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March 31, 2022

BC Solar & Storage Industries Association
PO Box 33019, West Vancouver, BC
V7V 4W7

Attention: Mr. Steve Davis

Dear Mr. Davis:

Re: FortisBC Inc. (FBC)

2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application) – Project No. 159924

Response to the BC Solar and Storage Industries Association (BCSSIA) Information Request (IR) No. 2

On August 4, 2021, FBC filed the Application referenced above. In accordance with the regulatory timetable established in British Columbia Utilities Commission Order G-24-22 for the review of the Application, FBC respectfully submits the attached response to BCSSIA IR No. 2.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC INC.

Original signed:

Diane Roy

Attachments

cc (email only): Commission Secretary
Registered Parties



FortisBC Inc. (FBC or the Company) 2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application)	Submission Date: March 31, 2022
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1 **15.0 Topic: Retail Access**

2 **Reference: Exhibit B-3, FortisBC response to BCSSIA IR 1 2.1 and 1 2.2**

3 FBC's response to BCSSIA IR.1.2.1 concluded with the statement:

4 "This leaves only transactions for retail access that take place entirely within the
5 FBC service area as being possible at this time."

6 FBC's response to BCSSIA IR.1.2.2 stated:

7 "Retail access has never been utilized to serve customer load in the FBC service
8 area, though the transmission service rates have been used by eligible customers
9 to deliver self-generated power to points of delivery with the BC Hydro system."

10 15.1 Please define the characteristics of an "eligible customer" that could receive "self-
11 generated power" from a facility that is not co-located. For instance, is there some
12 required level of common ownership or an amount of power being delivered?
13

14 **Response:**

15 Eligible customers are not defined by characteristics. Rather, eligible customers are those that
16 meet the definition of an Eligible Customer contained in FBC's Transmission Access Terms and
17 Conditions – Tariff Supplement No. 7.¹

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¹ https://www.cdn.fortisbc.com/libraries/docs/default-source/services-documents/industrial-electricity-services-tariff-supplement-number7.pdf?sfvrsn=410b6b33_2.

FortisBC Inc. (FBC or the Company) 2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application)	Submission Date: March 31, 2022
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1 **16.0 Topic: Financial Assumptions used for Supply-Side Resource Options**

2 **Reference: Exhibit B-1, 2021 LTERP, Appendix K, Section 2.2.2, “Financial**
 3 **Attributes”**

4 In the preamble for Section 2.2.2 of Appendix K, FBC explains that

5 “It should be noted that while the base cost information, such as capital and
 6 operating costs, for the various supply-side resources is the same for FBC and BC
 7 Hydro, the base unit costs (i.e. UECs and UCCs) will differ slightly between FBC
 8 and BC Hydro...”

9 FBC uses different Weighted Average Cost of Capital (WACC) discount rate (DR)
 10 assumptions than BC Hydro. This is because FBC’s WACC has a different debt
 11 and equity ratio and return on equity than BC Hydro’s WACC. Furthermore, the
 12 adjusted unit costs may also differ due to the differences in the adders to the base
 13 unit costs. For example, BC Hydro may have different interconnection or wheeling
 14 costs than FBC may incur.”

15 In Section 2.2.2.1, FBC describes the various Financial Assumptions used in the
 16 evaluation of its Resource Options, including WACC, Integration Charges, Carbon Costs,
 17 Interconnection Costs, etc.

18 With respect to its WACC, FBC states that

19 “For this ROR, FBC has used 3.69% percent (in real terms) based on FBC’s
 20 AFUDC rate for 2020 and 2021 which is equal to the FBC after-tax WACC,
 21 converted to a constant dollars WACC4,”

22 Footnote 4 describes the detailed calculation of the 3.69% as $(1.0576/1.02) - 1 = 0.0369$,
 23 where 5.76% is the Nominal WACC and 2% is the average assumed inflation rate. And
 24 the response to BCOAPO IR 1.41.2 (Exhibit B-4) contains the following table showing the
 25 calculation of the pre and after-tax WACC:

Weighted Average Cost of Capital (WACC)			
	Weight	Pre-Tax Rate	After-Tax Rate
Short Term Debt	2.84%	2.22%	1.62%
Long Term Debt	57.16%	4.93%	3.60%
Common Equity	40.00%	12.53%	9.15%
WACC (Nominal)	100.00%	7.89%	5.76%
WACC (Real)		5.78%	3.69%
FBC Tax Rate	27.00%		
Inflation (CGAR)	2.0%		

26

27 16.1 Is the Common Equity ratio of 40% the actual for 2021, or is it a targeted value for
 28 the longer term?



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Response:

The common equity ratio of 40 percent is the current BCUC-approved² common equity ratio. The BCUC sets FBC’s common equity ratio (and return on equity) through a cost of capital hearing that takes place from time to time.

16.2 What is the difference between FBC’s and BC Hydro’s debt to equity ratio and return on equity?

Response:

To the best of FBC’s knowledge, the comparable public information regarding BC Hydro’s Weighted Average Cost of Capital, including the represented debt to equity ratio and return on equity, can be found in BC Hydro 2021 Integrated Resource Plan Application (IRP), Chapter 6 - Resource Options and Other Inputs to the 2021 IRP, Section 6.4.1 Weighted Average Cost of Capital. The referenced section of BC Hydro’s IRP indicates what BC Hydro is using for the purposes of establishing a discount rate within the IRP and the calculation of the unit energy cost (UEC) of resources. Using these values from BC Hydro’s IRP, BC Hydro’s equity ratio is 40 percent and their ROE is 8.75 percent.

However, BC Hydro’s achieved equity ratio and ROE is different than that cited above. BC Hydro sets out its capital structure and achieved and derived ROE in Appendix A, Schedule 9.0 of its revenue requirements applications and, assuming an effective tax rate of 20 percent, BC Hydro’s equity ratio is 19.6 percent and its ROE is 12.14 percent.

In comparison, FBC’s equity thickness is 40 percent and ROE is 9.15 percent.

16.3 In what contexts does FBC use the “AFUDC rate”, and how is it related to the after-tax Nominal WACC?

Response:

Each resource option identified in the LTERP portfolios has an assumed construction period and corresponding payment schedule. The AFUDC recognizes that carrying costs are incurred over the construction period if FBC were to develop the resource as a rate base asset. All costs in the portfolio are stated on a real basis; therefore, a WACC of 3.69 percent (5.76 percent nominal)

² BCUC Order G-47-14, <https://www.ordersdecisions.bcuc.com/bcuc/decisions/en/111723/1/document.do>.



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1 was assumed as the AFUDC rate. The real rate of 3.69 percent relates to the after-tax nominal
2 WACC through the following formula: $(1 + \text{Nominal Rate}) = (1 + \text{Real Rate}) * (1 + \text{Inflation Rate})$.

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6 16.4 Does FBC evaluate its Resource Options from the perspective of a project that is
7 developed, financed and owned by FBC, or from the perspective of an independent
8 power project that is contracted with an EPA? What distinctions does FBC make
9 between these two perspectives, in terms of the financial or operating
10 assumptions, or adjustments used in calculating the unit costs?

11

12 **Response:**

13 In the portfolio analysis, any new resource selected in the optimization routine was assumed to
14 be constructed by the utility as a rate base asset. The optimization routine minimizes the power
15 supply revenue requirements, rather than power purchase expense, and is more reflective of the
16 actual cost to customers by also considering capital-related costs. This approach also allowed
17 the rate impacts, as presented in Table 11-2, to be fully integrated into the model.

18 However, once the portfolio analysis for new resource selection is completed, the Unit Energy
19 Cost (UEC) and the LRMC are stated from the perspective of independent power projects that
20 could be contracted through an EPA. The UECs and LRMC reflect the market value of the
21 commodity to the utility rather than the cost to the customer. Although FBC does not have direct
22 visibility into the financial parameters of private sector developers, FBC has assumed that private
23 sector developers generally have access to similar costs of equity and debt as FBC, and therefore
24 FBC's discount rate was used in the calculations.

25

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28 16.5 With regard to Wheeling Costs, FBC states:

29 "Wheeling costs within BC are based on the BC Hydro Open Access Transmission
30 Tariff (OATT), Point to Point service effective April 1, 2021... This equates to \$9.00
31 per MWh for wheeling costs and 6.28 percent for line losses, assuming hourly
32 rates."

33 However, in its response to BCSSIA IR 3.4, FBC states that these ranged from
34 \$15 to \$16/MWh.



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1 16.5.1 Please explain the difference between the “\$9.00 per MWh for wheeling
2 costs and 6.28% for line losses” and the \$15 to \$16/MWh referenced
3 above.

4
5 **Response:**

6 The calculated UEC for resources within BC Hydro’s service area are grossed up 6.28 percent to
7 account for transmission line losses. For each MWh generated from a resource located in BC
8 Hydro’s service area (at the point of interconnection), only 0.9372 MWh (= 1 MWh x (1 – 6.28
9 percent)) would be delivered to FBC’s service territory after accounting for loss recovery.

10 The \$15 to \$16 per MWh wheeling cost referenced above can be illustrated using an example
11 UEC of \$100, inclusive of interconnection costs, for a resource option located within BC Hydro’s
12 service area:

- 13 • Wheeling from BC Hydro’s system, not plant gate, to FBC’s service territory was assumed
14 to have a cost of \$9.00 per MWh as per BC Hydro’s tariff.
- 15 • In addition, there is a cost of \$6.28 per MWh to account for transmission losses on BC
16 Hydro’s system.
- 17 • Thus, the total estimated wheeling cost is \$15.28 per MWh (\$9.00 per MWh + \$6.28 per
18 MWh).

19
20 The wheeling cost assumptions included in the portfolio model are intended to be a high-level
21 estimate only, but grounded by variables set out in BC Hydro’s tariff.³ The actual cost of wheeling
22 on BC Hydro’s system for any particular resource option, if pursued, would be a point of
23 negotiation and likely influenced by existing capacity available in the areas on the system where
24 the resource is interconnecting and the distance from FBC’s service area.

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28 16.5.2 Please explain how the \$15-\$16 cost is calculated for the Resource
29 Options solar project whose UEC totals to \$99 vs. the one with a UEC of
30 \$135.

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³ BC Hydro Tariff. OATT Schedule 1 - Point-To-Point Transmission Service (G-32-20) & OATT Schedule 10 (G-192-10).



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1 **Response:**

2 The UEC of \$134 per MWh (as opposed to \$135 per MW), as presented in the response to
3 BCSSIA IR1 3.4 as the upper bound, has \$16.40 per MWh of wheeling costs included. The UEC
4 of \$99 per MWh, as presented in the response to BCSSIA IR1 3.4 as the lower bound, is located
5 within FBC's service territory and, therefore, has no wheeling costs included. Please also refer
6 to the response to BCSSIA IR2 16.5.

7
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10 16.5.3 What is the Wheeling Cost within the FBC service territory? How does it
11 depend on the location of the generator and/or the customer? Does it
12 depend on the distance between the generator and the customer?

13

14 **Response:**

15 In the LTERP portfolio analysis model, FBC does not assume any wheeling costs or transmission
16 losses for utility-owned generation within its service area as part of the resource's UEC.
17 Resources located in FBC's service territory are assumed to be constructed by the utility for
18 purposes of serving FBC tariff ratepayers and is inclusive of interconnecting costs.

19
20

21

22 16.5.4 Are transmission losses included in the Wheeling Cost? If not, on what
23 basis are they charged?

24

25 **Response:**

26 Please refer to the responses to BCSSIA IR2 16.5.1 and 16.5.3.

27
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29

30 16.6 With regard to any potential Integration Costs for intermittent resources, FBC
31 states, "FBC utilizes a portfolio approach which accounts for the sale of surplus
32 energy, so no integration cost was included."

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34 16.6.1 Please explain how any costs for integration are dealt with in this
35 "portfolio approach".



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1 **Response:**

2 FBC's portfolio approach does not assign specific integration costs at the resource level. As
3 discussed in the response to BCUC IR1 30.1, the portfolio model is required to meet the monthly
4 load forecast requirements for both energy and capacity for each year in the planning horizon.
5 These load requirements are met through a combination of existing resources, PPA, market, new
6 resources, and include changes in surplus capacity and energy.

7 FBC's portfolio analysis reflects this combination of resources meeting capacity requirements,
8 which includes resources like WAX, as well as aspects of various agreements, such as the CPA,
9 that allow for the integration of intermittent resources through the flexibility of entitlement and the
10 storage account as discussed in the response to BCUC IR1 31.3. Therefore, FBC indirectly
11 accounts for the cost of integrating intermittent resources through changes in costs within the
12 portfolio including any sales of surplus energy and/or reductions in capacity sales, which would
13 occur when an intermittent resource produces more or less than expected, respectively.

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17 16.6.2 How is this portfolio approach able to ensure that the selected resource
18 options can accommodate the intermittent behaviour of both loads and
19 resources?
20

21 **Response:**

22 Please refer to the response to BCUC IR1 31.3.

23
24

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26 16.7 With regard to Carbon Costs, FBC states that these are set to \$50 per tonne in
27 2022 and escalated at the inflation rate (assumed to be 2%) thereafter).

28 16.7.1 Please confirm that the federal government's plan is to increase the
29 Carbon price by \$15/MWh for each year until it reaches \$170/MWh in
30 2031?
31

32 **Response:**

33 As discussed on page 74 of FBC's 2021 LTERP, the Canadian federal government has
34 announced its plan to increase the carbon tax by \$15 per tonne per year for eight years beginning
35 in 2023 to reach \$170 per tonne in 2030. At this time, there are no indications of a further increase
36 beyond this level and so the carbon tax would remain at \$170 per tonne in 2031. However, it is



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1 unknown what future BC carbon tax increases may be, and the base case assumes that after
2 2022 it remains constant in real dollars, with sensitivities to other higher cost scenarios.

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16.7.2 Please confirm that FBC only uses this higher Carbon Cost scenario for
a sensitivity case, and only to the extent that it would raise the cost of
gas-fired generation options within B.C.? Does FBC assume there would
be no impact on the cost of imported gas-fired generation?

7

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11 **Response:**

12 FBC confirms that it only used the high carbon price scenario as a sensitivity case.

13 In all scenarios, with the exceptions of portfolios B3 and B4,⁴ FBC has expected Powerex will be
14 able to source and provide clean market energy at a premium price which is represented by the
15 clean market adder. Therefore, any potential future carbon tax applied to imported non-clean
16 energy is not applicable as the market purchases will be considered certified as clean.

17 Lastly, portfolios that contain RNG SCGT peaking units are assumed to have an insignificant
18 amount of indirect scope 3 emissions, zero direct emissions (as shown in the response to BCSEA
19 IR1 11.4), and are only used to meet peak capacity requirements. Therefore, higher carbon taxes
20 do not materially influence FBC's proposed preferred portfolios.

21

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16.7.3 To what extent does FBC use the higher Carbon Cost scenario to affect
the level of its future electric load forecast? Does FBC's load forecast
consider the impact that the federal government's higher Carbon Cost
scenario would have on the future electrification of fossil fuel energy
uses, such as, for example, electric vehicle charging? If not, why not?

25

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30 **Response:**

31 The higher carbon cost scenario does not affect the level of FBC's load forecast. As discussed
32 in Section 2.5, the carbon price scenarios are inputs into the cost of gas-fired generation and are
33 not inputs into the Reference Case load forecast or load scenarios. As discussed in Appendix F,
34 the business-as-usual (BAU) forecast is based on a time series method which captures intrinsic

⁴ Both portfolios B3 and B4 did not have the clean market adder enabled, and therefore were subject to BC's carbon tax.



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1 historical load drivers. The Reference Case load forecast builds on the BAU forecast by including
2 electric vehicle charging load and new industrial loads with high confidence of materializing.
3 Therefore, changes in the carbon tax and its impacts on future fuel switching will be reflected over
4 time in the future BAU load forecasts. More specifically, with regard to EV charging loads, FBC
5 expects that the *ZEV Act* light-duty EV sales targets assumed in the Reference Case load forecast
6 will capture future growth in EV charging.

