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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER E-10-15**

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

and

FortisBC Inc.
Section 71 Application for Acceptance of the Capacity and Energy Purchase
and Sale Agreement between FortisBC Inc. and Powerex Corp.

BEFORE: K. A. Keilty, Commissioner/Panel Chair
I. F. MacPhail, Commissioner April 27, 2015
D. M. Morton, Commissioner

O R D E R

WHEREAS:

- A. On March 6, 2015, FortisBC Inc. (FBC) filed with the British Columbia Utilities Commission (Commission) for acceptance as an energy supply contract under section 71 of the *Utilities Commission Act* (UCA), to the extent within the Commission's jurisdiction, of a Capacity and Energy Purchase and Sale Agreement (CEPSA) dated February 17, 2015, for purchase of power between FBC and Powerex Corp. (Application);
- B. FBC submits that sections 3, 4, 5 and 8 of the CEPSA are exempt from regulation under the UCA;
- C. FBC requests that certain details of the CEPSA be kept confidential for reasons of commercial sensitivity, and filed a redacted version of the CEPSA. The non-confidential version of the Application was copied to all registered interveners in the FBC Application for Approval of a Multi-Year Performance Based Ratemaking Plan for 2014 through 2018 proceeding (PBR Intervenors);
- D. Ministerial Order No. M407 issued December 3, 2004, pursuant to section 22 of the UCA exempts from section 71 of the UCA, persons, their successors and assigns, who enter into an energy supply contract with Powerex Corp. (Powerex) for the delivery of power services to Powerex, and Powerex, in respect of such contracts;
- E. By Order G-61-12 dated May 25, 2012, the Commission approved Rules for Energy Supply Contracts for Electricity (Rules). The Rules are intended to facilitate the Commission's review of energy supply contracts for electricity and proposed energy supply contracts for electricity under section 71 of the UCA;

- F. Order in Council No. 097, approved and ordered on March 5, 2014, contained the direction that the Commission may not exercise any power under Part 3 of the UCA in regard to the gas and electricity trading activities of Powerex;
- G. By letter L-35-14 dated June 19, 2014, the Commission accepted the FBC 2014/2015 Annual Electric Contracting Plan (AECF);
- H. On March 10, 2015, the British Columbia Hydro and Power Authority (BC Hydro) and Powerex jointly filed a section 71 filing with the Commission for acceptance of an agreement that amends the Transfer Pricing Agreement for Electricity and Gas between BC Hydro and Powerex (TPA Filing). The Transfer Pricing Agreement Amending Agreement was necessary to ensure the commercial arrangements between FBC and Powerex under the CEPSA are consistent with the existing Heritage Contract framework. In the TPA Filing, BC Hydro and Powerex provide comments regarding the CEPSA and the need for the unredacted CEPSA to be held confidential. The TPA Filing was copied to PBR Interveners;
- I. On March 20, 2015, the Commission issued confidential and non-confidential information requests to FBC and FBC responded confidentially and non-confidentially to the respective information requests on March 27, 2015;
- J. The Commission issued letter L-11-15 dated March 16, 2015, providing interested stakeholders the opportunity to submit comments in regard to the acceptance under section 71 of the UCA of the applicable sections of the redacted CEPSA;
- K. On March 19, 2015, the Industrial Customers Group (ICG) requested an extension to the deadline established in L-11-15 on the basis that the process established by the Commission did not provide an opportunity for stakeholders to be heard on the issue of the request for confidentiality in accordance with the principles related to procedural fairness;
- L. On March 20, 2015, FBC made a submission to the Commission in regard to ICG's request. On March 23, 2015, Powerex also submitted comments in regard to ICG's request;
- M. Submissions were received in response to L-11-15 from British Columbia Old Age Pensioners' Organization *et al.* and a joint submission from the B.C. Sustainable Energy Organization and Sierra Club of B.C. on March 23, 2015 and March 24, 2015, respectively;
- N. On March 25, 2015, the Commission issued letter L-13-15 extending the deadlines established in L-11-15 and requesting ICG to provide clarification as to whether it did have objections to the FBC confidentiality request;
- O. ICG filed a submission dated March 27, 2015, stating its objections to the FBC confidentiality request and in the event that the Commission determines that certain information should be held confidential, ICG requests access to such information on a confidential basis;

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- P. On March 31, 2015, BC Hydro and Powerex (BC Hydro/Powerex) filed a joint submission and FBC filed its reply submission and comments in regard to ICG's request for access;
- Q. On April 2, 2015, the Commission issued letter L-16-15 providing ICG the opportunity to file a reply submission in regard to FBC and BC Hydro/Powerex comments on the need for confidentiality and in regard to FBC and BC Hydro/Powerex comments on granting ICG access to information found to be confidential;
- R. ICG filed its reply comments on April 9, 2015, regarding its reasons why FCB's request for confidentiality should be denied and confirming ICG's request for access to the redacted information in the event the Commission holds the information confidential; and
- S. The Commission reviewed the Application, FBC responses to the confidential and non-confidential Commission Information Request No. 1 and the submissions from the parties and determines that the purchase of energy under the CEPSA is in the public interest and the CEPSA, to the extent it is within the Commission's jurisdiction, should be accepted for filing as an energy supply contract under section 71 of the UCA and the Rules for Energy Supply Contracts for Electricity and that the redactions to the CEPSA should be held confidential as requested.

NOW THEREFORE for the reasons set out in the reasons for decision attached as Appendix A to this order:

- 1. The British Columbia Utilities Commission (Commission) determines that the Capacity and Energy Purchase and Sale Agreement (CEPSA) between FortisBC Inc. (FBC) and Powerex Corp. (Powerex) dated February 17, 2015 is in the public interest and accepts, to the extent within the Commission's jurisdiction, the CEPSA as an energy supply contract pursuant to section 71 of the *Utilities Commission Act* and in accordance with the Commission Rules for Energy Supply Contracts for Electricity.
- 2. The Commission accepts FBC's request that the redactions to the CEPSA be held confidential. The Commission will also hold confidential the confidential Commission Information Request No. 1 and FBC's confidential response to the confidential Commission Information Request No. 1.
- 3. The Commission denies the Industrial Customers Group request for access to confidential information.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of April 2015.

