019 Letter Agreement as filed without condition.

The Panel notes that the 2018 Letter Agreement was entered into as a response to the anomalous events of winter 2018/19, which are difficult, if not impossible to predict based on historical data. While the likelihood of an event or series of events similar to those that occurred in winter 2018/19 is unknown, the 2019 Letter Agreement has been entered into proactively, to ensure appropriate measures are in place to respond to any potential future supply issues in a timely and cost-effective way.

The Panel agrees that BC Hydro's paramount obligation is to meet the electricity needs of its customers, namely the delivery of electricity. The 2019 Letter Agreement provides BC Hydro the mechanism to purchase forward firm electricity from Powerex outside of the day ahead Mid-C market, which has displayed a reduction in liquidity. While forward transactions lock in prices that may potentially be above those observed in the day ahead market, the Panel weighs management of supply risk above any potential for the management of price risk. The 2019 Letter Agreement provides security of supply, known in advance of delivery, and can be used to manage short-term energy shortfalls and expected outages. Comparing the price paid on a forward basis to the price paid when transacting these volumes on the day-ahead market, if possible, merely represents an opportunity cost, which can only be known at the time of transaction. In addition, the Panel notes that declining liquidity may increase price volatility on the day-ahead market and forward purchases reduce BC Hydro's exposure to this potential price risk.

The Panel further notes that the 2019 Letter Agreement is an additional, but importantly, not an exclusive tool, that BC Hydro can use to manage its load obligations. The Panel notes that BC Hydro has stated on the record that acceptance of the 2019 Letter Agreement does not preclude it from using other tools at its disposal, including industrial curtailment, which BC Hydro expects to consider as planning resources in the IRP.

The Panel notes that in BC Hydro's Reply Argument it confirms it will not object to intervener IRs or evidence related to the 2019 Letter Agreement in the 2022 RRA and it expects the planning criteria will be within scope of the IRP and does not object to intervener IRs or evidence regarding mechanisms that enable imports and exports in the operational time horizon, including the 2019 Letter Agreement.

The Panel notes that CEABC, in its submission, states that the Application is not in compliance with the DRIPA, which became law in British Columbia on November 28, 2019. DRIPA reflects a clear public policy direction from the Province. The UNDRIP is an international instrument, which has been given legal force in British Columbia

through the DRIPA. The DRIPA establishes a process to align the Province's laws with UNDRIP, over time, through the development of an action plan but it does not change the laws of the Province, including the UCA, as they currently stand. The Panel agrees with BC Hydro. The DRIPA does not require the BCUC or BC Hydro to create economic opportunities for First Nations as argued by CEABC.

In consideration of the above **the Panel determines that the 2019 Letter Agreement is accepted for filing. The Panel directs BC Hydro to file with the BCUC, 90 days after the end of each calendar quarter, a public report that specifies the Transactions, as defined in the 2019 Letter Agreement, that occurred during the relevant calendar quarter. BC Hydro is also directed to file monthly reports to monitor water levels and inflows at each of the Kinbasket and Williston reservoirs.**