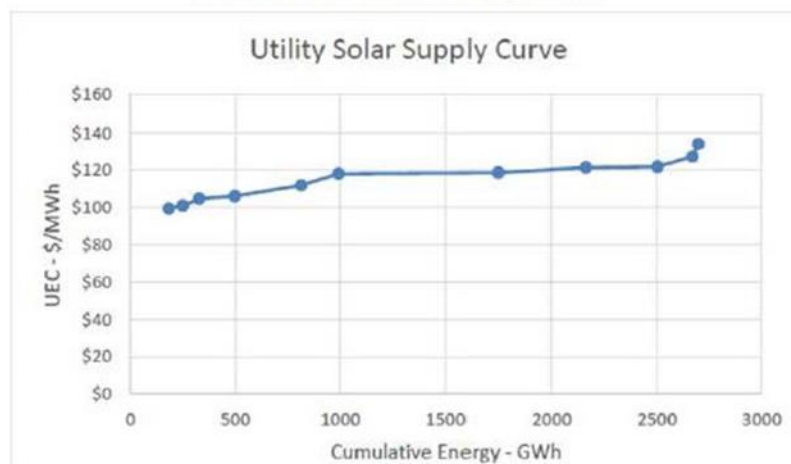
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1 **17.0 Topic: Information on the Selected Subset of Solar Projects**
 2 **Reference: Exhibit B-3, response to BCSSIA IR 1 3.1, Exhibit B-1, Chapter 11,**
 3 **Section 11.3.8, “Portfolios Considered for Preferred Portfolios,” and**
 4 **Appendix K – Resource Options Report, Section 3.3.3, “Utility-Scale**
 5 **Solar Power”.**

6 In Appendix K, FBC presented the following summary graph of a selected set of solar
 7 projects:

Figure K3-26: Solar Supply Curve



8
 9 And in its response to BCSSIA IR 1.3.1, FBC provided the following table summarizing
 10 the attributes of these 11 solar projects:

Resource	Installed Capacity (MW)	Average Annual Dependable Capacity (MW)	Annual Reliable Energy (GWh)	Average Annual Capacity Factor (%)
Solar1	17	4	27.5	18.8
Solar2	39	9	65.0	19.1
Solar3	47	11	78.7	19.2
Solar4	93	24	170.2	20.9
Solar5	99	23	166.1	19.2
Solar6	106	24	177.4	19.1
Solar7	110	26	183.9	19.0
Solar8	177	45	316.2	20.3
Solar9	216	48	341.2	18.0
Solar10	268	59	417.4	17.8
Solar11	490	107	754.4	17.6
Total	1,662	380	2698.0	18.5



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1 17.1 It appears that the 11 projects depicted in Figure K3-26 have been placed in order
2 of their Adjusted UECs. Is that correct?

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4

Response:

5 FBC confirms that the 11 solar projects shown in the graph of Figure K3-26 have been placed in
6 ascending order based on their UECs. Note that the 11 solar projects included in the table
7 associated with response to BCSSIA IR1 3.1 are ordered from smallest to largest in terms of
8 installed capacity.

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12 17.2 Why was project #1 selected in 2033, in preference to #2 and #3 (not selected until
13 2037 and 2038), which are larger and likely to provide energy at a lower cost?

14
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Response:

16 FBC assumes that this IR is referencing portfolio C4 because that portfolio includes the Solar1
17 resource. FBC notes that portfolio C3 does select Solar2 and Solar3 prior to Solar1, as the
18 optimization routine in each year considers the dependable capacity and reliable energy of
19 resource options relative to the capacity and energy gaps over the full planning horizon. As
20 portfolio C4 has a different mix of resources than other portfolios, there are varying residual gaps
21 in subsequent years, and the optimization routine selects Solar1 first to meet the monthly load
22 requirements with the lowest power supply revenue requirement.

23 Please also refer to the responses to BCUC IR1 30.1 and 30.3 for more information on how the
24 portfolio optimization routine functions and selects resources. Please note the 11 solar projects
25 included in the table associated with the response to BCSSIA IR1 3.1 are ordered from smallest
26 to largest in terms of installed capacity, rather than ascending UEC. Some smaller projects in
27 terms of installed MW have lower UECs than larger projects as a result of interconnection and
28 wheeling costs.

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32 17.3 Please clarify if these UECs are at the plant gate or at the point of interconnection.

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Response:

35 FBC confirms the UECs of all resource options are stated at point of interconnection to FBC's
36 system. Resources located within BC Hydro's service territory include both BC Hydro
37 interconnection costs as well as the wheeling costs to move the power to FBC service area.



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17.4 Please augment this table to include the Base UEC, the amounts of any adjustments made to the UEC, and the Adjusted UEC for each of those 11 projects, and please give a description of the adjustments. Please also provide the range of “Adjustments” for the UECs across all the selected projects.

Response:

10 FBC considers details regarding uniquely identifiable resources to be confidential and has already
11 provided the data that it is able to share publicly in the response to BCSSIA IR1 3.4. FBC
12 interprets “Adjusted UEC” to mean the differences between FBC’s UEC and BC Hydro’s UEC for
13 the equivalent solar resource option. Differences between FBC and BC Hydro UEC values for
14 solar resource options can be attributed to differences in the following assumptions:

- 15 • Discount rates;
- 16 • Interconnection costs for those resources located in FBC’s service area as well as the
17 corresponding operating and maintenance costs to maintain the interconnecting
18 infrastructure;
- 19 • Wheeling costs to move the power to FBC’s system for resources in BC Hydro’ service
20 area; and
- 21 • AFUDC estimates for revenue requirements and corresponding rate impacts.

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23 These differences collectively result in UEC variances of solar resources ranging from -6 percent
24 to +31 percent with the average being +22 percent, with wheeling costs being the most significant
25 factor impacting the differences.

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17.5 Please augment this table to include the Base, the amounts of any adjustments made to the UCC, and the Adjusted UCC for each of those 11 projects, and please give a description of the adjustments. Please also provide the range of “Adjustments” for the UCCs across all the selected projects.

Response:

35 FBC has interpreted “adjusted UCC” to mean variances from BC Hydro’s UCCs for the equivalent
36 solar projects. To the best of FBC’s knowledge, BC Hydro does not state UCC values for solar
37 resource options; therefore, there is no basis to assess “adjustments”.

1 **18.0 Topic: Information on the Selected Subset of Solar Projects**

2 **Reference: Exhibit B-3, response to BCSSIA IR 1 3.4**

3 FBC also provided the following table showing the ranges and averages for 12 different
 4 project parameters and the UEC and UCCs for the 11 selected projects:

Category	Values	Comments
Energy, GWh per year	Range: 27.5 – 754.4 Average: 245.3	Refer to BCSSIA IR1 3.1 for individual project data
Capacity (nameplate), MW AC	Range: 17 to 490 Average: 151	Refer to the response to BCSSIA IR1 3.1 for individual project data
FBC Average Dependable Capacity, MW AC ³	Range: 4 to 107 Average: 35	Refer to the response to BCSSIA IR1 3.1 for individual project data
FBC Capacity Factor, annual (%) per MW AC	Range: 17.6 to 20.9 Average: 19.0	Refer to the response to BCSSIA IR1 3.1 for individual project data
Approximate latitude, Rounded to the nearest degree	Range: 50 to 54 Average: 51	Rounded to nearest degree
Region	4 in FBC service area, 7 in BC Hydro service area	'Region' was interpreted as utility service area
Style of solar panel / orientation	Horizontal Single Axis Tracker	
Insolation, ⁴ kWh per m2 per day	Range: 3.2 to 3.7 Average: 3.5	
Installed Cost, (\$/W DC) 2020\$ CAD	Range: 1.47 to 1.64 Average: 1.48	'Installed Cost' was interpreted to be the cost of the generator only ⁵
Charge for wheeling and losses, \$ per MWh	Range: 15 to 16 Average: 16	For solar resources in BC Hydro's service territory, rounded to the nearest dollar. Please refer to Appendix K, Section 2.2.2.1 (page 8) for financial assumptions
Charge for integration, \$ per MWh	N/A (0)	Please refer to Appendix K, Section 2.2.2.1 (Page 9) for financial assumptions
Unit Energy Cost (UEC), 2020\$ per MWh	Range: 99 to 134 Average: 115	Table 10-2, pages 166-167
Unit Capacity Cost (UCC), 2020\$ per kW-Year	Range: 686 to 863 Average: 753	Table 10-2, pages 166-167

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7 18.1 What is region "4" in the FBC service area and region "7" in the BC Hydro service
 8 area? Please provide a map showing where all the defined regions are located.

9

10 **Response:**

11 Of the 11 solar resource options, four of the solar resource options are located in FBC's service
 12 area and seven solar resource options are located in BC Hydro's service area. The term 'Region'
 13 only represents the service areas of the two utilities. Please refer to Figure 1-1 of the Application
 14 for a map of FBC's service area.

15
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17

18 18.2 Please provide the calculations of the UEC and UCC for a hypothetical solar
 19 project with the following parameters:

20 Capacity 120 MW
 21 Capacity Factor 25%



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1	Latitude	51
2	Region	4 in FBC service territory
3	Style of panel	Bifacial
4	Mounting system	Horizontal single axis tracker
5	Insolation	3.7 kWh/m ² /day ***
6	Installed Cost	\$130 2020CAD/W DC

7 For any other needed parameters, state what they are and use the average values
8 from the 11 selected projects included in Figure K3-26. This should include the
9 assumed project life and/or amortization period.

10 *** Based on more sophisticated solar irradiation estimates of specific sites
11 identified by BCSSIA members.

12

13 **Response:**

14 FBC assumes BCSSIA intended to suggest an installed cost of \$1.30 2020CAD/W DC as
15 opposed to \$130 2020CAD/W DC.

16 FBC assumed the specified installed capacity of 120 MW is stated in MW AC. FBC has also
17 assumed a 30 percent overbuild ratio, consistent with other solar resource options in the portfolio,
18 which results in a 156 MW DC project. FBC has assumed BCSSIA's 25 percent capacity factor
19 includes any solar resource-related losses such as shading, soiling, losses associated with
20 cabling, and DC to AC conversion – all of which would otherwise decrease the effective capacity
21 factor. Although the average transmission interconnection cost among the 11 projects is used as
22 requested, transmission interconnection costs can vary considerably depending on the location
23 of the resource relative to the nearest infrastructure capable of accommodating the resource.
24 Average interconnecting transmission as well as O&M costs have been rounded to the nearest
25 one hundred thousand dollars.

26 The following table shows the BCSSIA specified parameters for a hypothetical solar project
27 compared to the average values for the projects FBC selected in the LTERP. The values colored
28 orange represent average values from the 11 selected projects and the values colored in light
29 blue represent values specified by BCSSIA. The most notable differences are the assumed \$
30 per W DC and the capacity factor.



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Parameters		
ID	BCSSIA	Average
Location	FBC	FBC
Installed Capacity (DC MW)	156	196
Installed Capacity (AC MW)	120	151
Capacity Factor (CF)	25%	19%
Dependable Capacity (MW)	28	35
Reliable Energy (GWh)	262.8	245.3
Earliest Availability	2026	2026
Project Planning Life (years)	30	30
Earliest End Of Life	2056	2056
Total Lead Time (years)	5	5
Earliest Construction Year	2021	2021
\$ per Watt Direct Current (\$/Wdc)	\$ 1.30	\$ 1.48
Generator Cost (\$k)	\$ 202,800	\$ 290,524
Transmission Interconnection Cost (\$k)	\$ 24,500	\$ 24,500
Fixed O&M (\$k/yr)	\$ 6,100	\$ 6,100
Variable O&M (\$/MWh)	\$ -	\$ -

1

2 The following table shows the average dependable capacity profile of the 11 selected projects.

3 Although averages are used in this response, the dependable capacity profile is derived from

4 resource specific hourly data cross referenced with FBC's system load data to evaluate the

5 amount of installed capacity (in MW AC) that is considered available at the time of the monthly

6 coincident system peak. The 23.2 percent monthly average dependable capacity is multiplied by

7 the installed capacity (MW AC) to determine the average dependable capacity used in calculating

8 the UCC.⁵

⁵ For BCSSIA's hypothetical project, 120 AC MW * 23.2% monthly average proportion of installed capacity generating on peak = 27.9 MW AC.



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Shape	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Monthly Ave
Dependable Capacity Profile	0%	7%	43%	52%	40%	49%	42%	30%	10%	6%	1%	0%	23.2%

- 1
- 2 The upfront project costs are allocated over a five-year lead time, which assumes a three-year planning phase and a two-year
- 3 construction phase as shown below.

Payment Schedule	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Total
% of Upfront Capital	0%	5.0%	5.0%	5.0%	42.5%	42.5%	100.0%
Allocated Generator Cost (\$k)	\$ -	\$ 10,140	\$ 10,140	\$ 10,140	\$ 86,190	\$ 86,190	\$ 202,800
Allocated Transmission Interconnection Cost (\$k)	\$ -	\$ 1,225	\$ 1,225	\$ 1,225	\$ 10,413	\$ 10,413	\$ 24,500

- 4
- 5 The table below⁶ shows the calculation of the UEC and UCC of the BCSSIA specified hypothetical solar project.

⁶ The table omits the years 2032 to 2054 to fit on the page, but repeats the values shown in the years 2031 and 2055.



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BCSSIA	NPV	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2055	2056
Construction Flag	2021	0	1	1	1	1	1	0	0	0	0	0	0	0	0
Operation Flag	2026	0	0	0	0	0	0	1	1	1	1	1	1	1	0
Output															
Reliable Energy (GWh)	3,935.1	-	-	-	-	-	-	262.8	262.8	262.8	262.8	262.8	262.8	262.8	-
Dependable Capacity (MW)	417	-	-	-	-	-	-	27.9	27.9	27.9	27.9	27.9	27.9	27.9	-
Total Cost	\$ 294,430	\$ -	\$ 11,785	\$ 11,785	\$ 11,785	\$ 100,171	\$ 100,171	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ -
Total Capital (2020 \$K)	\$ 181,199	\$ -	\$ 10,515	\$ 10,515	\$ 10,515	\$ 89,374	\$ 89,374	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Transmission (2020 \$K)	\$ 21,890	\$ -	\$ 1,270	\$ 1,270	\$ 1,270	\$ 10,797	\$ 10,797	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Operating (2020 \$K)	\$ 91,341	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ -
Total Capital Cost of Generator	\$ 181,199	\$ -	\$ 10,515	\$ 10,515	\$ 10,515	\$ 89,374	\$ 89,374	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Generator (2020 \$K)	\$ 174,743	\$ -	\$ 10,140	\$ 10,140	\$ 10,140	\$ 86,190	\$ 86,190	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AFUDC @ 3.7%	\$ 6,456	\$ -	\$ 375	\$ 375	\$ 375	\$ 3,184	\$ 3,184	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Transmission Cost	\$ 21,890	\$ -	\$ 1,270	\$ 1,270	\$ 1,270	\$ 10,797	\$ 10,797	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interconnection (2020 \$K)	\$ 21,110	\$ -	\$ 1,225	\$ 1,225	\$ 1,225	\$ 10,413	\$ 10,413	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AFUDC @ 3.7%	\$ 780	\$ -	\$ 45	\$ 45	\$ 45	\$ 385	\$ 385	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total O&M	\$ 91,341	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ -
Fixed O&M (2020 \$K/yr)	\$ 91,341	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ 6,100	\$ -
Variable O&M (2020 \$/MWh)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UEC before Cost Plus Adders	\$ 74.82	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
UCC before Cost Plus Adders	\$ 706	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Annual Soft Costs															
Community Revenue Share	2.50%														
Community Revenue Share \$/MWh	\$ 1.87	\$ 17.65													
UEC w/ Soft Costs	\$ 76.69	\$ 723.46													

Administrator:
 = NPV Total Cost / NPV Reliable Energy
 = \$294,430K / 3,935.1GWh
 = \$74.82/MWh

Administrator:
 = [NPV Total Capital Cost of Generator + NPV Transmission Cost + NPV Fixed O&M] / NPV Dependable Capacity
 = [\$181,199K+21,890K+91,341K] / 417MW
 = \$706/kW-Year

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1 **19.0 Topic: Solar UEC reduction from bifacial panel and snow-covered albedo**

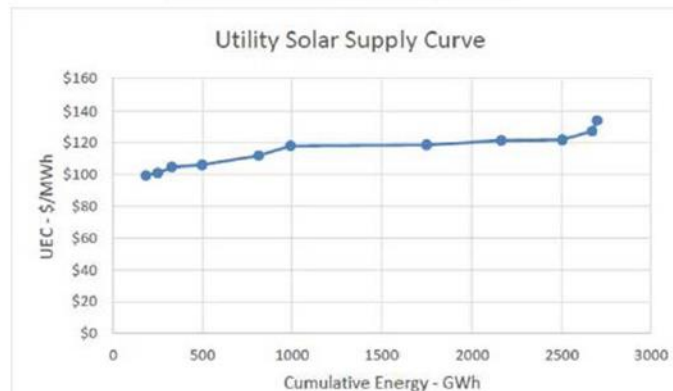
2 **Reference: Exhibit B-1, Appendix K, Section 3.3.3, “Utility-Scale Solar Power”**

3 FBC states: (beginning on page 41 of Appendix K)

4 “There is significant potential for solar power generation in southern Canada,
 5 including FBC’s service area in the southern interior region of BC, as shown in the
 6 following figure.