BY ORDER

Original Signed By:

K. A. Keilty
Commissioner/Panel Chair

Attachment



IN THE MATTER OF

FORTISBC INC.

**SECTION 71 APPLICATION FOR ACCEPTANCE OF THE CAPACITY AND ENERGY PURCHASE
AND SALE AGREEMENT BETWEEN FORTISBC INC. AND POWEREX CORP.**

REASONS FOR DECISION

April 27, 2015

BEFORE:

K. A. Keilty, Commissioner/Panel Chair
I. F. MacPhail, Commissioner
D. M. Morton, Commissioner

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1.0 INTRODUCTION

1.1 FBC application

FortisBC Inc. (FBC) filed an application dated March 6, 2015, seeking British Columbia Utilities Commission (Commission) acceptance, under section 71 of the *Utilities Commission Act* (UCA), of the Capacity and Energy Purchase and Sale Agreement (CEPSA) dated February 17, 2015, between FBC and Powerex Corp. (Powerex), as an energy supply contract, to the extent its components are within Commission jurisdiction (Application). FBC submits that certain subject matter within the CEPSA is exempt from Part 3 and section 71 of the UCA because the counterparty to the CEPSA is Powerex, a wholly owned subsidiary of the British Columbia Hydro and Power Authority (BC Hydro).

The Application includes a redacted public version of the CEPSA and a confidential version of the unredacted CEPSA. FBC provided a copy of the non-confidential version of the Application to the registered interveners in the FBC Application for Approval of a Multi-Year Performance Based Ratemaking Plan for 2014 through 2018 proceeding (PBR Intervenors).

FBC describes the CEPSA as a master agreement in that it sets out the terms and conditions for future market transactions entered into by FBC with Powerex. Under the CEPSA, FBC will purchase all of its market energy requirements from Powerex and will sell any surplus capacity that may be available after meeting FBC's load requirements to Powerex. FBC states the benefits of this arrangement include increased certainty of energy access as well as surplus capacity sales at prices that are potentially better than could be achieved elsewhere, optimizing FBC's resource portfolio.¹

FBC states that sections 3, 4, 5 and 8 of the CEPSA are exempt from Part 3 and section 71 of the UCA and, as such, the energy supply contract components of the CEPSA that FBC is seeking acceptance of do not include these sections of the CEPSA.²

The CEPSA provides access to day-ahead and real-time purchases based on applicable market index prices.³ FBC also has the ability to enter into monthly block contracts with Powerex of delivery of energy in future periods through three different options which are intended to provide FBC access to market contracts at fair market prices.⁴

In section 5 of the Application, FBC describes the benefits and risks associated with the CEPSA. Benefits include:

- Increased availability and certainty in regard to the purchase of real-time power;
- Operational efficiencies arising from the re-allocation of real-time resources to a focus on day-ahead operations; and
- Reduced scheduling and contract management risk, in particular minimizing the risk for disputes regarding scheduling rights under the Canal Plant Agreement (CPA).⁵

FBC describes one of the key risks of the CEPSA is a potential reduced ability to take advantage of opportunities, that may become available on short notice, to purchase energy at a cost lower than the market index price. FBC

¹ Application, p. 1.

² Ibid., p. 3.

³ Ibid., p. 11.

⁴ Ibid., p. 12.

⁵ Ibid., pp. 14–15.

believes the risk is more than offset by the benefits of the CEPSA which FBC believes will result in lower market-based costs for energy purchases on an overall basis.⁶

The CEPSA is to commence on the first day of the month after FBC begins receiving capacity under the Waneta Expansion Capacity Agreement (WAX CAPA) which is anticipated to occur in April 2015. The CEPSA will continue until September 30, 2018, unless extended by mutual agreement. The CEPSA can be extended for further one year extensions on an annual basis with one year's notice but the terms of the CEPSA provide that it will terminate no later than September 30, 2025.⁷

In the Application, FBC describes how the applicable sections of the CEPSA meets each of the criteria set out in section 71 of the UCA for acceptance as an energy supply contract.

In order to provide further clarification of the information provided in the Application, the Commission issued confidential and non-confidential information requests to FBC on March 20, 2015 and FBC responded confidentially and non-confidentially to the respective information requests on March 27, 2015.

FBC requests a decision from the Commission before May 1, 2015, due to the conditions precedent set out in the CEPSA. Under Article 2.6 of the CEPSA, the CEPSA will not become effective if the Commission has not issued an order accepting for filing or otherwise approving the CEPSA on or before May 1, 2015, and the Commission has not issued an order accepting for filing or, otherwise approving as an energy supply contract, the proposed amendments to the Transfer Pricing Agreement (TPA) between BC Hydro and Powerex required for Powerex to implement the CEPSA (please see section 1.3 of these reasons for the details of the BC Hydro/Powerex TPA filing).

1.2 Background

FBC's most recent long-term resource plan filed under section 44.1 of the UCA, the 2012 Long Term Resource Plan (2012 LTRP) was found to meet the requirements of the UCA and accepted by the Commission under Order G-110-12.⁸

On a short-term basis, FBC files Annual Electric Contracting Plans (AECPs), which outline the forecast energy and capacity gaps for the upcoming operating year and present a contracting plan to acquire the necessary energy and capacity, consistent with the most recent long term resource plan. The AECP for a particular operating year is intended to facilitate the review and acceptance of energy supply contracts executed in the subject operating year. In the AECP, FBC also seeks acceptance of the annual nomination it anticipates under the Power Purchase Agreement between FBC and BC Hydro (PPA) in advance of making the PPA nomination.