7 FBC analyzed a subset of 11 solar projects ranging in nameplate capacity from 17
 8 MW – 490 MW in its portfolio analysis. The supply curve for these options is
 9 provided in the following figure.”

Figure K3-26: Solar Supply Curve



10
 11 B.C.’s southern interior has snow on ground for several months of the year. Energy from
 12 the sun reflects well off the snow. Solar panels, especially two sided (bifacial) panels,
 13 capture that reflected energy thereby significantly increasing the production of electricity
 14 from each panel.

15 A recent National Renewable Energy Laboratory (NREL) study

16 [https://www.nrel.gov/news/features/2020/bifacial-solar-advances-with-the-times-and-](https://www.nrel.gov/news/features/2020/bifacial-solar-advances-with-the-times-and-the-sun.html)
 17 [the-sun.html](https://www.nrel.gov/news/features/2020/bifacial-solar-advances-with-the-times-and-the-sun.html)

18 found that (emphasis added):

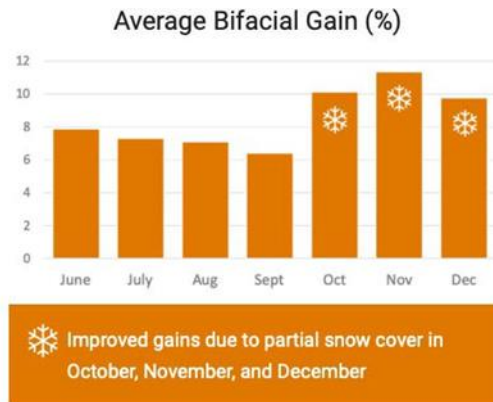
19 “Traditional solar modules convert light to electricity using photovoltaic (PV) cells
 20 on the top side of the panels. Now, NREL researchers are shining a light on what
 21 lies beneath.

22 In May 2019, a team at NREL kicked off a three year study to evaluate bifacial
 23 modules that collect light on both sides of a panel while also following the sun
 24 throughout the day. The key benefit of bifacial panels is obtaining more power

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1 production without expanding system footprints or reconfiguring the panels too
 2 much.

3 Early results show a significant boost from the bifacial panels. Data from June
 4 through November 2019 revealed up to a 9% gain in energy production using
 5 bifacial panels compared with their one-sided cousins.



6
 7 The cells themselves are pretty much the same price," Chris Deline, NREL
 8 researcher and principal investigator on the study said. "You're going to a slightly
 9 more expensive package. You have to do something different on the backside—
 10 either glass or clear, transparent plastic. On the whole, it's going to be less than
 11 10% more cost."

12 To determine how much more power such panels can produce, the team needed
 13 data, so they are gathering it. Some of their data are already publicly available—
 14 an industry first for a study of this scale. NREL researchers anticipate new data
 15 will remove barriers to advancing the cutting-edge technology by providing
 16 information and best practices that increase installation efficiency, reduce costs,
 17 and improve durability. So far, the results have not disappointed.

18 "Everybody is really excited because the results are returning in line with
 19 expectations," Deline said. "Compared with initial simulations, we're actually
 20 getting more energy out than what was modeled."

21 During the current study, the team plans to evaluate the benefits of different ground
 22 covers beneath the solar panels. Since the bifacial PV energy gain relies on
 23 reflected light, the more the ground can reflect, the more powerful the panels.

24 "We look at ways of enhancing the ground albedo [the proportion of the incident
 25 light or radiation that is reflected by a surface, typically that of a planet or moon]
 26 through different treatment options like natural vegetation, crushed rock, and weed

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1 barriers," Deline said. "Some of that is already happening in industry, but this will
2 be the first multiyear study with open data."

3 In the study's first year, Deline's team is testing natural ground cover. They will
4 follow by adding crushed rock in the second year, and Deline said they are
5 considering rolling out some kind of white fabric for a third comparison.

6 "We're seeing that as the grass turns brown, it gets more reflective," Deline said.
7 "And snow cover is great."

8 With snow on the ground, when average albedo is several times more reflective
9 than grass, all tested panels hit their highest recorded gains."

10 19.1 Please confirm that increasing the amount of electricity produced from a solar
11 panel by using bifacial panels and capturing the irradiance from snow-reflected
12 albedo would decrease the UEC for solar projects, all other things being constant.

13
14 **Response:**

15 Not confirmed. In simple terms, the UEC is the net present value (NPV) of the total costs of a
16 resource over its economic life divided by the NPV of energy produced over the same period.⁷
17 The change in UEC value is dependent on the change in total costs relative to the energy output
18 on a NPV basis. Notwithstanding the commentary on costs in the citation, if the upfront cost of
19 using bifacial panels is materially more expensive and/or there is a material increase in the
20 ongoing cost of operations and maintenance, it is possible the incremental costs could outweigh
21 the incremental energy after expressing the terms in present value, thereby increasing the UEC.
22 If the change in energy output is more significant than the change in total costs on a present value
23 basis, then the UEC would decrease.

24
25

26
27 19.2 What is FBC's estimate of the reduction in UEC that would result from enhanced
28 production (9%) as outlined in the above quoted NREL study?

29
30 **Response:**

31 There is insufficient cost information provided to accurately calculate a change in UEC value.
32 Notwithstanding this, FBC notes the following points in the cited text:

⁷ Appendix L, Section 3.1 Levelized Unit Energy Cost Approach.



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1 Data from June through November 2019 revealed up to a 9% gain in energy
2 production...

3 On the whole, it's going to be less than 10% more cost.

4 Based on the above estimates, FBC expects that the total increased costs for the project would
5 be less than 10 percent, as certain project costs, such as the required land, do not change, while
6 other project costs, such as wheeling and losses, are related to the increase in energy production,
7 not the cost of the panels. Given that it is likely that total costs would increase by less than 10
8 percent on a NPV basis and the total energy output would increase by nine percent on an NPV
9 basis, then the UEC should slightly decrease.

10

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1 **20.0 Topic: Information on the Selected Subset of Solar Projects**

2 **Reference: Exhibit B-3, response to BCSSIA IR 1 3.7**

3 FBC was asked why it never selected BC Hydro Tranche 2 energy as a resource in any
4 of its Preferred Portfolios. It responded that:

5 “As shown in Table 10-2, PPA Tranche 2 Energy has a cost range of \$80 to \$95
6 per MWh depending on BC Hydro’s LRMC for rate making purposes, and market
7 purchases are forecasted to be \$28 to \$49 per MWh as supported by the Mid-C
8 Electricity Price Forecast tables in Appendix E.”

9 20.1 If BC Hydro changes its LRMC, when and to what extent will that change be
10 reflected in the EPA Tranche 2 Energy cost?

11

12 **Response:**

13 FBC assumes this IR is referring to the PPA Tranche 2 Energy cost. As set out in the PPA, the
14 Tranche 2 Energy Price reflects BC Hydro’s most recent proxy for long run marginal cost (LRMC)
15 for firm energy as determined by BC Hydro and accepted by the BCUC for rate making purposes.
16 If a new proxy for the LRMC is accepted by the BCUC for rate making purposes, the Tranche 2
17 Energy Price will be amended accordingly and, if required, BC Hydro will apply to the BCUC for
18 approval thereof. FBC would update the PPA Tranche 2 Energy cost after BCUC acceptance of
19 any BC Hydro proposed changes to Rate Schedule 3808.

20

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1 **21.0 Topic: Selection of FBC’s Resource Options**

2 **Reference: Exhibit B-3, response to BCSSIA IR 1 3.8**

3 FBC was asked to provide more detail of the parameters associated with its selected group
 4 of Resource Options. It responded that:

5 “FBC worked in collaboration with BC Hydro to update the BC Resource Options
 6 Report. Appendix K represents the FBC-relevant content of the Resource Options
 7 Report that has been made public. Tables 10-1, 10-2, and 10-3 provide an
 8 aggregate summary of the key attributes of the resource options considered by
 9 FBC.”

10 21.1 Does this mean that the 11 selected projects in FBC’s Resource Options are
 11 simply a subset of those in BC Hydro’s Resource Options? Or are the two sets of
 12 Options mutually exclusive?

13
 14 **Response:**

15 As discussed in Section 1 of Appendix K of the Application, FBC selected a representative
 16 portfolio, or subset of projects, from the BC Resource Options Report to include in its portfolio
 17 analysis. Resources selected for inclusion in FBC’s portfolio analysis are not mutually exclusive.

18
 19

20
 21 21.2 Which of the selected 11 projects are in FBC’s service territory, and which are in
 22 BC Hydro’s service territory?

23
 24 **Response:**

25 The following table is reproduced from the response to BCSSIA IR1 3.1 with the additional
 26 requested information included in the rightmost column. The resources without a check mark are
 27 located in BC Hydro’s service territory.

Resource	Installed Capacity (MW)	Average Annual Dependable Capacity (MW)	Annual Reliable Energy (GWh)	Average Annual Capacity Factor (%)	Located inside FBC’s service territory
Solar1	17	4	27.5	18.8	
Solar2	39	9	65.0	19.1	√
Solar3	47	11	78.7	19.2	√
Solar4	93	24	170.2	20.9	√
Solar5	99	23	166.1	19.2	

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Resource	Installed Capacity (MW)	Average Annual Dependable Capacity (MW)	Annual Reliable Energy (GWh)	Average Annual Capacity Factor (%)	Located inside FBC's service territory
Solar6	106	24	177.4	19.1	
Solar7	110	26	183.9	19.0	√
Solar8	177	45	316.2	20.3	
Solar9	216	48	341.2	18.0	
Solar10	268	59	417.4	17.8	
Solar11	490	107	754.4	17.6	
Total	1,662	380	2698.0	18.5	

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21.3 What are the parameters that FBC uses to identify which Options it selects, from among the larger set of Resource Options, to consider for its own planning purposes?

Response:

Please refer to Section 2 of Appendix K of the Application, which states:

In addition to financial attributes, FBC considers a number of factors when evaluating its resource options. These include consistency with BC energy policy as well as resource attributes, such as operational characteristics, environmental impacts and plant footprint. Geographic diversity of resources is also a consideration given that all of the generation plants FBC owns are located in the Kootenay region whereas most of the load and recent load growth is in the Okanagan region.

In addition to the criteria outlined in Section 2 of Appendix K of the Application, resources in the portfolio analysis were chosen:

1. To reflect a breadth of different resource types and sizes (for each resource type and size grouping, the least cost resources were incorporated);
2. To allow a consistent set of resource options covering the full span of the different load scenarios; and
3. With consideration for the size and shape of FBC's future resource requirements/gaps.

1 **22.0 Topic: Future price increases in the PPA with BC Hydro**
 2 **Reference: Exhibit B-1, Section 5, Existing Supply-Side Resources, and Section**
 3 **2.5.5, BC Hydro PPA Rate Scenarios**

4 In Section 5, FBC provides the following table of its current supply resources:

Table 5-1: FBC's 2021 Available Energy and Dependable Capacity Resources¹⁴¹

FBC Existing Resources (2021)	Available Energy (GWh)	Dependable Capacity (MW)
FBC CPA Entitlements	1,596	208
BPPA	919	138
BRX	79	45
PPA (Tranche 1 Energy)	1,041	-
PPA (Tranche 2 Energy)	711	-
IPP	1	-
Market and Other Contracted	302	-
PPA Capacity	-	200
WAX (net of RCA)	-	218
Total Resources	4,648	810

5
 6 In Section 5.5, FBC states that

7 “5.5 BC HYDRO POWER PURCHASE AGREEMENT

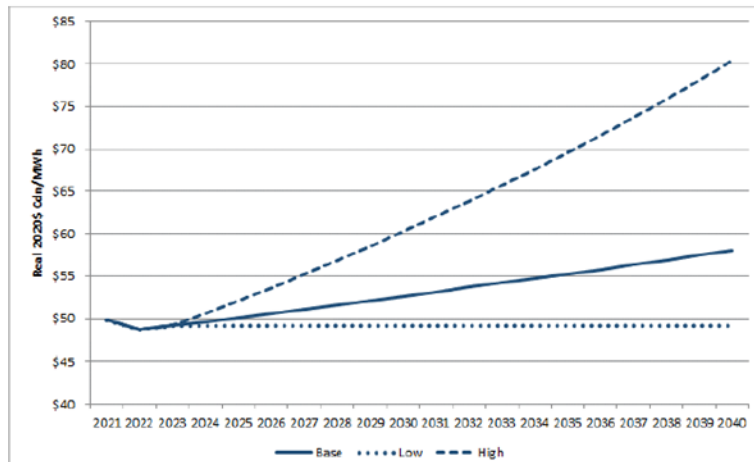
8 Under the PPA, FBC's customers have access to BC Hydro supply up to a
 9 maximum of 200 MW and 1,752 GWh of annual energy. The term of the PPA
 10 continues through to September 30, 2033. In 2020, the PPA supplied 18 percent
 11 of FBC's energy requirement and 18 percent of the Company's peak capacity
 12 needs.”

13 The prices for energy and capacity under the PPA with BC Hydro are all subject to BC
 14 Hydro's general rate increases and will therefore be influenced by BC Hydro's costs.
 15 Those costs will have to reflect, among other things, the cost of amortizing the Site C
 16 project once that project comes into service in 2025.

17 In Section 5.5, FBC provides the following charts of its expected future prices for Tranche
 18 1 and Tranche 2 energy:

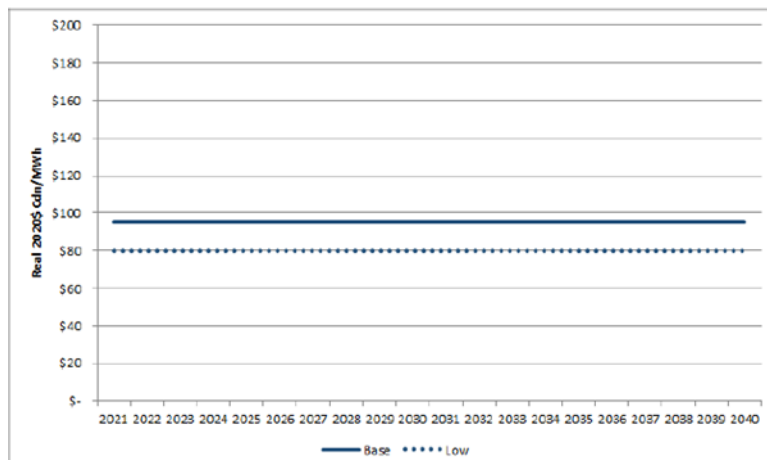
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Figure 2-21: PPA Rate Scenarios for Tranche 1 Energy



1

Figure 2-23: PPA Rate Scenarios for Tranche 2 Energy



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On January 17, 2021, FortisBC Energy Inc.(gas) (“FBC Energy”) circulated the Meeting Notes from a Resource Planning Advisory Group Meeting Session held on December 1, 2021, as part of the consultation for FBC Energy 2022 Long Term Gas Resource Plan. The Meeting Notes are available upon request from IRP@FortisBC.com. In Item 2.3.e.i., FBC Energy stated: (underline added)

8

9

10

11

12

13

14

15

“FortisBC: (Note to attendees: some additional information to that provided during the session on RNG costs is included here for completeness): As volumes increase, we expect that the costs will come down as the transportation rider effects on bills will be able to be absorbed in the short term. The cost comparison should not be made between \$3 versus \$30/GJ. Currently, the cost is \$3 plus carbon tax which in 2030 is expected to be \$8.40 (therefore this results in over \$11/GJ). Further, a comparison with electricity is valid. Currently electricity rates are between 9 and 14 cents per kWh. Site C alone will cost more than 16 cents for

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1 generation only. Adding 5 cents for transmission and delivery results in over 20
2 cents/kWh...”

3 22.1 Please provide the assumptions and calculations supporting the FBC Energy
4 statement that “Site C will cost more than 16 cents for generation only.” (i.e.,
5 \$160/MWh).
6

7 **Response:**

8 FBC’s support for its statement that Site C power will cost more than \$0.16 per kWh for generation
9 only is based on a simple scaling of the cost of power based on BC Hydro’s estimated construction
10 cost for Site C.