FBC's 2014/2015 AECP for the operating year of October 1, 2014 to September 30, 2015 was accepted as in the public interest by letter L-35-14.⁹ The 2014/2015 AECP, in the non-confidential version appended as Appendix A to L-35-14, set out the objectives described by FBC in the Application against which to assess the acceptance under section 71 of energy supply contracts (ESCs) that are subsequently filed by FBC during the 2014/2015 operating year.¹⁰

⁶ Ibid., p. 14.

⁷ Ibid., p. 8.

⁸ Ibid., p. 2.

⁹ Commission letter L-35-14 dated June 19, 2014.

¹⁰ Application, p. 2.

1.3 Related filing by BC Hydro/Powerex

On March 10, 2015, BC Hydro and Powerex jointly filed a section 71 filing with the Commission for acceptance of an agreement that amends the TPA (TPA Filing). In the TPA Filing, BC Hydro/Powerex submit that the TPA Amending Agreement is necessary to ensure the commercial arrangements between FBC and Powerex under the CEPSA are consistent with the various elements of the regulatory framework that address the maximization and allocation of the economic benefits of BC Hydro's low-embedded cost Heritage Resources. The acceptance of the TPA Filing is the subject of a separate Commission order.

In the TPA Filing, BC Hydro/Powerex provided comments regarding the CEPSA and BC Hydro/Powerex confirmed the redacted information in the CEPSA is commercially sensitive and should be held confidential. BC Hydro/Powerex copied the TPA Filing to PBR Interveners in addition to the registered interveners in the most recent BC Hydro revenue requirements application.

1.4 Commission process for stakeholder comments

The Commission issued letter L-11-15 dated March 16, 2015, providing interested stakeholders the opportunity to submit comments to the Commission, specifically in regard to the acceptance under section 71 of the UCA of the subject sections 1, 2, 6, 7, 9 through 17 of the redacted CEPSA. Stakeholders were to limit comments to issues that are within the Commission's jurisdiction. The Commission established a deadline of March 24, 2015 for submission of comments and provided FBC the opportunity to submit any reply comments by March 27, 2015.

On March 19, 2015, the Industrial Customers Group (ICG) requested an extension to the March 24, 2015 deadline on the basis of its submission that the process established by the Commission in L-11-15 for review of the CEPSA did not provide a reasonable opportunity for stakeholders to be heard in accordance with the principles related to procedural fairness in keeping with the protocol established for hearings in the Commission's Confidential Filing Practice Directive.¹¹ On March 20, 2015, FBC made a submission to the Commission in regard to ICG's request and, on March 23, 2015, Powerex also submitted comments in regard to ICG's request.

Comments in response to L-11-15 were filed by the British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) and the B.C. Sustainable Energy Association and the Sierra Club of B.C. (BCSEA/SCBC) on March 23, 2015 and March 24, 2015, respectively.

The Commission issued letter L-13-15 dated March 25, 2015, extending the deadline for the comment period established in L-11-15 to March 27, 2015 and extending the deadline for FBC to file any reply comments to March 31, 2015, re-iterating that the comments were to be in regard to the redacted CEPSA and stating the need for a hearing had not been established.

With regard to ICG's submission that the process established in L-11-15 did not provide an opportunity for comments regarding the FBC request for confidentiality of Appendix B, in L-13-15 the Commission, in keeping with the protocol established for hearings in the Commission's Confidential Filing Practice Directive, requested ICG to provide clarification as to whether it did have objections to the FBC confidentiality request and to submit any such objections in writing together with reasons to the Commission by March 27, 2015. FBC was provided the opportunity to file any reply comments by April 1, 2015.

¹¹ Practice Directive of the British Columbia Utilities Commission dated September 1, 2007 regarding Confidential Filings

ICG filed a submission dated March 27, 2015, in which it stated its position that the Commission should ensure public disclosure of all aspects of the CEPSA and related documents that have been filed. ICG further submitted FBC failed to properly request confidentiality as described in the Commission's Confidential Filing Practice Directive. In the event the Commission decides it will hold Appendix B confidential, ICG requested it be granted access to the information found to be confidential pursuant to section 9 of the Confidential Filing Practice Directive.

On March 31, 2015, BC Hydro and Powerex (BC Hydro/Powerex) filed a joint submission responding to the ICG submission regarding the need for confidentiality and provided comments in regard to ICG's request for access. BC Hydro/Powerex submitted, given Powerex is a party to the CEPSA and in alignment with FBC on the issue, that BC Hydro and Powerex have the same right of reply as FBC. BC Hydro/Powerex also provided comments on the submissions of the parties in regard to the acceptance of the redacted CEPSA.

On March 31, 2015, FBC filed the following:

- its reply submission regarding the submissions of the interested stakeholders in regard to the acceptance of the redacted version of the Agreement incorporating the BC Hydro/Powerex submission by reference;
- reply comments in regard to the ICG submission regarding the need for confidentiality; and
- comments opposing ICG's request for access to information the Commission finds to be confidential.

FBC supported BC Hydro/Powerex's right of reply and incorporated by reference BC Hydro/Powerex's submission regarding acceptance of the CEPSA for filing.

The Commission issued letter L-16-15 dated April 2, 2015, in which the Commission acknowledged that ICG is of the view that FBC's justification for confidentiality was limited and, as a result of these unique circumstances, the Commission provided ICG the opportunity for a reply submission in regard to the following:

- the FBC and BC Hydro/Powerex comments in regard to the need for confidentiality; and
- the FBC and BC Hydro/Powerex comments in regard to the ICG's request for access in the event the Commission determines the information should be held confidential.

ICG filed its reply comments with the Commission on April 9, 2015, and confirmed its request for access to the redacted information.

1.5 Commission review of Application and ICG requests

In these reasons the Panel first addresses the issue of acceptance of the CEPSA as filed and then addresses ICG's objections to FBC's request for confidentiality and request for access to confidential information.

2.0 JURISDICTION, LEGISLATION AND RULES FOR ESCS

2.1 Commission jurisdiction

The Commission's jurisdiction is limited in regard to certain transactions involving Powerex as these are exempt from section 71 and Part 3 of the UCA. With respect to the CEPSA, the exempt transactions are the capacity and energy sales from FBC to Powerex.

Under Ministerial Order No. M407 issued December 3, 2004, pursuant to section 22 of the UCA, the Minister exempted from section 71 of the UCA "persons, their successors and assigns, who enter into an energy supply contract with Powerex for the delivery of power services to Powerex, and Powerex, in respect of such contracts."

Section 13 of Order in Council No. 097 contains the direction that "The commission may not exercise any power under Part 3 of the Act in regard to the gas and electricity trading activities of Powerex Corp."¹²

2.2 Assessment criteria for acceptance under section 71

The review of the CEPSA is conducted pursuant to section 71 of the UCA and in accordance with the "Rules for Energy Supply Contracts for Electricity" (Rules) that were established by the Commission under Order G-61-12 and attached as Appendix A to that order.

2.2.1 Section 71 of the UCA

Subsection 71(1) of the UCA requires that a person who enters into an energy supply contract must,

- (a) File a copy of the contract with the commission under rules and within the time it specifies, and
- (b) Provide to the commission any information it considers necessary to determine whether the contract is in the public interest.

Under subsection 71(2) of the UCA, the Commission may make an order determining that an energy supply contract is not in the public interest but can only do so after a hearing.

Under subsection 71(2.1) of the UCA, in determining under subsection 71(2) whether an energy supply contract filed by a public utility other than the authority is in the public interest, the Commission must consider:

- (a) the applicable of British Columbia's energy objectives,
- (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any,
- (c) the extent to which the energy supply contract is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act*,
- (d) the interests of persons in British Columbia who receive or may receive service from the public utility,
- (e) the quantity of the energy to be supplied under the contract,
- (f) the availability of supplies of the energy referred to in paragraph (e),
- (g) the price and availability of any other form of energy that could be used instead of the energy referred to in paragraph (e), and

¹² Province of British Columbia Order in Council No. 097 approved and ordered March 5, 2014, p. 11.

- (h) 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 (e).

Under subsection 71(2.2), subsection 71(2.1) (a) to (c) does not apply if the Commission considers that the matters addressed in the energy supply contract filed under subsection (1) were determined to be in the public interest in the course of considering a long-term resource plan under section 44.1 of the UCA.

British Columbia's energy objectives are set out in section 2 of the *Clean Energy Act* (CEA).

2.2.2 Commission Rules for Energy Supply Contracts

Appendix A of Commission Order G-61-12 provides the Rules for Energy Supply Contracts for Electricity (Rules). Rules of note in the review of this Application are the following:

Rule 1.1.2 states:

A person entering into an ESC other than an ESC described in section 1.1.1 shall file the ESC with the Commission within 60 days of the date upon which the person enters into the ESC. In addition to filing the ESC with the Commission, a public utility entering into an ESC must provide notice of the filing to parties that intervened in its most recent revenue requirements application as appropriate. Upon reviewing the filing, the Commission will determine whether appropriate notice has been given in the circumstances.

Rule 1.1.3 states:

The obligation to file an ESC and provide information rests upon each party to the ESC, but for the purposes of these Rules, the Commission considers that the primary obligation to file and provide information rests with the buyer.

Rule 1.2 states:

The Commission will rely on all information it considers necessary to determine whether an ESC is in the public interest. In doing so it will consider the factors referred to in section 71(2.1) and (2.2) of the Act where the ESC is filed by a public utility other than BC Hydro and the Commission will consider and be guided by the factors in section 71(2.21) of the Act where the ESC is filed by BC Hydro.

Rule 1.3 states:

Generally, the Commission will decide within 60 days of the filing of an ESC as to whether a public hearing is required, and if not, will issue an Order determining the ESC is in the public interest and accepting the ESC for filing. If the Commission determines a public hearing is required, it will take place where:

- (a) the Commission is unable to determine on the basis of the information filed under these General Rules that the ESC is in the public interest; or
 - (b) it appears to the Commission on the basis of the information filed under these General Rules that the ESC may not be in the public interest.
- The Commission may also hold a hearing where it receives a third party complaint about the ESC.

Rule 1.6 states:

Where applicable, an ESC filing pursuant to section 71(1) of the Act ... must at a minimum include the following information: duration, rights of renewal and other special provisions, reliability considerations, price and price escalation and alternate sources of supply of the ESC or Proposed ESC and, where a person seeks Commission acceptance of an amendment to an ESC, that notice has been provided to all parties that intervened in any Commission proceeding concerning the filing of the original ESC under section 71 of the Act.

2.3 Assessment criteria for request for confidentiality

2.3.1 Section 71 of the UCA

Section 71(5) of the UCA states, “An energy supply contract or other information filed with the commission under this section must be made available to the public unless the commission considers that disclosure is not in the public interest.”

2.3.2 Commission Rules for Energy Supply Contracts

In regard to confidentiality, Rule 1.10 of the Commission’s Rules states:

An ESC and the information filed under section 71(1) of the Act shall be made available to the public except where the Commission considers that disclosure is not in the public interest. In order to allow the Commission to make a determination that disclosure is not in the public interest, parties to the ESC must provide written submissions in support of any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential and include in the filing a redacted version of the ESC and other information. The Commission will consider the justification provided and determine the issue of confidentiality. Where the Commission determines that disclosure of the ESC or other information is not in the public interest, it will require a redacted version of the ESC and other information to be made available to the public.