11 According to a BC Hydro website news release in 2014, electricity generation (not including
12 transmission or distribution costs) for Site C was expected to cost \$83 per MWh based on an
13 upfront capital cost of \$7.9 billion.⁸

14 In its F2023 to F2025 Revenue Requirements Application, BC Hydro’s Revised Project Budget
15 for the Site C project is now approximately \$16 billion.⁹ The rate impact of the project will be
16 subject to a future proceeding. However, as a highly simplistic assumption and all else equal, if
17 an asset with a capital cost of \$7.9 billion results in a rate of \$83 per MWh (or \$0.083 per kWh),
18 then doubling the capital cost would roughly double the rate to over \$0.16 per kWh.

19
20

21
22 22.2 Please provide the assumptions and calculations supporting the FBC Energy
23 statement that Site C transmission and delivery costs will add 5 cents. (i.e.,
24 \$50/MWh).
25

26 **Response:**

27 FBC’s support for the statement that Site C transmission and delivery costs will add 5 cents. (i.e.,
28 \$50 per MWh) is based on its assumptions regarding BC Hydro’s current transmission and
29 distribution costs and its current average cost of generation and/or market supply. FBC assumes
30 that BC Hydro’s average cost of generation and/or market supply is in the order of \$40 per MWh
31 (or \$0.04 per kWh). Based on BC Hydro’s current residential rates of approximately \$0.09 to 0.14
32 per kWh (Step 1 and 2 energy charges, respectively), subtracting the average cost of generation
33 and/or market supply yields a transmission and delivery cost of \$0.05 to \$0.10 per kWh. To be

⁸ https://www.bchydro.com/news/press_centre/news_releases/2014/site-c-environmental-approval.html.

⁹ Table 6-57, p. 6-122. https://docs.bcuc.com/Documents/Proceedings/2021/DOC_64005_B-2-BCH-F23-F25-RRA-public.pdf.

FortisBC Inc. (FBC or the Company) 2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application)	Submission Date: March 31, 2022
Response to the BC Solar & Storage Industries Association (BCSSIA) Information Request (IR) No. 2	Page 28

1 conservative, FBC has taken the lower value of \$0.05 per kWh (applicable to the Step 1 rate) as
2 the estimate for the transmission and delivery cost.

3
4

5

6 22.3 Please confirm that, even prior to the PPA renewal in 2033, all of the rates charged
7 under the PPA (for Tranche 1, Tranche 2, and Capacity) are subject to BC Hydro's
8 general tariff rate increases. What provision is FBC making for the rate increases
9 that will be needed to amortize the cost of the Site C project, once that project
10 comes into service in 2025 and thereafter?

11

12 **Response:**

13 Not confirmed. The rates for PPA Tranche 1 and Capacity are subject to BC Hydro's general
14 tariff rate increases and the rate for PPA Tranche 2 is based on BC Hydro's Long Run Marginal
15 Cost. FBC did not make any additional or different assumption changes for post-renewal
16 compared to pre-renewal for PPA Tranche 1 and Tranche 2 energy and PPA capacity.

17 FBC did not make a specific provision for the cost of the Site C project; however, the high case
18 scenario reflects the potential for higher rate increases driven by higher costs for electricity
19 generation and infrastructure, such as Site C, under a future with significant electrification of
20 transportation, industry and buildings.

21

22

23

24 22.4 What assumption is FBC making as to the post-renewal prices for Tranche 1 and
25 Tranche 2 energy and Capacity, in its PPA with BC Hydro?

26

27 **Response:**

28 Please refer to the response to BCSSIA IR2 22.3.

29

30

31

32 22.5 Please confirm that the "PPA" that is referenced in the Application is the PPA
33 between BC Hydro and that BC Hydro filed for approval by the BCUC on May 24,
34 2013 ("PPA Proceeding") and Attachments 1-4 in Exhibit B-1 in that proceeding
35 are true and complete copies of the agreement and related agreements
36 ("Agreements").



FortisBC Inc. (FBC or the Company) 2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application)	Submission Date: March 31, 2022
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Response:

Not confirmed. The “PPA” that is referenced in the Application is the PPA between FBC and BC Hydro and dated as of May 26, 2014. The May 26, 2014 copies of both the PPA and Amended and Restated Wheeling Agreement (ARWA) between FBC and BC Hydro were provided in a BC Hydro compliance filing (as directed per Order G-60-14) and are included here as Attachment 22.5.

22.6 Please confirm that section 15.2 of the PPA states:

“At any time, in the event of a shortage of Electricity, whether actual or apprehended by BC Hydro, BC Hydro may request FortisBC to reduce its taking of Electricity at the Points of Delivery. If FortisBC does not suspend or reduce its take of Electricity as requested, BC Hydro may suspend or reduce the supply of Electricity under this Agreement to FortisBC. BC Hydro shall use its reasonable efforts to advise FortisBC and to curtail service to FortisBC on a pro-rata basis with other BC Hydro load.”

Response:

Confirmed. FBC does not receive priority service over other BC Hydro customers under the PPA. However, to date, BC Hydro has not requested FBC to reduce service under the PPA.

22.7 Please confirm that the General Wheeling Agreement between BC Hydro and FortisBC Inc. dated July 16, 2013, that is marked as Exhibit B-3 in the PPA Proceeding is a true and complete copy of this agreement.

Response:

Not confirmed. Please refer to the response to BCSSIA IR2.22.5.

22.8 Please confirm that any disputes between BC Hydro and FortisBC pertaining to the Agreements and General Wheeling Agreement are to be determined in



FortisBC Inc. (FBC or the Company) 2021 Long-Term Electric Resource Plan (LTERP) and Long-Term Demand-Side Management Plan (LT DSM Plan) (Application)	Submission Date: March 31, 2022
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1 accordance with the dispute resolution proceedings in these agreements. And
2 other than amendments to these agreements, not including amendments to the
3 Master Accounting Agreement, will be settled by arbitration and not reference to
4 the BCUC.

5
6 **Response:**

7 Confirmed.

8

Attachment 22.5

Janet Fraser

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

June 11, 2014

Ms. Erica Hamilton
Commission Secretary
British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Hamilton:

**RE: Project No. 3698720
British Columbia Utilities Commission (BCUC)
British Columbia Hydro and Power Authority (BC Hydro)
Application for Approval of Rates between BC Hydro and FortisBC Inc.
with regards to Rate Schedule 3808, Tariff Supplement No. 3 -
Power Purchase and Associated Agreements, and
Tariff Supplement No. 2 to Rate Schedule 3817
Compliance with BCUC Order No. G-60-14**

BC Hydro writes in accordance with Directive 4 of BCUC Order No. G-60-14 to provide amended tariff sheets and rate schedules in relation to the New Power Purchase Agreement (**PPA**) and related agreements. For ease of reference on a go-forward basis, all amendments to the PPA, the Imbalance Agreement (**IA**), the Energy Export Agreement (**EEA**), the Master Accounting Agreement (**MAA**) and the Amended and Restated Wheeling Agreement (**ARWA**) have been incorporated into the original agreements, as provided in BC Hydro's application filed with the BCUC in 2013, and have been re-executed by both BC Hydro and FortisBC as restated agreements of the originals. The following attachments include the final tariff supplements and rate schedules to be stamped and approved by the BCUC:

- Attachment A: Tariff Supplement No. 3 (includes the PPA (Attachment 1), the IA (Attachment 2), the EEA (Attachment 3), and the MAA (Attachment 4))
- Attachment B: Rate Schedule 3808
- Attachment C: Tariff Supplement No. 2 (ARWA)
- Attachment D: Rate Schedule 3817

BC Hydro also attaches black-lined copies of the amended agreements and rate schedules to show the changes made to the documents originally filed by BC Hydro as part of its application in 2013 (Attachments E-H).

June 11, 2014
Ms. Erica Hamilton
Commission Secretary
British Columbia Utilities Commission
Application for Approval of Rates between BC Hydro and FortisBC Inc. with regards to
Rate Schedule 3808, Tariff Supplement No. 3 - Power Purchase and Associated
Agreements, and Tariff Supplement No. 2 to Rate Schedule 3817
Compliance with BCUC Order No. G-60-14

The attached amended tariff sheets and rate schedules incorporate changes required as a result of the BCUC's decision and the new effective dates of the agreements, with one exception as noted in item #5 below. In summary, the amendments can be categorized as follows:

1. Housekeeping revisions to reflect the new Effective Date of July 1, 2014, instead of October 1, 2013 which was originally contemplated by BC Hydro and FortisBC.
2. Changes were also required to the agreements to accommodate the first Contract Year not starting on October 1, 2013, which would have been at the beginning of a new Contract Year. For the PPA, this includes an amendment to recognize that the Annual Energy Nomination and the Annual Minimum Take need to be adjusted for the first Contract Year because the first Contract Year will be less than 365 days. The determination of the Annual Energy Nomination and the Annual Minimum Take for the first partial year is outlined in a letter agreement, as between BC Hydro and FortisBC, dated October 1, 2013 (Attachment I), as referenced in Section 18.12 of the PPA. The Annual Energy Nomination and the Annual Minimum Take for the current Contract Year have been redacted from the attached document as this is FortisBC's information as a customer of BC Hydro.
3. Amendments to incorporate the revised Section 2.5 which was approved by the BCUC.
4. Amendments required to extend certain deadlines as a result of the longer than anticipated regulatory proceeding.
5. Amendments to the IA to replace references to the Dow Jones Index, which has been discontinued, with the ICE Index. A more detailed explanation of this required amendment is provided below.

As communicated to the BCUC in BC Hydro's application to Replace S&P Dow Jones Mid Columbia Indices (**Dow Jones Indices**) for the Electric Tariff and the Open Access Transmission Tariff (the **Index Application**), dated September 9, 2013, the Dow Jones Indices for electricity prices were discontinued in September 2013. The original IA was finalised and executed by the parties in May 2013, several months before BC Hydro received notice that the Dow Jones Indices would be discontinued. Accordingly, the original IA used the Dow Jones Indices and these references needs to be changed for the restated IA.

BC Hydro's Index Application compared the indices published by Platts (a division of McGraw Hill Financial), Powerdex Inc. and the IntercontinentalExchange Inc. (**ICE**). In its Final Argument, BC Hydro concluded that the data provided by all of the indices generally correlated with the data provided by the Dow Jones Indices and recommended

June 11, 2014
Ms. Erica Hamilton
Commission Secretary
British Columbia Utilities Commission
Application for Approval of Rates between BC Hydro and FortisBC Inc. with regards to
Rate Schedule 3808, Tariff Supplement No. 3 - Power Purchase and Associated
Agreements, and Tariff Supplement No. 2 to Rate Schedule 3817
Compliance with BCUC Order No. G-60-14

the use of the Platts data because of the ease of compatibility with BC Hydro existing software systems related to its tariffs.¹

However, the IA is a stand-alone bilateral agreement that does not require the use of the software systems referred to in BC Hydro's Index Application. As such, there are no compatibility or cost issues associated with BC Hydro's existing IT systems nor are there any additional subscription costs for the use of the ICE Mid-C Electricity Price Indices (**ICE Indices**). BC Hydro and FortisBC have agreed to replace references to the Dow Jones Indices with equivalent ICE Indices references as a more appropriate and suitable electricity price index for this long-term bilateral agreement.

For further information, please contact Gordon Doyle at 604-623-3815 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,

Original signed

Janet Fraser
Chief Regulatory Officer

gd/tn

Enclosure

Copy to: BCUC Project No. 3698720 (BC Hydro Application for Approval of a New PPA with FortisBC) Registered Intervener Distribution List.

¹ Pursuant to BCUC Order No. G-214-13, the BCUC approved BC Hydro's recommendation. There were no other parties registered as Interveners, nor as Interested Parties, in this proceeding.

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment A

**TS No. 3
Clean**

ATTACHMENT 1

POWER PURCHASE AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
and
FORTISBC INC.

DATED FOR REFERENCE
May 26, 2014

ACCEPTED: _____

ORDER NO. _____

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POWER PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 26th day of May, 2014 (the “**Reference Date**”), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir
Street, City of Vancouver, Province of British Columbia

(“**BC Hydro**”)

AND:

FORTISBC INC., a body corporate having an office at
10th Floor, 1111 West Georgia Street, City of Vancouver,
Province of British Columbia

(“**FortisBC**”)

WHEREAS:

- A. BC Hydro and FortisBC (then known as “West Kootenay Power Ltd.”) entered into a power purchase agreement made as of October 1, 1993 (together with amendments thereto, the “**1993 Agreement**”), the term of which agreement was set to expire on September 30, 2013 but has been extended by agreement between BC Hydro and FortisBC to June 30, 2014; and
- B. BC Hydro has agreed to sell Electricity to FortisBC, and FortisBC has agreed to purchase Electricity from BC Hydro, at the rates and under the terms and conditions specified in this Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) “**1993 Agreement**” has the meaning ascribed to it in Recital A;
- (b) “**Accounting Procedures**” means the accounting procedures established from time to time under the Master Accounting Agreement;

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- (c) “**Agreement**” means this Power Purchase Agreement, as amended, restated and/or supplemented from time to time, and includes any appendices referred to in it as being attached to it;
- (d) “**Annual Energy Nomination**” means the annual amount of energy (in GWh) that FortisBC nominates for purchase under this Agreement in a Contract Year, in accordance with and subject to Section 5.1;
- (e) “**Annual Minimum Take**” has the meaning ascribed to it in Section 5.4(a);
- (f) “**Annual Shortfall**” has the meaning ascribed to it in Section 5.4(b);
- (g) “**BC Control Area**” has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the “BC Hydro Balancing Authority area”;
- (h) “**BC Hydro System**” means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties’ System), including all additions and modifications thereto and repairs or replacements thereof;
- (i) “**Billing Demand**” has the meaning ascribed to it in Section 8.2;
- (j) “**Billing Month**” means a calendar month;
- (k) “**Breach**” has the meaning ascribed to it in Section 14.1(a);
- (l) “**Breaching Party**” has the meaning ascribed to it in Section 14.1(a);
- (m) “**Brilliant Plant**” has the meaning ascribed to it in the Canal Plant Agreement;
- (n) “**Brilliant Power Purchase Agreement**” means the agreement made as of the 4th day of April, 1996 between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as “West Kootenay Power Ltd.”), as amended, restated and/or supplemented from time to time;
- (o) “**Business Day**” means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (p) “**Canal Plant Agreement**” means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta

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- Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;
- (q) “**Commission**” means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
 - (r) “**Contract Demand**” means the maximum demand (in MW) that FortisBC may schedule and take under this Agreement in any hour, being 200 MW, unless reduced in accordance with Section 5.6;
 - (s) “**Contract Year**” means, in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2033, the last Contract Year shall end on the earlier termination date;
 - (t) “**Day of Flow**” means the calendar day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, energy which is scheduled to flow; for greater certainty, a Day of Flow is a single calendar day even in the event that two or more calendar days are scheduled during the same Preschedule Day;
 - (u) “**Demand Charge**” means the monthly demand charge to be paid by FortisBC to BC Hydro for supplying Electricity pursuant to this Agreement, to be determined from time to time in accordance with Section 8;
 - (v) “**Effective Date**” means July 1, 2014, provided that the last of the conditions precedent in Section 2.2 has been met;
 - (w) “**Electricity**” means electric energy and its associated capacity;
 - (x) “**Energy Export Agreement**” means the Energy Export Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
 - (y) “**Entitlement Energy**” has the meaning ascribed to it in the Canal Plant Agreement;
 - (z) “**Entitlement Parties**” means the parties to the Canal Plant Agreement, except BC Hydro;
 - (aa) “**Entitlement Parties’ System**” means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all

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additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties' transmission facilities through facilities owned by BC Hydro;

- (bb) **"Exchange Accounts"** has the meaning ascribed to it in the Canal Plant Agreement;
- (cc) **"export"**, and all forms of the verb "to export", means any transaction whereby Electricity is determined and calculated in accordance with the Accounting Procedures to transfer out of the FBC Service Territory, and without netting such transfers against concurrent imports, but specifically excludes the following:
 - (i) wheeling losses scheduled to BC Hydro;
 - (ii) Coordination Transfers to BC Hydro under the Canal Plant Agreement; and
 - (iii) such other exceptions as the Parties may agree to from time to time, acting reasonably;
- (dd) **"Force Majeure"** means any cause which is beyond a Party's reasonable control, in each case that directly affects the Party's ability to perform hereunder; a Force Majeure event does not include an act of negligence or intentional wrongdoing or lack of money or credit or economic hardship;
- (ee) **"FBC Entitlement Energy"** means FortisBC's share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under "FBC Projects", as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (ff) **"FBC Service Territory"** means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (gg) **"Final Notice of Pending Complaint"** has the meaning ascribed to it in Section 14.1(d);
- (hh) **"Fresnet Period"** means the period from May 1 through July 31 in each year;
- (ii) **"General Wheeling Agreement"** or **"GWA"** means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;