2.3.3 BCUC Practice Directive on Confidential Filings

The Commission notes that although the need for a hearing has not been established, the BCUC Confidential Filing Practice Directive (Directive) which “is intended to provide direction or guidance as to the approach the Commission will take and how the Commission will deal with requests by parties that information be filed on a confidential basis during Commission public hearings”¹³ can also provide direction and guidance in regard to the FBC request for certain information to be kept confidential.

The clause 2 of the Directive states:

The request for confidentiality should:

- (a) briefly describe the nature of the information in the document and the reasons for the request for confidentiality, including the specific harm that could reasonably be expected to result if the document were placed on the public record, and
- (b) indicate whether all or only a part of the document is the subject of the request.

¹³ Cover letter to the BCUC Confidential Filing Practice Directive (Directive) dated September 12, 2007.

Clause 5 of the Directive states:

The Commission may, with or without a hearing or further process, grant a request for confidentiality on any terms it considers necessary.

3.0 ACCEPTANCE OF AGREEMENT FOR FILING UNDER SECTION 71 OF THE UCA

Commission determination

For the reasons set out in the analysis below, **the Panel determines that the Capacity and Energy Purchase and Sale Agreement (CEPSA) between FortisBC Inc. (FBC) and Powerex Corp. (Powerex) dated February 17, 2015 is in the public interest and accepts, to the extent within the Commission's jurisdiction, the CEPSA as an energy supply contract pursuant to section 71 of the *Utilities Commission Act* and in accordance with the Commission Rules for Energy Supply Contracts for Electricity.** Accordingly, since the Panel accepts the CEPSA as in the public interest, a public hearing on the Application is not required.

3.1 Analysis against section 71 criteria

The Panel reviewed the applicable energy purchase sections of the CEPSA against the criteria for acceptance set out in section 71(2.1) of the UCA and also considered whether there are additional benefits for FBC customers and BC Hydro customers arising from entering into an exclusive arrangement with Powerex for both the purchase of energy and the sale of capacity when considering the potential costs.

3.1.1 Applicable British Columbia's energy objectives, most recent long-term resource plan, and applicable requirements under sections 6 and 19 of the *Clean Energy Act*

Section 71(2.2) of the UCA states that "Subsection (2.1) (a) to (c) does not apply if the commission considers that the matters addressed in the energy supply contract filed under subsection (1) were determined to be in the public interest in the course of considering a long-term resource plan under section 44.1." ¹⁴ The most recent long-term resource plan (LTRP) filed by FBC is the 2012 LTRP which was found to meet the requirements of the UCA and accepted by the Commission under Order G-110-12. FBC submits the CEPSA is consistent with FBC's 2012 LTRP and facilitates its implementation, and further submits that no review of subsections 71(2.1) (a) to (c) is specifically required in the review of this Application.

BCOAPO agrees with FBC that issues with respect to the applicability of British Columbia's energy objectives and requirements of the CEA were considered in the Commission's decision to accept the resource acquisition strategy in FBC's 2012 LTRP and do not need to be canvassed again here. ¹⁵

¹⁴ Application, p. 5.

¹⁵ BCOAPO comments, March 23, 2015, pp. 2-3.

Commission discussion

With regard to section 71 criteria set out in subsection 71(2.1) (a) and (c), the Panel agrees with FBC and BCOAPO that the applicability of British Columbia's energy objectives and the requirements of the CEA were considered in the Commission's decision to accept the resource acquisition strategy in FBC's 2012 LTRP and do not need to be reviewed in detail again. The CEP SA is consistent with and aligned with the 2012 LTRP. The Panel further notes that the CEP SA does not detract from any of the British Columbia's energy objectives and requirements under section 6 and 19 of the CEA.

3.1.2 The quantity of the energy to be supplied under the contract

The CEP SA sets out the terms and conditions for future transactions, the volume of which transactions (relevant to subsection 71(2)(e)) will be determined in accordance with the Commission-accepted AEC Ps. FBC states that the CEP SA does not contemplate any energy or capacity purchases that were not already expected under the 2012 LTRP; it simply facilitates making those purchases in a more reliable and cost effective manner.¹⁶ FBC further confirms that "the complete energy supply contract for a particular energy supply transaction would consist of two components; the Agreement that FBC seeks section 71 acceptance of in this Application and the energy supply contract setting out the details of the particular transaction."¹⁷

Commission discussion

The Panel reviewed the CEP SA and notes that while the quantity of energy to be supplied by the CEP SA is not defined within the filed CEP SA, the Panel is satisfied with the notion that the quantity supplied will be reviewed as part of the AEC P review process and the review of specific energy purchase contracts that FBC files for section 71 acceptance.

3.1.3 The availability of supplies of the energy

FBC submits that while the CEP SA is not required in order for FBC to have access to market supply, the CEP SA increases FBC's ability to purchase energy based on market prices and is therefore expected to increase the overall reliability of FBC purchases of energy to serve load.¹⁸ FBC states that:

[T]ransmission from within the US to the border can be difficult at times to obtain and firm transmission rights are rarely available. Currently FBC's counterparties generally rely on the availability of non-firm transmission capacity to deliver to the border to serve FBC purchases.

Under the Agreement, Powerex will be responsible for obtaining transmission capacity to deliver to the BC/US border to the degree it is necessary. FBC expects that Powerex will determine any transmission requirements to fulfill FBC's energy purchases as part of its market activities to support the optimisation of the BC Hydro system. As such it is expected that Powerex will be able to deliver energy purchases to the BC/US border or to the Kootenay Interconnection with a higher degree of certainty than FBC could achieve under its existing market arrangements, at comparable or lower cost.¹⁹

¹⁶ Application, p. 6.

¹⁷ BCUC IR 1.2.1.

¹⁸ Application, p. 8.

¹⁹ Ibid., p. 13.

Additionally, Powerex has a contractual obligation to provide FBC with energy at market index-based prices when required by FBC in accordance with and subject to the terms set out in the CEP SA. This obligation includes providing energy in real time to address unexpected conditions such as a change to the load forecast, or an unexpected loss of generation.²⁰

Commission discussion

The Panel has reviewed the agreement and is satisfied that Powerex will provide FBC with a reliable supply of energy under the agreement.

3.1.4 The price and availability of any other form of energy that could be used instead of the energy from the agreement

FBC states that it currently does not have the ability to call on power on demand from any marketer or supplier and the cost of such a service on a standalone basis would be significant.²¹ As such, the service provided by Powerex is unique and is not comparable to service offered by other suppliers. FBC states it held discussions with other marketers but, Powerex was the preferred option for such an exclusive arrangement at this time. The main reason for this view is Powerex's ability to incorporate FBC's energy requirements as part of its role to optimise the overall BC Hydro system, resulting in lower incremental costs to acquire the necessary energy and transmission resources.²²

Commission discussion

In the absence of the CEP SA, to acquire quantities of energy contemplated in its Commission-accepted AEC P and 2012 LTRP, FBC would continue to enter into energy supply contracts with marketers based on a negotiated price. The Commission has accepted contracts of this nature in the past, such as those accepted by Order E-1-15 and Order E-7-15. The Panel observes that FBC will continue to have access to energy purchases at a negotiated price with Powerex as well as the opportunity to enter into fixed price contracts based on either third party offers available on the market facilitated by another third party or based on a formulaic approach based on published forward prices, and therefore is no worse off as a result of the CEP SA. In addition, Powerex provides FBC with services that are uniquely available through Powerex.

3.1.5 In the case only of an energy supply contract that is entered into by a public utility, the price of the energy from the agreement

FBC will purchase wholesale energy requirements from Powerex at market index based prices for all pre-scheduled and real-time purchases and on a contract by contract basis under various fixed price options for advanced market blocks. FBC submits that the CEP SA provides FBC with improved market access at a cost that is expected to be lower than that which FBC could achieve under its existing market arrangements.²³ FBC states that the main disadvantage of an exclusive market purchase arrangement is that it may be difficult to know if the best possible price is being obtained. In particular, the CEP SA limits FBC's ability to take advantage of real-time opportunities that may be available on short notice at a cost lower than index. However, FBC believes the risks are more than offset by the benefits of the CEP SA and that FBC will pay less on an overall basis for energy

²⁰ Ibid., p. 14.

²¹ Ibid., p. 14.

²² BCUC IR 1.1.1.1.

²³ Application, p. 9.

deliveries under the CEPSPA. In this regard FBC notes that the risk FBC will pay more than index for this energy is also eliminated.²⁴

BCOAPO states that:

the redactions made to the filed Agreement mean that the precise relationship between ICE - published Mid-C prices and the prices to be paid by FBC is unknown. Therefore, BCOAPO is not in a position to know what premium (if any) FBC will be paying over the Mid-C index prices for purchases from Powerex. BCOAPO submits that the Commission must carefully assess whether such a premium exists and, if so, whether the advantages of the Agreement offset the additional cost such that the agreement truly is in the public interest.²⁵

Commission discussion

In regard to the BCOAPO concern, the Panel notes it reviewed the pricing structure for the market based purchases and finds the pricing to be acceptable and not unreasonable considering the price FBC has paid for energy purchases in the past. The Panel is also satisfied that the options provided for the advance market blocks provide FBC with the equivalent of continued access to the third party offers.

3.1.6 The interests of persons in British Columbia who receive or may receive service from the public utility

Powerex is responsible for buying and selling electricity, including energy and associated capacity, to help optimize the economic benefits to, and reliable operation of, the BC Hydro system, including marketing surplus British Columbia system capability and purchasing power to meet BC Hydro's energy needs that are not supplied from the BC Hydro system.²⁶ FBC states that the main advantage of an exclusive market purchase arrangement with Powerex is the ability for FBC to benefit from Powerex's role in optimising the overall Provincial resources and requirements in the most efficient manner. This also reduces the operational issues that arise from time to time between FBC and BC Hydro under the CPA and other agreements. The benefits of this to FBC ratepayers are lower costs, greater reliability and improved flexibility.²⁷

BCOAPO submits that there are certainly advantages to having an established power marketer coordinate and facilitate FBC's energy market purchases and be responsible for transmission arrangements up to the BC/US border. BCOAPO further submits that such advantages are perhaps even more pronounced when Powerex is that established power marketer, given that the arrangement will minimize the likelihood of disputes under other agreements with BC Hydro.²⁸

In BCSEA-SCBC's view, the concept of FBC contracting with Powerex for the sale and purchase of market capacity and energy so as to provide FBC with access to market prices, as provided for by the CEPSPA, makes sense and is consistent with the public interest under section 71.²⁹

²⁴ Ibid., p. 14.

²⁵ BCOAPO Submission dated March 23, 2015, p. 4.

²⁶ Application, p. 8.

²⁷ BCUC IR 1.1.2.

²⁸ BCOAPO Submission dated March 23, 2015, p. 3.

²⁹ BCSEA/SCBC Submission dated March 24, 2015, p. 1.

Commission discussion

The Panel notes that the CEPSA has other associated benefits such as FBC's improved ability to sell surplus capacity on a day-ahead basis, improved operational efficiency from non-standard day ahead market access, and reduced risk for disputes around FBC's scheduling rights under the CPA. However, under the CEPSA, FBC's ability to take advantage of potential deals that may become available on short notice at a cost lower than the index prices is reduced. Any gains to FBC as a result of the CEPSA will flow through to FBC ratepayers, and any gains to Powerex will flow through to BC Hydro ratepayers. On balance, the Panel finds the CEPSA is in the interests of not only the FBC customers but the BC Hydro customers as well and the CEPSA therefore has benefits to most British Columbians.