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- (jj) “**Imbalance Agreement**” means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (kk) “**Imbalance Energy**” has the meaning ascribed to it in the Imbalance Agreement;
- (ll) “**Interconnection Agreement**” means the interconnection agreement entered into between BC Hydro and FortisBC dated May 16, 2013, as amended, restated and/or supplemented from time to time;
- (mm) “**Master Accounting Agreement**” means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (nn) “**material Breach**” has the meaning ascribed to it in Section 14.1(a);
- (oo) “**Maximum Tranche 1 Amount**” means 1041 GWh each Contract Year;
- (pp) “**NERC**” means the North American Electric Reliability Corp., or a successor organization;
- (qq) “**Notice of Material Breach**” has the meaning ascribed to it in Section 14.1(a);
- (rr) “**Notice of Pending Complaint**” has the meaning ascribed to it in Section 14.1(c);
- (ss) “**OATT**” means BC Hydro’s Open Access Transmission Tariff as approved by the Commission from time to time;
- (tt) “**Other Party**” has the meaning ascribed to it in Section 14.1(a);
- (uu) “**Parties**” means the parties to this Agreement and “**Party**” means either of them;
- (vv) “**Points of Delivery**” means the Point of Supply and the Points of Interconnection as identified and defined in the General Wheeling Agreement;
- (ww) “**Preschedule**” means a schedule provided by FortisBC to BC Hydro by the Prescheduling Deadline setting out FortisBC’s scheduled Electricity purchases under this Agreement for each hour of each of the following Day(s) of Flow, that complies with, and is delivered in accordance with, Section 6.1, and, if a change to any such schedule is provided in

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- compliance with Section 6.1 for any hour, means the schedule as so changed;
- (xx) “**Preschedule Day**” means a day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, Electricity is scheduled for delivery on one or more Day(s) of Flow; Preschedule Days and their corresponding Day(s) of Flow with respect to NERC holidays and any special scheduling days shall be as set forth in the WECC Preschedule Calendar;
 - (yy) “**Preschedule Change**” means a change to a Preschedule made pursuant to and in accordance with Section 6.2(b);
 - (zz) “**Prescheduled Energy**” means for any hour of a Day of Flow the amount of Electricity to be delivered by BC Hydro to FortisBC pursuant to the Preschedule for that hour;
 - (aaa) “**Prescheduling Deadline**” has the meaning ascribed to it in Section 6.1;
 - (bbb) “**Prime Rate**” means the annual rate of interest designated by the Bank of Montreal as its “prime rate” for Canadian dollar commercial loans to customers in Canada;
 - (ccc) “**Reference Date**” has the meaning ascribed to it on the first page of this Agreement;
 - (ddd) “**Schedule**” means a Preschedule provided by FortisBC to BC Hydro pursuant to Section 6.1 that has become a Schedule pursuant to Section 6.2, setting out FortisBC’s scheduled Electricity purchases under this Agreement for the following hour;
 - (eee) “**Scheduled Energy**” means for any hour of a Day of Flow the amount of Electricity to be delivered by BC Hydro to FortisBC pursuant to the Schedule for that hour;
 - (fff) “**Scheduling Deadline**” has the meaning ascribed to it in Section 6.2;
 - (ggg) “**Service Area Load Requirements**” means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;
 - (hhh) “**Term**” has the meaning ascribed to it in Section 2.1;
 - (iii) “**Tranche 1 Energy**” means the volume of energy (in GWh) taken, or deemed to be taken, under this Agreement in any Contract Year that is less than or equal to the Maximum Tranche 1 Amount;

ACCEPTED: _____

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- (jjj) "Tranche 1 Energy Price" means the price (in \$/MWh) for Tranche 1 Energy, to be determined from time to time in accordance with Section 7.1;
- (kkk) "Tranche 2 Energy" means the volume of energy (in GWh) taken, or deemed to be taken, under this Agreement in any Contract Year that exceeds the Maximum Tranche 1 Amount;
- (lll) "Tranche 2 Energy Price" means the charge (in \$/MWh) for Tranche 2 Energy, to be determined from time to time in accordance with Section 7.2;
- (mmm) "WECC" means the Western Electricity Coordinating Council, or a successor organization; and
- (nnn) "WECC Preschedule Calendar" means the WECC Scheduling Calendar published annually by WECC that identifies certain NERC holidays and any special scheduling days which affect normal preschedule timelines and the days upon which prescheduling will take place to accommodate these identified days.

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or

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other subdivision of, or Appendix to, this Agreement, unless the context otherwise requires;

- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND PURPOSE

2.1 Term of Agreement

Subject to Section 2.2, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until September 30, 2033 unless terminated earlier pursuant to Section 5.6(b) or an order of the Commission. Expiry or early termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement and the amendments to Rate Schedule 3808 contemplated in this Agreement shall not be effective unless each of the following conditions precedent has, on or before December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, including the amended Rate Schedule 3808 attached as Appendix 1, without imposing changes unless acceptable to both Parties;
- (b) each of the Imbalance Agreement and the Master Accounting Agreement has become, or will concurrently become, effective in accordance with its respective terms; and
- (c) the condition precedent in Section 2.1(a)(i) of the Energy Export Agreement has been, or will concurrently be, satisfied.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement and the amendments to Rate Schedule 3808 contemplated in

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this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

2.4 Agreement Replaces the 1993 Agreement

This Agreement replaces the 1993 Agreement as of the Effective Date; provided that replacement of the 1993 Agreement shall not relieve either Party from any liability or obligation accrued but unsatisfied thereunder as at the Effective Date. The Parties agree that the termination date of the 1993 Agreement is the day prior to the Effective Date of this Agreement.

2.5 Purpose/Limitation of use of Scheduled Energy

- (a) Electricity taken under this Agreement:
 - (i) is to be used solely for the purpose of supplementing FortisBC's resources to enable FortisBC to serve the Service Area Load Requirements and shall not be (A) exported or used to support or enable exports, (B) sold, exchanged or transferred to any person without load, or an obligation to serve load, in the FBC Service Territory, or (C) stored; provided that nothing contained herein shall prohibit FortisBC from storing FBC Entitlement Energy in the Exchange Accounts pursuant to the Canal Plant Agreement;
 - (ii) shall not be sold to any FortisBC customer with self-generation facilities, or used by FortisBC to serve any such customer's load, when such customer is selling self-generated Electricity unless a portion of the customer's load equal to or greater than the customer-specific baseline is being served by Electricity that is not Electricity taken under this Agreement, where such customer-specific baseline is as determined in accordance with Commission-approved guidelines and in consultation with the customer; and
 - (iii) may be sold to any FortisBC customer with self-generation facilities, or used by FortisBC to serve any such customer's load, when such customer (A) is not selling self-generated Electricity, or (B) is selling self-generating Electricity and a portion of the customer's load equal to or greater than the customer-specific baseline is being served by Electricity that is not Electricity taken under this Agreement, where such customer-specific baseline is as determined in accordance with Section 2.5(a)(ii).
- (b) For greater certainty, Section 2.5(a)(ii) is intended to prevent FortisBC from increasing its purchases of Electricity under this Agreement if such

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increased purchases would be a result of FortisBC's customers with self-generation facilities purchasing Electricity from FortisBC at regulated rates and simultaneously selling Electricity at higher rates, except as otherwise approved by the Commission.

2.6 Limitation on Exports While Taking Electricity under this Agreement

- (a) FortisBC shall not export or permit its customers to export (except as permitted under Section 2.5(a)(iii)) any Electricity (including capacity and/or energy comprised therein) in any hour during which FortisBC is taking Electricity from BC Hydro under this Agreement, except during the term of, and to the extent specifically agreed under, and in accordance with, the terms and conditions of, the Energy Export Agreement.
- (b) BC Hydro acknowledges and agrees that nothing in this Agreement affects any right FortisBC has to export Electricity in any hour during which FortisBC is not taking Electricity from BC Hydro under this Agreement; provided such exports are in compliance with any applicable agreements to which FortisBC and BC Hydro are both parties.

3. POINTS OF DELIVERY / INTERCONNECTED OPERATION

3.1 Electricity to be Delivered and Received at Points of Delivery

BC Hydro shall deliver and FortisBC shall take Electricity scheduled under this Agreement at the Points of Delivery. Such deliveries and take shall be deemed to occur and be allocated among the Points of Delivery in accordance with the Accounting Procedures.

3.2 Provision of Generation Reserves

BC Hydro shall be responsible for supplying reserves associated with deliveries of Scheduled Energy to FortisBC under this Agreement.

3.3 Interconnection Agreement

The Parties acknowledge and agree that interconnection related issues as between them shall be governed by the Interconnection Agreement.

3.4 General Wheeling Agreement

The Parties agree to negotiate in good faith and use all reasonable efforts to reach agreement on and execute amendments to the General Wheeling Agreement that reasonably result from this Agreement and the other agreements referred to in Section 2.2, by the Effective Date. The obligations in this Section 3.4 shall be effective and binding on the Parties as of the date of executing this Agreement, notwithstanding that this Agreement shall not otherwise be effective until the Effective Date.

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4. SUPPLY AND USAGE OF ELECTRICITY

4.1 Supply of Electricity

FortisBC may schedule Electricity under this Agreement for any hour up to the Contract Demand in aggregate at the Points of Delivery. BC Hydro shall deliver, and FortisBC shall take and pay for, the Scheduled Energy, subject to and in accordance with this Agreement.

4.2 Electricity is Bundled Product

Electricity to be delivered by BC Hydro to FortisBC under this Agreement shall at all times be energy with associated capacity and such capacity shall be used in the determination of Billing Demand. FortisBC shall not take delivery of energy without associated capacity and shall not take capacity without associated energy.

5. ANNUAL ENERGY NOMINATIONS AND CONTRACT DEMAND

5.1 Annual Energy Nomination

FortisBC may, by notice to BC Hydro provided on or before June 30, 2013 (as if this Agreement were then effective) specify the Annual Energy Nomination for the first Contract Year; if FortisBC does not provide such Annual Energy Nomination by June 30, 2013, the Annual Energy Nomination for the first Contract Year shall be deemed to be 1041 GWh. On or before June 30 of each Contract Year, FortisBC shall provide BC Hydro with notice of its Annual Energy Nomination for the Contract Year that commences on the following October 1. If the Annual Energy Nomination for a Contract Year is not received by BC Hydro by June 30 of the immediately preceding Contract Year, then the Annual Energy Nomination for the Contract Year shall be deemed to be the same as the Annual Energy Nomination for the immediately preceding Contract Year.

5.2 Maximum Annual Energy Nomination

The maximum Annual Energy Nomination for any Contract Year shall be the lesser of (i) 1752 GWh, and (ii) the product of the Contract Demand for that Contract Year and 8760 hours.

5.3 Limitation on Changes to Annual Energy Nomination

- (a) Subject to Section 5.2, the Annual Energy Nomination for any Contract Year shall not be more than 120% of, or less than 80% of, the Annual Energy Nomination for the immediately preceding Contract Year.
- (b) If in respect of a Contract Year FortisBC provides an Annual Energy Nomination that is not in compliance with Section 5.3(a), then FortisBC shall be deemed to have not provided an Annual Energy Nomination for that Contract Year, in which case the Annual Energy Nomination for the

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Contract Year shall be deemed to be the same as the Annual Energy Nomination for the immediately preceding Contract Year.

5.4 Annual Minimum Take/ Take or Pay

- (a) In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination for that Contract Year, less:
 - (i) Scheduled Energy FortisBC is prevented from taking by a Force Majeure event, as described in Section 6.4(a)(i); and
 - (ii) Scheduled Energy not delivered by BC Hydro, other than by reason of FortisBC's unexcused failure to take the Scheduled Energy, as described in Section 6.4(a)(i)

(the "Annual Minimum Take").

- (b) The amount of Electricity scheduled and taken by FortisBC in each Contract Year shall be the sum of the Scheduled Energy for each hour of the Contract Year that FortisBC is deemed to have taken pursuant to Section 6.4(a).

If FortisBC schedules and takes an amount of Electricity in any Contract Year that, in the aggregate, is less than the Annual Minimum Take for that Contract Year (the difference in MWh between the Annual Minimum Take and the amount FortisBC schedules and takes, being referred to as the "Annual Shortfall"), then in addition to the amount FortisBC has scheduled and taken, BC Hydro shall also be deemed to have delivered, and FortisBC shall be deemed to have taken and shall pay for, the Annual Shortfall.

- (c) BC Hydro shall have no obligation to deliver the Annual Shortfall, if any, at any future time.
- (d) The price payable for each MWh of the Annual Shortfall shall be the Tranche 1 Price or Tranche 2 Price, as applicable, as determined in accordance with Section 7.3.

5.5 Single Nomination for all Points of Delivery

The Annual Energy Nomination shall be a single nomination for all Points of Delivery.

5.6 Contract Demand Reduction; Termination

- (a) On or before June 30 of each Contract Year, FortisBC may by notice to BC Hydro reduce the Contract Demand, as follows, to be effective:

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- (i) on October 1 of the 3rd following Contract Year (or earlier by mutual agreement), if FortisBC is building or acquiring new generation resources to serve the Service Area Load Requirements, and
- (ii) on October 1 of the 2nd following Contract Year, if FortisBC has lost significant load or for any other reason, except if FortisBC is building or acquiring new generation resources to serve the Service Area Load Requirements.

Any such reduction in Contract Demand shall apply for the balance of the Term, unless the Parties mutually agree otherwise by written agreement.

- (b) If, by a notice provided pursuant to Section 5.6(a), FortisBC reduces the Contract Demand to zero, then this Agreement shall automatically terminate on the day immediately prior to the effective date of such reduced Contract Demand.

5.7 Power Purchase Agreement may be Amended

The Contract Demand and maximum Annual Energy Nomination may be amended by agreement in writing of the Parties if there is an agreed transfer of load between FortisBC and BC Hydro. Nothing in this Agreement requires either Party to agree to amendments to this Agreement.

6. ELECTRICITY TO BE SCHEDULED

6.1 FortisBC to Preschedule Electricity Requirements

FortisBC shall schedule its Electricity purchases under this Agreement in the following manner:

- (a) by 05:30 hours prevailing Pacific Time (the “**Prescheduling Deadline**”) on each and every Preschedule Day, FortisBC shall provide BC Hydro with a Preschedule (not to exceed the Contract Demand in any hour) for each hour of each of the following Day(s) of Flow;
- (b) for greater certainty, FortisBC may provide one or more changes to a Preschedule so long as any such change is provided on or before the Prescheduling Deadline;
- (c) Preschedules shall be in such form, and delivered to BC Hydro to such person(s) and in such manner, as BC Hydro may reasonably specify from time to time; and
- (d) if FortisBC does not provide BC Hydro with a Preschedule for any Day of Flow by the Prescheduling Deadline, then FortisBC shall be deemed to have provided a Preschedule the same as the Preschedule submitted for the

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most recent 'like day'. For this purpose, a 'like day' shall be the same day in the immediately preceding week (for example, the previous Tuesday if the Day of Flow is a Tuesday or the previous Saturday if the Day of Flow is a Saturday); provided that if the same weekday in the preceding week is a BC holiday (for example, the previous Tuesday is a BC holiday), the like day shall be deemed to be the day immediately preceding the BC holiday (or the day immediately following, if the day immediately preceding the BC holiday is itself a holiday or is a weekend day).