3.2 Other issues

3.2.1 One agreement versus two

ICG expressed concern regarding the need for one agreement rather than two separate agreements for the purchase of energy and sale of capacity, respectively. ICG submits that

FortisBC has requested approval before May 2015 in order to effect the sales of surplus capacity from the WAX CAPA. It would appear from the FBC Filing that the commitment to meet real-time market purchase requirements from Powerex does not require approval before May 2015. From a regulatory perspective, the preferred approach to the two distinct types of transactions would have been to have them housed in two separate agreements.³⁰

ICG further submits once sales to, and purchases from, Powerex are the subject of the same agreement ratepayers should be given an opportunity to ensure that sales to Powerex are not inappropriately supported by purchases from Powerex.³¹

Powerex states that:

Powerex insisted that the arrangements with FortisBC be in one agreement to minimize administrative complexity and costs arising from two or more contracts relating to the same subject matter with one counter-party. The effect of having the different components in one agreement relative to having the different components in different agreements is only that: reduced on-going administrative costs. From a system planning, system operations or microeconomic view, two or more agreements would have looked exactly the same as the CEPSA.³²

Commission discussion

With regard to the question of whether it was necessary for FBC to have negotiated one agreement rather than two, the Panel is satisfied that, as an agreement negotiated by two sophisticated arms-length parties, the form of the CEPSA as one agreement covering both the purchase of energy and sale of capacity is acceptable.

³⁰ ICG Submission dated March 19, 2015, pp. 1-2.

³¹ ICG Submission dated March 19, 2015, p. 2.

³² Powerex Submission dated March 20, 2015, p. 2.

3.2.2 Duration of the CEPSA

The CEPSA is expected to commence May 1, 2015 and will continue until September 30, 2018, unless extended by mutual agreement. One year prior to September 30, 2018, FBC and Powerex can agree to a further one year extension of the Agreement. This can be repeated on an annual basis but regardless, the CEPSA will terminate no later than September 30, 2025.

FBC submits the purpose of the annual review of the Powerex agreement is to ensure that it is properly representing the changing operating environment such that it continues to fairly meet FBC's needs. Significant changes to FBC's requirements or resources or other factors such as structural changes to the BC power market will be the primary consideration in determining whether the Powerex agreement should be extended or if changes would be required.³³ FBC will continue to assess the benefit of working with other marketers when considering an extension or replacement of the CEPSA at the end of the initial term.³⁴

Commission discussion

The initial term of the CEPSA is relatively short, and provides the opportunity for FBC's review and flexibility for potential extension after the initial term. Accordingly, the Panel is satisfied the overall term of the CEPSA is acceptable.

3.2.3 Process for Extending CEPSA

The regulatory review process that FBC considers to be appropriate is set forth in section 1.7 of the Rules for Energy Supply Contracts for Electricity, which requires that a report be filed by FBC on or before April 30 of each year. FBC considers this process to be the appropriate regulatory review process for the 2018 and subsequent annual extensions of the terms of the CEPSA. FBC states it expects the 2017/18 AECP will be accepted in the spring of 2017, about six months or more in advance of the extension notice requirements to Powerex.³⁵ The 2017/18 AECP would consider the potential first extension of the term of the CEPSA past September 2018 and the window for extending the term of the CEPSA would be between October 1 and November 30, 2017. If there is an extension, FBC will report on the extension to the term of the CEPSA on or before April 30, 2018.³⁶

Commission discussion

The Panel agrees with the regulatory process described by FBC for extending the term of the CEPSA upon its expiration in September 2018.

4.0 REQUEST FOR CONFIDENTIALITY

Commission determination

For the reasons set out below, the Panel makes the following determinations in regard to confidentiality:

³³ BCUC IR 1.3.2.

³⁴ BCUC IR 1.1.1.1.

³⁵ BCUC IR 1.3.3.

³⁶ BCUC IR 1.3.4.

- **The Panel accepts FBC's request that the redactions to the CEP SA be held confidential. The Panel will also hold confidential the Confidential Commission Information Request No. 1 and FBC's confidential response to the Confidential Commission Information Request No. 1, and**
- **The Panel denies the Industrial Customers Group request for access to confidential information.**

In the Application, FBC filed a redacted version of the CEP SA as Appendix A and also filed an unredacted version of the CEP SA on a confidential basis as Appendix B to the Application. In the cover letter to the Application, FBC "requests that Appendix B be kept confidential by the Commission as the redactions made in Appendix A contain market sensitive information which, if disclosed, would be detrimental to FBC, its customers and Powerex."³⁷

FBC further states in the body of the Application:

The redactions made in Appendix A are intended to protect market sensitive information which, if disclosed, would be detrimental to FBC, its customers, and Powerex. Disclosure of this information could prejudice FBC's ability to obtain favourable commercial terms in future power purchasing contract negotiations.³⁸

In letter L-13-15, the Commission stated that the need for a hearing has not been established at this point. However, the Commission stated "that in keeping with the protocol established for hearings in the Commission's Confidential Filing Practice Directive, the Commission requests that ICG provide clarification as to whether it has objections to the FBC request that Appendix B be held confidential by submitting any such objections in writing" By letter L-13-15 the Commission also provided the opportunity for any other interested stakeholders to submit objections. No parties other than ICG submitted objections.

ICG, in its March 27, 2015 submission, states its position is that the Commission should ensure public disclosure of all aspects of the Agreement and the related documents that have been filed.³⁹ In this submission, ICG states its view that:

In order for stakeholders to have a reasonable opportunity to object to the request for confidentiality there must be a description of the information that has been redacted. In this case, there is no description of the nature of the information that has been redacted, nor reasons why such information should be held confidential. However, it is simply not possible to comment on the FortisBC request for confidentiality, either in whole or in part, in the absence of a description of the nature of the information redacted with the reasons for the request for confidentiality. At the very least, each of the provisions with redactions in Appendix A should have been described by FortisBC with reasons relevant to each redaction as to why each redaction should be held confidential. ... FortisBC has failed to follow the Confidential Filing Practice Directive because it failed to describe the nature of the information and the reasons for the request for confidentiality. ... FortisBC should not be given an opportunity to remedy its failure at this stage, with no opportunity for the ICG or other stakeholders to comment on the reasons advanced.⁴⁰

BC Hydro and Powerex together made a joint submission dated March 31, 2015 in response to submissions by ICG, BCOAPO and BCSEA/SCBC in accordance with Commission letters L-11-15 and L-13-15. In their submission,

³⁷ FBC CEP SA Application, Cover Letter, p. 1.