6.2 Preschedule Changes

- (a) A Preschedule for an hour, as changed by a Preschedule Change, if any, shall be deemed to become a "Schedule" provided by FortisBC for the purposes of this Agreement, at 10 minutes prior to the deadline in the WECC region for making real time changes (as such deadline is amended from time to time, and which as of the Reference Date is 20 minutes prior to the start of the hour that energy is scheduled to flow) (the "Scheduling Deadline").
- (b) FortisBC may submit a change to a Preschedule after the Prescheduling Deadline but before the Scheduling Deadline, provided that:
 - (i) during the Freshet Period, the Scheduled Energy for any hour may not exceed the Prescheduled Energy (as at the Prescheduling Deadline) for that hour by more than 25 MW, and may not be less than the Prescheduled Energy (as at the Prescheduling Deadline) for that hour;
 - (ii) at any time other than during the Freshet Period, the Scheduled Energy may not exceed, or be less than, the Prescheduled Energy (as at the Prescheduling Deadline) for that hour by more than 25 MW;
 - (iii) after the Prescheduling Deadline, only one change can be made to a Preschedule for any hour; and
 - (iv) if:
 - A. a change to a Preschedule after the Prescheduling Deadline would reduce the amount of Scheduled Energy (as compared to the amount of Prescheduled Energy (as at the Prescheduling Deadline)) for any hour, and a change to aggregate Interchange Schedules for that same hour would reduce exports from, or increase imports to, the FBC Service Territory, then the combined magnitude of the change to the Preschedule and the change to the Interchange Schedule shall not exceed the Late Schedule Change Limit;

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- B. a change to a Preschedule after the Prescheduling Deadline would increase the amount of Scheduled Energy (as compared to the amount of Prescheduled Energy (as at the Prescheduling Deadline)) for any hour, and a change to aggregate Interchange Schedules for that same hour would increase exports from, or decrease imports to, the FBC Service Territory, then the combined magnitude of the change to the Preschedule and the change to the Interchange Schedule shall not exceed the Late Schedule Change Limit.
- (c) BC Hydro shall have the right to reject a Preschedule Change for any hour if such Schedule does not comply with the foregoing requirements. A Schedule shall be in such form as the Parties may agree from time to time, acting reasonably, and delivered to BC Hydro to such person(s) and in such manner as BC Hydro may reasonably specify from time to time. Failing agreement on the form of Schedule, either Party may submit the matter for dispute resolution in accordance with Section 13. If BC Hydro rejects a Preschedule Change, then the Scheduled Energy for any hour is deemed to be the Prescheduled Energy (as at the Prescheduling Deadline) for that hour.

6.3 No Changes to Schedules

From and after the Scheduling Deadline, no changes to a Schedule shall be permitted for any reason.

6.4 Take and Pay for Scheduled Energy

- (a) FortisBC shall be deemed to have taken in any hour, and shall pay for, all Scheduled Energy, except if, and only to the extent:
 - (i) FortisBC is prevented from taking Scheduled Energy by a Force Majeure event, provided that FortisBC immediately advises BC Hydro of, and reasonably establishes the occurrence of the Force Majeure event and inability to take Scheduled Energy, and further provided that FortisBC has taken all reasonable steps to mitigate the effect of the Force Majeure event and to promptly overcome the Force Majeure event, or
 - (ii) BC Hydro fails to deliver Scheduled Energy for any reason, other than by reason of FortisBC's unexcused failure to take the Scheduled Energy.
- (b) BC Hydro shall have no obligation to deliver the untaken Scheduled Energy at any future time

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- (c) FortisBC shall have no obligation to pay for Scheduled Energy not delivered by BC Hydro (other than by reason of FortisBC's unexcused failure to take the Scheduled Energy) or not taken by reason of FortisBC being prevented from taking the Scheduled Energy by a Force Majeure event as described in Section 6.4(a)(i).
- (d) The Accounting Procedures shall account for Scheduled Energy that is deemed to be taken as provided for in Section 6.4(a).

6.5 Imbalance Energy

If there is Imbalance Energy in any hour, it shall be dealt with in accordance with the Imbalance Agreement.

7. ENERGY PRICE

7.1 Tranche 1 Energy Price

- (a) The Tranche 1 Energy Price ("Tranche 1 Energy Price") shall be established by Rate Schedule 3808 from time to time and shall reflect the energy charge component of BC Hydro's rate for customers taking Electricity at transmission voltages that are exempted from Rate Schedule 1823 by the Commission. As at the Reference Date, the Parties agree that this rate is represented by BC Hydro's Rate Schedule 1827, as it may be amended from time to time, and as at April 1, 2013 is \$37.24 per MWh (\$0.03724 per kWh).
- (b) If and when the Commission approves changes to the energy charge component of Rate Schedule 1827, the Parties agree that Rate Schedule 3808 shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof. If there is a material change in the underlying design for the energy charge component of Rate Schedule 1827, the Parties shall negotiate in good faith for a replacement rate for the Tranche 1 Energy Price and BC Hydro shall seek approval of the Commission of any agreed rate. If despite good faith negotiations, the Parties are unable to agree, BC Hydro may apply to the Commission for approval of a proposed replacement rate and FortisBC may intervene in such proceeding or file a complaint with respect to the proposed replacement rate.

7.2 Tranche 2 Energy Price

- (a) The Tranche 2 Energy Price ("Tranche 2 Energy Price") shall be established by Rate Schedule 3808, from time to time and shall reflect BC Hydro's most recent proxy for long run marginal cost for firm energy (the "LRMC"), as determined by BC Hydro and as accepted by the Commission for rate making purposes, which shall not include an amount on account of distribution losses but shall include an amount on account of

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transmission losses and an adjustment for inflation. As at the Reference Date, BC Hydro's most recent proxy for the LRMC used for ratemaking purposes is as accepted by the Commission in BC Hydro's 2010 Residential Inclining Block Rate Re-pricing Application. The Parties agree that as at April 1, 2013 the Tranche 2 Energy Price, determined as described above, is \$129.70 per MWh (\$0.1297 per kWh).

- (b) If a new proxy for the LRMC is accepted by the Commission for rate-making purposes, the Tranche 2 Energy Price shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof.
- (c) If the LRMC is no longer used by BC Hydro for rate-making purposes other than for this Agreement, the Parties shall negotiate in good faith for a replacement rate for the Tranche 2 Energy Price and BC Hydro shall seek approval of the Commission of any agreed replacement rate. If despite good faith negotiations, the Parties are unable to agree on a replacement rate, (i) BC Hydro may apply to the Commission for approval of a proposed replacement rate and FortisBC may intervene in such proceeding or file a complaint with respect to the proposed replacement rate, or (ii) if BC Hydro fails to apply to the Commission for approval of a proposed replacement rate, FortisBC may file a complaint with the Commission seeking to change the then existing rate.

7.3 Price for Scheduled Energy Less Than or Equal to Annual Energy Nomination

In any Contract Year, for the amount of Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

- (a) the Tranche 1 Energy Price for each MWh of such Scheduled Energy taken or deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and
- (b) the Tranche 2 Energy Price for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Maximum Tranche 1 Amount.

7.4 Price for Scheduled Energy Exceeding the Annual Energy Nomination

In any Contract Year, for the amount of Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination but is less than or equal to the Maximum Tranche 1 Amount; and

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- (b) 115% of the Tranche 2 Energy Price, for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

8. CAPACITY PRICE

8.1 Demand Charge

- (a) In addition to an energy price applicable to Scheduled Energy, FortisBC shall pay a monthly demand charge (in \$ per kW/month) ("Demand Charge") based on its Billing Demand, as determined in accordance with Section 8.2. The Demand Charge shall be established in Rate Schedule 3808 from time to time and shall reflect the demand charge component of BC Hydro's rate for customers taking Electricity at transmission voltages that are exempted from Rate Schedule 1823 by the Commission. As at the Reference Date, the Parties agree that this rate is represented by BC Hydro's Rate Schedule 1827, as it may be amended from time to time, and as at April 1, 2013 is \$6.353 per kW/month.
- (b) If and when the Commission approves changes to the demand charge component of Rate Schedule 1827, the Parties agree that Rate Schedule 3808 shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof. If there is a material change in the underlying design for the capacity charge component of Rate Schedule 1827, the Parties shall negotiate in good faith for a replacement rate for the Demand Charge and BC Hydro shall seek approval of the Commission of any agreed rate. If, despite good faith negotiations, the Parties are unable to agree, BC Hydro may apply to the Commission for approval of a proposed replacement rate for the Demand Charge and FortisBC may intervene in such proceeding or file a complaint with respect to the proposed replacement rate.

8.2 Calculation of Monthly Demand Charge

The Demand Charge for each Billing Month of the Term shall be applied to the highest of the following amounts of Electricity (the "Billing Demand"), in the period specified:

- (a) the maximum amount of Electricity (in kW) scheduled under this Agreement, for any hour of the Billing Month;
- (b) subject as hereinafter provided, 75% of the maximum amount of Electricity (in kW) scheduled under this Agreement in any hour in the 11 months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Billing Month); and
- (c) 50% of the Contract Demand (in kW) for the Billing Month.

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If FortisBC has reduced the Contract Demand pursuant to Section 5.6, the amount of Electricity specified in Section 8.2(b) may not exceed an amount equal to 100% of the Contract Demand.

9. PLANNING AND OPERATING INFORMATION

9.1 General Information Requests

BC Hydro and FortisBC agree to cooperate in the full exchange of, and shall provide, such planning and operating information as may be reasonably necessary for the timely and efficient performance of the Parties' obligations or the exercise of rights under this Agreement. Such information shall be provided on a timely basis and no reasonable request shall be refused. FortisBC acknowledges and agrees that planning and operating information related to other agreements may be required by BC Hydro for the purpose of administering and implementing this Agreement.

9.2 Load-Resource Forecasts

By June 30 of each year, FortisBC shall provide BC Hydro with a forecast for the next ten years of (i) loads in the FBC Service Territory and (ii) annual purchases under this Agreement. The forecast shall contain such detail as BC Hydro may reasonably require for purposes of resource planning to meet its obligations under this Agreement.

10. INVOICES AND PAYMENT

10.1 Invoices

BC Hydro shall render an invoice monthly in respect of Demand Charges and Scheduled Energy taken or deemed to be taken in the immediately preceding Billing Month, based on best available billing and accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. BC Hydro shall render an invoice within 30 days after the end of each Contract Year for the Annual Shortfall, if any. Invoices shall be due and payable upon receipt.

10.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of Demand Charges and Scheduled Energy taken or deemed to be taken, are exclusive of all applicable taxes, including federal goods and services tax, provincial sales tax, and harmonized sales tax (or any successor or replacement tax therefor).

10.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may

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dispute the invoice or the billing or accounting information on which it was based in accordance with Section 13.4. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

10.4 Late Payment Charge

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount shall be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

11. INFORMATION, ACCOUNTING AND AUDITS

11.1 Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to determine or verify all purchases and sales of Electricity hereunder, the Demand Charge payable each month, all amounts of Electricity scheduled, taken and/or deemed taken hereunder, all amounts required for determining the Annual Shortfall, if any, all billing and payment amounts hereunder, and otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.
- (b) Each Party shall provide access to the books and records described in Section 11.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement that may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for purchases and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

11.2 Audits

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.6(j) of the Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.

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- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 14.1.

12. CONTRACT REPRESENTATIVES

12.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

12.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

12.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

13. DISPUTE RESOLUTION

13.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be

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submitted for dispute resolution in accordance with this Section 13 in the absence of agreement, or (iv) any proposed amendment to this Agreement, then a Party may give to the other Party a notice (“Dispute Notice”) specifying the Dispute and requiring its resolution under this Section 13. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 13.

13.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute.

13.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 13.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

13.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the expedited dispute resolution process in Section 13.6(e).

13.5 Referral to a Third Party for resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;

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in respect of the proposed amendment, and the other Party may intervene in such proceeding; and

- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

13.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal

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law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;

- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

13.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

13.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 13.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 13.6(a).

14. REMEDIES FOR BREACH

14.1 Breach of Agreement

- (a) Subject to Section 14.1(b), if either Party (the "Breaching Party") breaches this Agreement (a "Breach"), and the Breach is material or if there are persistent Breaches (in either case, a "material Breach"), the other Party (the "Other Party") may issue a notice describing the material Breach (a "Notice of Material Breach") and the Breaching Party shall have 7 days to satisfy the Other Party, acting reasonably, that the cause of the material Breach has been or will be addressed to the Other Party's reasonable satisfaction within the 7 day period.

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- (b) If FortisBC Breaches Section 2.6, such Breach shall be considered a Breach under the Energy Export Agreement to be dealt with in accordance with the Energy Export Agreement.
- (c) If the Breaching Party fails to satisfy the Other Party, acting reasonably, that the cause of the material Breach has been or will be addressed to the Other Party's reasonable satisfaction within the 7 day period referred to in Section 14.1(a), the Other Party may at any time thereafter issue to the Breaching Party a notice (a "Notice of Pending Complaint") that it intends to file a complaint to the Commission with regard to the material Breach and/or any previous material Breach.
- (d) If, within 14 days of the Other Party issuing a Notice of Pending Complaint, the Breaching Party has not established to the Other Party's satisfaction, acting reasonably (which may include consideration of previous Breaches and steps taken), that the Breaching Party has remedied the cause of the material Breach and put procedures in place designed to avoid a recurrence of the material Breach, the Other Party's Chief Executive Officer may give notice (a "Final Notice of Pending Complaint") to the Breaching Party's Chief Executive Officer of the Other Party's intent to apply to the Commission for such remedies as the Other Party considers appropriate in the circumstances.
- (e) The Chief Executive Officers shall meet within 10 days of the Final Notice of Pending Complaint to try to resolve the issues giving rise to the Other Party's Final Notice of Pending Complaint. If they fail to resolve the issues to their mutual satisfaction within 30 days of the Final Notice of Pending Complaint, the Other Party may apply to the Commission for such remedies as the Other Party considers appropriate in the circumstances.
- (f) If the Commission declines to adjudicate whether there has been a material Breach of this Agreement, either Party may submit the matter for dispute resolution in accordance with the *Commercial Arbitration Act* (British Columbia) pursuant to Section 13. The arbitrator shall have the authority to determine whether there has been a material Breach of this Agreement and to order appropriate remedies.

14.2 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting, as required by this Agreement and/or the Master Accounting Agreement, in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

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15. SUPPLY; SUSPENSION OF SUPPLY

15.1 No Warranty of Continuous Supply

BC Hydro does not warrant a continuous supply of Electricity or the maintenance of unvaried frequency or voltage.

15.2 Request to Suspend or Reduce Taking

At any time, in the event there is a shortage of Electricity, whether actual or apprehended by BC Hydro, BC Hydro may request FortisBC to reduce its taking of Electricity at the Points of Delivery. If FortisBC does not suspend or reduce its take of Electricity as requested, BC Hydro may suspend or reduce the supply of Electricity under this Agreement to FortisBC. BC Hydro shall use its reasonable efforts to advise FortisBC and to curtail service to FortisBC on a pro-rata basis with other BC Hydro load.

16. LIABILITY/INDEMNITY

16.1 Liability

(a) All responsibility of BC Hydro for Electricity delivered to FortisBC under this Agreement shall cease at the applicable Point of Delivery.

(b) Neither Party, its servants or agents, shall be liable to the other Party for any loss, injury, damages or expense of the other Party caused by or resulting from any suspension, discontinuance or defect in the supply of Electricity, or the maintenance of unvaried frequency or voltage alleged or caused by an act or omission of the other Party, its servants or agents.

16.2 Indemnity

FortisBC shall indemnify BC Hydro and save it harmless from any and all claims from FortisBC's customers or other third parties in connection with the supply of, or any suspension, discontinuance or defect in the supply of, Electricity, or the maintenance of unvaried frequency or voltage, by BC Hydro under this Agreement.

17. NOTICES

17.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement (except those given pursuant to Section 6 which shall be given as provided for therein, or otherwise in accordance with standard scheduling requirements in the BC Control Area) shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid

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registered post mailed in British Columbia to the Parties at the following addresses respectively:

- (a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3
- Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

- (b) to FortisBC:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3
- Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C. V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

17.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

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- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

17.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 17.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 17.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

18. MISCELLANEOUS

18.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

18.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

18.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective

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permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

18.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

18.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 18.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

18.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

18.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) to the jurisdiction of the Commission.

18.8 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

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ACCEPTED: _____

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18.9 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

18.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

18.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

18.12 Restatement of Agreement Dated for Reference May 21, 2013

The Power Purchase Agreement dated for reference May 21, 2013 ("2013 PPA"), and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement, provided that the Annual Energy Nomination delivered by FortisBC and accepted by BC Hydro pursuant to Section 5.1 of the 2013 PPA shall continue to apply for the purposes of this Agreement. The Parties further agree that because the 1st Contract Year will be for a period of less than 365 days, the Annual Energy Nomination and Annual Minimum Take will be determined in accordance with the provisions outlined in the letter agreement executed by the Parties dated October 1, 2013.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: 
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

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IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: 
Authorized Signatory

ACCEPTED: _____

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COMMISSION SECRETARY

Appendix 1

RATE SCHEDULE 3808 attached

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ACCEPTED: _____

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SCHEDULE 3808 – TRANSMISSION SERVICE – FORTISBC

Availability: This schedule is available to FortisBC in accordance with the terms and conditions of the Agreement between BC Hydro and FortisBC entered into and deemed effective the 1st day of October 2013 (the "Power Purchase Agreement"). The Contract Demand shall not exceed 200 MW in any hour.

Applicable in: For Electricity delivered to FortisBC at each Point of Delivery as defined in the Power Purchase Agreement.

Rate: Demand Charge: \$6.353 per kW of Billing Demand per Billing Month

plus

Tranche 1 Energy Price: 3.724¢ per kW.h

Tranche 2 Energy Price: 12.97¢ per kW.h

Billing Demand: The Billing Demand for billing purposes in any Billing Month shall be the greatest of:

1. The maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement, for any hour of the Billing Month;
2. Subject as hereinafter provided, 75% of the maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement in any hour in the 11th months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Month); and
3. 50% of the Contract Demand (in kW) for the Billing Month.

If FortisBC has reduced the Contract Demand in accordance with the Power Purchase Agreement, the amount of Electricity specified in Section 2 above may not exceed an amount equal to 100% of the Contract Demand.

Maximum Tranche 1 Amount The Maximum Tranche 1 Amount for each Contract Year is 1041 GWh.

Scheduled Energy Less Than or Equal to Annual Energy Nomination

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

ACCEPTED: _____

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BC Hydro
Rate Schedules
Effective: 01 April 2013
Eleventh Revision of Page 76

Scheduled Energy
Exceeding the
Annual Energy
Nomination

- (a) The Tranche 1 Energy Price for each kW.h of such Scheduled Energy taken or deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and
- (b) The Tranche 2 Energy Price for each kW.h of such Scheduled Energy taken that exceeds the Maximum Tranche 1 Amount.

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each kW.h of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination, but is less than or equal to the Maximum Tranche 1 Amount; and
- (b) 115% of the Tranche 2 Energy Price, for each kWh of such Scheduled Energy taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

Annual Minimum Take

In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination, and shall be responsible for any Annual Shortfall.

Note:

The terms and conditions under which service is supplied to FortisBC are contained in the Power Purchase Agreement.

Taxes:

The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

Rate Rider:

The Deferral Account Rate Rider as set out in Rate Schedule 1901 applies to all charges payable under this Rate Schedule, before taxes and levies.

Rate Increase:

The Tranche 1 Energy Price and Demand Charge are subject to the same rate adjustments as Schedule 1827. Tranche 2 Energy Price is subject to changes as provided for in the Power Purchase Agreement.

Effective April 1, 2013 the Tranche 1 Energy Price and the Demand Charge under this schedule includes an increase of 1.44% before rounding, approved by BCUC Order No. G-77-12A

ACCEPTED: _____

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ATTACHMENT 2

IMBALANCE AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May 26, 2014

ACCEPTED: _____

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IMBALANCE AGREEMENT

THIS AGREEMENT is made as of the 26th day of May, 2014 (the "**Reference Date**"), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir
Street, City of Vancouver, Province of British Columbia

("BC Hydro")

AND:

FORTISBC INC., a body corporate having an office at
10th Floor, 1111 West Georgia Street, City of Vancouver,
Province of British Columbia

("FortisBC")

WHEREAS:

- A. FortisBC and BC Hydro serve adjacent areas in British Columbia and have various points of electrical system interconnection which permit the flow of electricity to and from their respective systems;
- B. FortisBC and BC Hydro, among other parties, are parties to the Canal Plant Agreement, pursuant to which FortisBC receives from BC Hydro a capacity and energy entitlement that is not scheduled and the usage of which is determined on an after-the-fact basis;
- C. Concurrently with this Agreement, BC Hydro and FortisBC are entering into a power purchase agreement to be effective July 1, 2014 (the "**Power Purchase Agreement**"), pursuant to which FortisBC has agreed to schedule and purchase, and BC Hydro has agreed to supply and sell, Electricity to be delivered from the BC Hydro System;
- D. BC Hydro acts as the operator of the BC Control Area and the balancing authority in British Columbia and FortisBC operates an integrated generation and transmission system within the BC Control Area;
- E. From time to time Unexpected Conditions may occur that will cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa; and
- F. The Parties have agreed that FortisBC will pay BC Hydro an amount for transfers of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System and, in Negative Price Hours, from the Entitlement Parties' System to the BC Hydro System, all on the terms and conditions specified in this Agreement.

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THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) "Accounting Procedures" means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) "AESO" means the Alberta Electric System Operator, or a successor organization;
- (c) "AESO Hourly Pool Price" means the price for each hour, in \$/MWh, established and reported by AESO, in accordance with the AESO rules, for electric energy exchanged through the Alberta power pool;
- (d) "Agreement" means this Imbalance Agreement, as amended, restated and/or supplemented from time to time and includes any schedules or exhibits referred to in it as being attached to it;
- (e) "BC Control Area" has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the "BC Hydro Balancing Authority area";
- (f) "BC Hydro System" means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties' System), including all additions and modifications thereto and repairs or replacements thereof;
- (g) "Business Day" means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (h) "Canal Plant Agreement" means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;
- (i) "Capacity Buffer" means, in respect of any hour, an amount of reserves held by FortisBC immediately prior to the start of that hour, in addition to (i) the capacity required to meet FortisBC's reasonably forecast load obligations, (ii) the ancillary services requirements in Sections 6.2 and 6.7(a) of the Canal Plant Agreement, and (iii) reserve requirements under

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- any other CPA-Related Agreement (as defined in the Master Accounting Agreement);
- (j) “COB or NOB HASP LMP” means for an hour the index representing the market price for real time sales to the California Independent System Operator (“CAISO”) from sources in the Pacific Northwest, and, as at the date of this Agreement, is the average of the four 15 minute Locational Marginal Prices for the hour for either the MALIN_5_N01 (COB) node or the SYLMARDC_2_N501 (NOB) node, whichever is higher, as published by the CAISO;
 - (k) “Commission” means the British Columbia Utilities Commission, established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
 - (l) “Contract Year” means, in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates on a day other than September 30, the last Contract Year shall end on the date of termination;
 - (m) “Effective Date” means July 1, 2014, provided that the last of the conditions precedent in Section 2.2 has then been met;
 - (n) “Electricity” means electric energy and its associated capacity;
 - (o) “Entitlement Parties” means the parties to the Canal Plant Agreement, except BC Hydro;
 - (p) “Entitlement Parties’ System” means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties’ transmission facilities through facilities owned by BC Hydro;
 - (q) “FBC Service Territory” means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties’ System;
 - (r) “General Wheeling Agreement” or “GWA” means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;
 - (s) “ICE Mid-C Off-Peak Index” means for an hour the price as reported in the ICE Mid-C Off-Peak Index, as published by ICE in the ICE Day Ahead Power Price Report;

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- (t) **"ICE Mid-C Peak Index"** means for an hour the price as reported in the ICE Mid-C Peak Index, as published by ICE in the ICE Day Ahead Power Price Report;
- (u) **"Imbalance Energy"** has the meaning ascribed to it in Section 5.3;
- (v) **"Imbalance Energy Charge"** has the meaning ascribed to it in Section 6.1;
- (w) **"Master Accounting Agreement"** means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (x) **"Mid-Columbia Powerdex Realtime Hourly Index Price"** means for an hour the weighted average price for that hour reported in the Powerdex Realtime Mid-Columbia Power index, as published by Powerdex, Inc.;
- (y) **"Negative Price Hour"** means any hour in which either (i) the ICE Mid-C Peak Index or ICE Mid-C Off-Peak Index, as applicable to that hour, or (ii) the Mid-Columbia Powerdex Realtime Hourly Index Price applicable to that hour, is reported as being a negative price;
- (z) **"NERC"** means the North American Electric Reliability Corp., or a successor organization;
- (aa) **"Parties"** means the parties to this Agreement and **"Party"** means either of them;
- (bb) **"Points of Delivery"** means the Point of Supply and the Points of Interconnection as identified and defined in the General Wheeling Agreement;
- (cc) **"Power Purchase Agreement"** has the meaning ascribed to it in Recital C;
- (dd) **"Powerex"** means Powerex Corp., a wholly-owned subsidiary of BC Hydro;
- (ee) **"Prime Rate"** means the annual rate of interest designated by the Bank of Montreal as its "prime rate" for Canadian dollar commercial loans to customers in Canada;
- (ff) **"Service Area Load Requirements"** means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;

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- (gg) "Term" has the meaning ascribed to it in Section 2.1;
- (hh) "Unexpected Condition" means any of the following:
 - (i) an unexpected transmission limitation;
 - (ii) an unexpected change to generation availability caused by a generation outage;
 - (iii) an unexpected change to reasonably forecasted load requirements in the FBC Service Territory; or
 - (iv) any other unexpected circumstance affecting imports or exports into or out of the FBC Service Territory (excluding curtailments, reinstatements, adjustments and/or withdrawals of schedules other than for emergency reasons), loads in the FBC Service Territory or resources in the FBC Service Territory used to serve such loads;that could reasonably be expected to, or does, cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa; and
- (ii) "WECC" means the Western Electricity Coordinating Council or a successor organization.

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Meaning of "transfer"

In this Agreement, any reference to Imbalance Energy that "transfers" from the BC Hydro System to the Entitlement Parties' System, or vice versa, means Imbalance Energy that is determined and calculated in accordance with the Accounting Procedures to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa.

For the purposes of this Agreement, any transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, shall be deemed to occur at the Point of Supply (as that term is defined in the General Wheeling Agreement).

1.4 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all

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genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;

- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement is to the designated Section, subsection or other subdivision of this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; where indices used in this Agreement are denominated in US dollars, index amounts and US dollar amounts payable hereunder shall be converted from US dollars to Canadian dollars at the Bank of Canada noon spot rate on the applicable day(s); and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND CONDITIONS PRECEDENT

2.1 Term of Agreement

- (a) Subject to Section 2.2, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until either Party elects to terminate this Agreement upon at least one year's notice to the other Party; provided that neither Party may give notice to terminate this Agreement to be effective prior to the expiry or earlier termination (as the case may be) of the Power Purchase Agreement.
- (b) If a Party gives notice to terminate this Agreement pursuant to Section 2.1(a) and the Canal Plant Agreement is then in force, the Parties shall negotiate in good faith the terms and conditions of an agreement to replace this Agreement upon its termination; failing agreement, either Party may submit the matter for dispute resolution in accordance with Section 10.

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- (c) Termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has, on or before December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties; and
- (b) the Power Purchase Agreement has become, or will concurrently become, effective in accordance with its terms.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application; provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

3. IMBALANCE ENERGY IS NOT A SERVICE

3.1 Imbalance Energy is Not a Service

- (a) FortisBC acknowledges that, despite that BC Hydro acts as the operator of the BC Control Area, BC Hydro is not, pursuant to this Agreement or otherwise, offering to FortisBC an imbalance energy service and that any transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is not authorized. If Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, or vice versa, as determined in accordance with the Accounting Procedures, FortisBC shall pay BC Hydro for such transfer in accordance with this Agreement.
- (b) FortisBC shall not plan for a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, to occur in any hour for any purpose, including to serve load, to meet reserve requirements or to support imports, exports or other marketing activities by FortisBC or any other person.
- (c) If an Unexpected Condition occurs in any hour, FortisBC shall use all reasonable efforts to avoid, minimize and/or end any transfer of Imbalance Energy, in accordance with Sections 5.1(c) and 5.1(d).

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- (d) FortisBC shall not enter into any purchases, sales or other transactions with third parties (including customers, third party generators, marketers, or Entitlement Parties) under which such third party would be permitted to take any action that would cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa.

3.2 BC Hydro Entitled to Assume No Imbalance Energy Transfers

BC Hydro shall be entitled to operate the BC Hydro System assuming there will be no Imbalance Energy transfers at any time.

4. POINTS OF DELIVERY / INTERCONNECTED OPERATION

4.1 Imbalance Energy transfers at Points of Delivery

For purposes of this Agreement only, transfers of Imbalance Energy shall be deemed to occur as a result of system-to-system imbalances between the BC Hydro System and the Entitlement Parties' System. Imbalances occurring at individual Points of Delivery shall be derived in accordance with the Accounting Procedures and shall be netted against each other on an aggregate basis, to determine whether there is a transfer of Imbalance Energy between the BC Hydro System and the Entitlement Parties' System for purposes of this Agreement.

5. IMBALANCE ENERGY

5.1 Imbalance Energy Transfers to be Avoided

FortisBC shall use all reasonable efforts to avoid, minimize and/or end as soon as possible (as applicable) transfers of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, in any hour. This shall include FortisBC:

- (a) undertaking the following actions at all times during the Term:
 - (i) maintaining a Capacity Buffer of at least the greater of (A) 15 MW; or (B) 10% of scheduled exports by or on behalf of FortisBC from the FBC Service Territory to outside the BC Control Area, to respond to Unexpected Conditions; and
 - (ii) maintaining continuous real-time monitoring of actual loads, resources, imports, exports, schedules and etags so it is able to timely respond to Unexpected Conditions;
- (b) at all times during the Term:
 - (i) not under-scheduling resources;
 - (ii) not over-scheduling resources;
 - (iii) not relying on or using Imbalance Energy as a firming service; and

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- (iv) planning to balance loads and resources at each Point of Delivery, including securing and scheduling transmission rights on the BC Hydro System;
- (c) if an Unexpected Condition occurs, undertaking such actions as would in all the circumstances reasonably be expected to avoid or minimize any such transfers of Imbalance Energy that might be caused thereby, including any or all of the actions described in Section 5.1(d);
- (d) if an Unexpected Condition occurs and a transfer of Imbalance Energy is caused thereby in any hour, undertaking such actions as would in all the circumstances reasonably be expected to end such transfer as soon as possible after its commencement (and in any event by the end of that hour or by the end of the next hour if the Unexpected Condition arises within 30 minutes before the start of the next hour), including:
 - (i) acquiring additional capacity resources;
 - (ii) using all other resources available to FortisBC (for example, Canal Plant Agreement, operating reserves);
 - (iii) curtailing and/or adjusting scheduled imports and/or exports, as permitted by industry practices;but shall not include requiring FortisBC to curtail load on the Entitlement Parties' System or compensate third parties to curtail load; provided that nothing herein affects any obligations to curtail load under other agreements or pursuant to reliability orders; and
- (e) if an Unexpected Condition occurs in any hour which affects the Capacity Buffer, undertaking such actions as would in all the circumstances reasonably be expected to re-establish the required Capacity Buffer as soon as possible.

5.2 Change to Capacity Buffer

If there is a material change in loads and/or resources in the FortisBC Service Territory, the Parties shall negotiate in good faith a revised Capacity Buffer amount for purposes of Section 5.1(a)(i); failing agreement, either Party may submit the matter for dispute resolution in accordance with Section 10.

5.3 Imbalance Energy is a Derived Amount

- (a) For purposes of this Agreement, "Imbalance Energy" is a derived amount, determined and calculated in accordance with the Accounting Procedures, that is intended to be the net amount of electrical energy that is considered to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa, in any hour. The determination of Imbalance Energy takes into account scheduled deliveries under the Power Purchase Agreement, scheduled imports and/or exports to or from the FBC Service Territory,

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generation and loads within the FBC Service Territory, Entitlement Energy usage under the Canal Plant Agreement (within the limits of the applicable Exchange Accounts), or other resources used by FortisBC. Imbalance Energy is not metered and the Parties recognize that Imbalance Energy transfers do not represent actual flows of energy between the BC Hydro System and Entitlement Parties' System in any hour.