³⁸ Ibid., p. 1.

³⁹ ICG Submission dated March 27, 2015, p. 1.

⁴⁰ Ibid., p. 3.

BC Hydro/Powerex submit they have the same right of reply as FBC for procedural fairness reasons given Powerex is a party to the CEPSC. With regard to the need for confidentiality, BC Hydro/Powerex refer to the reasons provided by Powerex, as a party to the CEPSC, in BC Hydro and Powerex's joint March 10, 2015 filing of the TPA Amending Agreement.

In the TPA Filing, BC Hydro/Powerex state:

A number of provisions in the public version of FortisBC's CEPSC filing were redacted. Powerex confirms that in its view all the redacted information is commercially sensitive, and that public disclosure of it could undermine Powerex's bargaining position with other participants in the wholesale electricity markets of the Western Interconnection. BC Hydro and Powerex submit that to the extent Powerex's bargaining position is undermined, BC Hydro's ratepayers would be adversely affected through lower Powerex net income and higher BC Hydro rates than would otherwise be the case.⁴¹

FBC made further submissions in regard to its request for confidentiality in its March 31, 2015 submission stating FBC agrees with BC Hydro/Powerex that BC Hydro/Powerex should be permitted, as a matter of procedural fairness, to respond to the submissions of the other parties. FBC submits that the reasons provided by Powerex and BC Hydro in their March 31, 2015 submission "squarely confirms why disclosure of the redacted portions of the Agreement would not be appropriate or in the public interest under s. 71(5) of the *Utilities Commission Act*" and is consistent with the position expressed in the TPA Filing.⁴² FBC also submitted that "the parties made substantial efforts to limit the redactions, and succeeded in doing so." ... "it is also evident from reviewing the redacted Agreement what types of information those redactions protected; the parties preserved to the extent possible subheadings and context which make that clear."⁴³

In its March 31, 2015 submission, FBC further submits that the redacted portions of the CEPSC include details that are commercially sensitive and "if disclosed could give competitors as well as potential counterparties a substantial advantage in future negotiations."⁴⁴

Commission discussion

Subsection 71(5) of the UCA and the Commission Rules for Energy Supply Contracts for Electricity (Rules) state that an energy supply contract must be made available to the public unless the Commission considers the disclosure is not in the public interest. Rule 1.10 states that "parties to the ESC must provide written submissions in support of any request that the ESC, any terms and conditions thereof, or the information filed be kept confidential and include a redacted version of the ESC and other information."⁴⁵ The Panel observes that FBC provided appropriate notice to other parties according to Commission Rule 1.1.2 by copying the non-confidential version of the Application, which included a redacted version of the CEPSC, to the PBR Interveners. The Panel accepts that, as a counterparty to the CEPSC, Powerex's reasons for confidentiality should be considered together with those of FBC and that BC Hydro/Powerex has the right of reply.

The Panel is satisfied that FBC has met the requirements under the Rules to support the request for confidentiality.

⁴¹ BC Hydro/Powerex Section 71 Filing of the TPA Amending Agreement, p. 4.

⁴² FBC Submission dated March 31, 2015, p. 2.

⁴³ Ibid., p. 2.

⁴⁴ Ibid., p. 3.

⁴⁵ Order G-61-12, Appendix A, Commission Rules for Energy Supply Contracts for Electricity, Rule 1.10.

The Panel finds that the redacted version of the CEPSC is sufficiently transparent for interested stakeholders to understand the context and provide comment without the need for further disclosure of the information FBC has requested be held confidential. The Panel reviewed each of the redactions and concludes that FBC made reasonable efforts to limit the redactions. The Panel finds the nature of the redactions is such that a redaction-by-redaction justification is not necessary. Further, the Panel is of the view that there is sufficient context provided in the non-confidential text surrounding the redacted text to provide the reader with sufficient understanding of the agreement. The Panel does not accept ICG's argument that the Commission should reject the request by FBC to hold the redacted information confidential outright on the basis FBC did not provide explicit reasons on an individual redaction-by-redaction basis.

In the TPA Filing, Powerex provided further elaboration on the nature of the potential harm to Powerex and by extension to BC Hydro customers through higher rates. The Panel accepts that it is appropriate to also consider Powerex's reasons for confidentiality given Rule 1.10 contemplates that both parties to the energy supply contract provide written submissions in support of the FBC request for confidentiality.

The Panel reviewed the information in the Application, the submissions from ICG, BC Hydro/Powerex and FBC, and is satisfied that the submissions of BC Hydro/Powerex and submissions of FBC subsequent to the initial Application can be considered under the Commission's Rules and that FBC's request for confidentiality conforms to the Rules.

The Panel finds that the redactions to the CEPSC contain commercially sensitive information the release of which would be detrimental to both FBC customers and BC Hydro customers. The Commission will keep confidential the redactions to the CEPSC and the confidential responses to the Confidential Commission Information Request No. 1.

In section 3 of these reasons, the Panel finds that it has sufficient information to allow it to determine that the ESC is in the public interest and to accept, to the extent within the Commission's jurisdiction, the CEPSC as an energy supply contract pursuant to section 71 of the UCA and the Commission Rules for Energy Supply Contracts for Electricity. Since the Panel is satisfied that it has the information to make this determination without a hearing, the Panel concludes there is no need to consider ICG's request that it be granted access on a confidential basis to the non-redacted information at this time.