- (b) The Parties acknowledge and agree that any non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour shall be applied to serve the Service Area Load Requirements in priority to any Entitlement Energy and/or any Entitlement Capacity usage.
- (c) FortisBC acknowledges that BC Hydro is, as at May 21, 2013, a party to the following CPA-Related Agreements (referred to as "commercial arrangements" in Section 3.5 of the Canal Plant Agreement):
 - (i) Surplus Power Rights Agreement made as of March 5th, 2010 between BC Hydro and Teck Metals Ltd.;
 - (ii) Electricity Purchase Agreement made as of November 5th, 2003 between BC Hydro and Brilliant Expansion Power Corporation and Electricity Purchase Agreement made as of August 31st, 2006 between BC Hydro and Brilliant Expansion Power Corporation; and
 - (iii) Electricity Purchase Agreement made October 1, 2010 between BC Hydro and Waneta Expansion Limited Partnership;

which together have the effect of limiting the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour, to an amount equal to the Service Area Load Requirements plus FortisBC exports from the FBC Service Territory in that hour (the "Maximum FBC Hourly Imports"). For so long as all such "commercial arrangements" are in effect (including any "commercial arrangements" that may amend or supplement same), any amount of non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour that is in excess of the Maximum FBC Hourly Imports shall be deemed to be Imbalance Energy. Nothing in this Section 5.3(c) is intended to imply what limits, if any, apply to the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour if any of the "commercial arrangements" expires or is earlier terminated or is replaced. The Parties shall negotiate in good faith in an effort to agree on what limits, if any, will apply to the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour if any or all of the "commercial arrangements" expires or is earlier terminated or is replaced, or if any other "commercial arrangement" is entered into by an Entitlement Party.

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Failing such agreement, either Party may submit the matter for dispute resolution in accordance with Section 10;

- (d) The Parties acknowledge and agree that, for the purposes of the Energy Export Agreement, a subsequent calculation shall be completed to recognize the storage of Eligible Energy in the applicable FBC Eligible Exchange Account.
- (e) The Parties acknowledge and agree that commitments of Entitlement Capacity to be held by FortisBC as reserves shall be applied under the Accounting Procedures in priority to all other capacity uses so that any capacity deficit in any hour shall be deemed to result in an Imbalance Energy transfer.

5.4 Imbalance Energy Transfers Caused by Third Parties

- (a) FortisBC shall pay BC Hydro for Imbalance Energy that transfers from the BC Hydro System to the Entitlement Parties' System in any hour, regardless of how such transfer is caused, in accordance with Section 6.2. BC Hydro shall cooperate with FortisBC and shall provide such information as BC Hydro has (and is permitted to disclose to FortisBC, having taken reasonable steps to obtain such permission from all relevant third parties) and that FortisBC may reasonably request for the purpose of FortisBC seeking recovery from relevant third parties responsible for any Imbalance Energy Charges incurred by FortisBC pursuant to this Agreement.
- (b) BC Hydro shall own Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System and FortisBC shall pay BC Hydro for Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System in any Negative Price Hour, regardless of how such transfer is caused, all in accordance with Section 6.4. FortisBC shall hold BC Hydro harmless against any claim by any third party for payment for, or return of, any Imbalance Energy that so transfers.
- (c) Despite Sections 5.4(a) and 5.4(b), if a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is caused by a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent), then to the extent the transfer of Imbalance Energy is the result of such cause, BC Hydro shall reduce any resulting Imbalance Energy Charge to the lower of: (i) the Tranche 1 Energy Price (as defined and determined under the Power Purchase Agreement), and (ii) the Mid-Columbia Powerdex Realtime Hourly Index Price.
- (d) To the extent any transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is caused by:

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- (i) a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent); or
- (ii) an act or omission of an Entitlement Party other than FortisBC;

such transfer of Imbalance Energy shall not be taken into account in determining whether any threshold identified in 6.2(b)(i) or 6.2(b)(ii) is exceeded, provided that if the cause is one referred to in Section 5.4(d)(ii), BC Hydro is satisfied, acting reasonably, based on information provided by FortisBC to BC Hydro, that the transfer was caused by an act or omission of an Entitlement Party other than FortisBC and could not have been avoided by reasonable diligence on the part of FortisBC.

- (e) If and to the extent a transfer of electrical energy between the BC Hydro System and the Entitlement Parties' System in any hour that would, but for this Section 5.4(e), result in a transfer of Imbalance Energy for that hour, is bona fide settled after-the-fact pursuant to the Co-Ownership and Operating Agreement dated as of March 5th, 2010 between Teck Metals Inc. and BC Hydro, by payment of liquidated damages to BC Hydro thereunder, or otherwise, such transfer shall be deemed not to be a transfer of Imbalance Energy for that hour. The Accounting Procedures shall provide for such accounting as may be required to identify transfers of Imbalance Energy that are subject to this Section 5.4(e).
- (f) If BC Hydro enters into any contractual arrangement with any third party having generation in the FBC Service Territory (including an Entitlement Party other than FortisBC) after the Reference Date that provides for liquidated damages or a similar specific remedy in the event of an imbalance, then the Parties will negotiate in good faith to agree whether, and if so how, such remedy would impact transfers of Imbalance Energy for purposes of this Agreement.

6. PAYMENT FOR IMBALANCE ENERGY

6.1 Imbalance Energy Transfers from BC Hydro to FortisBC

Despite FortisBC using all reasonable efforts to avoid transfers of Imbalance Energy, including undertaking actions described in Section 5.1, and regardless of the cause, if Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in any hour, FortisBC shall pay BC Hydro an imbalance energy charge (the "Imbalance Energy Charge") determined in accordance with Section 6.2.

6.2 Charges for Imbalance Energy Transfers from BC Hydro to FortisBC

- (a) Subject to Section 5.4(c), for every hour in which Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, FortisBC shall pay to BC Hydro an amount equal to the greatest of:

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- (i) \$1,000;
- (ii) for each MWh of Imbalance Energy that transfers, \$50/MWh; and
- (iii) for each MWh of Imbalance Energy that transfers, 150% of the higher of the following two (or, if applicable, three) indices for the hour:
 - (A) the Mid-Columbia Powerdex Realtime Hourly Index Price;
 - (B) the COB or NOB HASP LMP;

and, if FortisBC or any person acting on behalf of, or purchasing from, FortisBC is scheduling to the Alberta market in that hour (which for purposes of this Section 6.2(a) includes energy, capacity, ancillary services or any allocation of Imbalance Energy Charges under this Agreement):

- (C) the AESO Hourly Pool Price.
- (b) Commencing one year after the Effective Date, if in any Contract Year either:
- (i) 15 MWh or more of Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in more than 5 hours (whether consecutive, or individual hours, or a combination thereof); or
 - (ii) 2 MWh or more of Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in more than 25 hours (whether consecutive or individual hours, or a combination thereof);

then during the remainder of the Contract Year or the immediately following 6 months, whichever is longer, Section 6.2(a) shall not apply to subsequent transfers of Imbalance Energy and, instead for every hour that Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, FortisBC shall pay to BC Hydro an amount equal to the greatest of:

- (iii) \$5,000;
- (iv) for each MWh of Imbalance Energy that transfers, \$100/MWh; and
- (v) for each MWh of Imbalance Energy that transfers, 200% of the higher of the following two (or, if applicable, three) indices for the hour:
 - (A) the Mid-Columbia Powerdex Realtime Hourly Index Price;

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(B) the COB or NOB HASP LMP;

and, if FortisBC or any person acting on behalf of, or purchasing from, FortisBC is scheduling to the Alberta market in that hour (which for purposes of this Section 6.2(b) includes energy, capacity, ancillary services or any allocation of Imbalance Energy Charges under this Agreement):

(C) the AESO Hourly Pool Price.

- (c) If the circumstances described in either Section 6.2(b)(i) or 6.2(b)(ii) occur in 2 or more consecutive Contract Years, then, in addition and without prejudice to its other remedies under this Agreement, BC Hydro may apply to the Commission to amend this Agreement to include financial disincentives that are in addition to and/or different from the payments provided for in Section 6.2(b).
- (d) The dollar amounts in Section 6.2(a) and 6.2(b) are in 2012 dollars and shall be escalated annually by increases or decreases in the energy price component of the Consumer Price Index as published by Statistics Canada or equivalent from time to time.
- (e) BC Hydro may, in its sole discretion, waive or reduce the charge that would otherwise be payable by FortisBC pursuant to Section 6.2(b) and/or determine that a transfer of Imbalance Energy shall not be considered for purposes of Sections 6.2(b)(i) or 6.2(b)(ii). If FortisBC wishes to request such a waiver, reduction or determination, the request shall be made by a senior executive (vice-president or higher) of FortisBC to a senior executive (vice-president or higher) of BC Hydro.

6.3 Flow-Through of Regulatory Penalties

If, as a result of a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, BC Hydro suffers or incurs any fine, penalty or similar charge imposed by WECC, NERC, the Commission or any other entity with authority to impose such fine, penalty or similar charge, then, except to the extent the transfer of Imbalance Energy in respect of which the fine, penalty or other charge was imposed was caused by a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent), Hydro may, by written notice delivered to FortisBC (to which notice BC Hydro shall attach evidence of the fine, penalty or other charge and evidence that BC Hydro has paid the same), flow through the amount of any such fine, penalty or similar charge to FortisBC and FortisBC shall pay such amount within 14 days of receiving from BC Hydro such notice. BC Hydro shall not object to any application by FortisBC for standing, or to FortisBC's participation if granted standing, in any proceedings before WECC, NERC, the Commission or other entity having jurisdiction in which liability for any such fine, penalty or similar charge is at issue.

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6.4 Imbalance Energy Transfers from FortisBC to BC Hydro

If Imbalance Energy transfers from the Entitlement Parties' System to the BC Hydro System in any hour, then

- (a) BC Hydro shall own but shall have no obligation to pay for such Imbalance Energy, and
- (b) if the hour is a Negative Price Hour, FortisBC shall pay to BC Hydro for each MWh of such Imbalance Energy an amount equal to 150% of the greater of (i) the absolute value of the Mid-Columbia Powerdex Realtime Hourly Index Price applicable to that hour, and (ii) the absolute value of the ICE Mid-C Peak Index or ICE Mid-C Off-Peak Index, as applicable to that hour.

7. INFORMATION, ACCOUNTING AND AUDITS

7.1 Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to (i) verify the amount of Imbalance Energy, if any, that transferred from the BC Hydro System to the Entitlement Parties' System, or vice versa, in each hour, (ii) verify the basis for claiming an Unexpected Condition, (iii) confirm compliance with this Agreement in each hour, including Sections 3.1 and 5.1, (iv) confirm invoices for Imbalance Energy Charges and other amounts payable under this Agreement, and (v) otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.
- (b) Each Party shall provide access to the books and records described in Section 7.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement as may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for billings and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

7.2 Audits/Adjustments

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.7(j) of the Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.

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- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 11.1.

8. INVOICES AND PAYMENT

8.1 Billing Invoices

BC Hydro shall render an invoice monthly for:

- (a) charges payable hereunder for Imbalance Energy transferred from the BC Hydro System to the Entitlement Parties' System (including the Imbalance Energy Charge), if any, during the immediately preceding month;
- (b) charges payable hereunder for Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System, if any, during the immediately preceding month; and
- (c) any other charges payable pursuant to this Agreement.

Invoices shall be based on best available billing and accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. Invoices shall be due and payable upon receipt.

8.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of Imbalance Energy Charges, are exclusive of all applicable taxes, including federal goods and services tax, provincial sales tax, and harmonized sales tax (or any successor or replacement tax therefor).

8.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may dispute the invoice or the billing or accounting information on which it was based in accordance with Section 10. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

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8.4 Late Payment Charge

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount shall be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

9. CONTRACT REPRESENTATIVES

9.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

9.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

9.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

10. DISPUTE RESOLUTION

10.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 10 in the absence of agreement, or (iv) any proposed amendment to or replacement of this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 10. All

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Disputes shall be exclusively resolved in accordance with the provisions of this Section 10.

10.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute

10.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 10.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

10.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the expedited dispute resolution provisions of Section 10.6(e).

10.5 Referral to Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to, or replacement of, this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;in respect of the proposed amendment or replacement, as the case may be, and the other Party may intervene in such proceeding; and
- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

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10.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable; and
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;

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- (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
- (iii) to seek injunctive relief if an arbitrator has not then been appointed.

10.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

10.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 10.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 10.6(a).

11. REMEDIES FOR BREACH

11.1 Breach of Agreement

If FortisBC breaches this Agreement (a "**Breach**"), and the Breach is material or there are persistent Breaches (in either case, a "**material Breach**"), BC Hydro may issue a notice (a "**Notice of Material Breach**") and FortisBC shall have 7 days after delivery of the Notice of Material Breach to satisfy BC Hydro, acting reasonably, that the cause of the material Breach has been or will be addressed to BC Hydro's reasonable satisfaction within the 7 day period. If FortisBC fails to do so, BC Hydro may apply to the Commission for appropriate remedies. Such remedies may include adding additional and/or other charges intended to create FortisBC disincentives to transfers of Imbalance Energy under this Agreement. BC Hydro agrees that any such remedies shall apply only prospectively.

11.2 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting as required pursuant to this Agreement and/or the Master Accounting Agreement in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

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11.3 Good Faith

- (a) If FortisBC in good faith disputes that there has been a material Breach, then FortisBC may, provided it has given a Notice of Dispute within the 7 day period referred to in Section 11.1, submit the question for dispute resolution pursuant to Section 10.5(b) and the arbitrator shall have the authority to determine whether there has been a material Breach. BC Hydro shall only exercise its remedies under Section 11.1 if the arbitrator agrees that there has been a material Breach.
- (b) If FortisBC in good faith disputes that BC Hydro has acted reasonably in determining that it is not satisfied that the cause of a material Breach has been or will be addressed within 7 days then, provided FortisBC has given timely Notice of Dispute, BC Hydro's Chief Executive Officer shall give at least 14 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to apply to the Commission for appropriate remedies. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to apply to the Commission. If they fail to resolve the issues to their mutual satisfaction within such 14 days, BC Hydro may nevertheless apply to the Commission for appropriate remedies.

12. NOTICES

12.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

- (a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

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With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

- (b) to FortisBC
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C. V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

12.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labor dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

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12.3 Electronic Notices

As an alternative to the methods of giving notice described in Section 12.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 12.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

13. MISCELLANEOUS

13.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

13.2 No Assignment Without Consent

- (a) Subject to Section 13.2(b), neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.
- (b) FortisBC may, with the consent of BC Hydro (not to be unreasonably withheld, delayed or conditioned), assign this Agreement and all of its rights and obligations hereunder to any person to whom FortisBC has assigned its current responsibilities as system operator of the Entitlement Parties' System. For the purposes of this Section 13.2(b), it shall not be unreasonable for BC Hydro to withhold its consent if the proposed assignee is not an experienced and creditworthy system operator, with a history of prudent and reliable system operation, or if appropriate contractual arrangements among the Parties (including such assignee) are not agreed to in order to reflect the relationship between this Agreement and the other agreements between the Parties.

13.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective

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permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

13.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

13.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 13.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

13.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

13.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

13.8 Reliance on Specified Indices

In the event that any provision of this Agreement relies on a specified index to determine or calculate a price or payment pursuant to such provision, and such index (i) ceases to exist or otherwise is no longer published or available to a Party (provided the Party subscribes to receive such index, where subscription is required), or (ii) ceases to be the index predominantly used to establish the market price for the applicable energy product in the applicable market, then the applicable index shall be such index that most closely applies to the provision and approximates the specified index (considering applicable factors, including delivery point, firmness of electricity, time of day and predominant use of such index by market participants), or such other index as the Parties may agree. If the Parties are unable to so agree within 30 days after the specified index ceases to exist or is no longer published or available to a Party or the foregoing notice is given, either Party may refer the matter to dispute resolution pursuant to Section 10. An arbitrator appointed under Section 10 is expressly authorized and directed to select a substitute index based on the foregoing criteria. Pending agreement on

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or determination of the substitute index, the Party entitled to be paid based on the index shall specify an interim index or pricing method, acting reasonably, and amounts so paid based on such interim index or pricing method shall be adjusted retroactively to the date the index ceased to exist or be published.

13.9 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

13.10 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

13.11 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

13.12 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

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13.13 Restatement of Agreement Dated for Reference May 21, 2013

The Imbalance Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: 
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

ACCEPTED: _____

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13.13 Restatement of Agreement Dated for Reference May 21, 2013

The Imbalance Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: 
Authorized Signatory

ACCEPTED: _____

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ATTACHMENT 3

ENERGY EXPORT AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
and
FORTISBC INC.

DATED FOR REFERENCE
May 26, 2014

ACCEPTED: _____

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ENERGY EXPORT AGREEMENT

THIS AGREEMENT is made as of the 26th day of May, 2014 (the “Reference Date”), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir Street,
City of Vancouver, Province of British Columbia

(“BC Hydro”)

AND:

FORTISBC INC., a body corporate having an office at 10th Floor,
1111 West Georgia Street, City of Vancouver, Province of British
Columbia

(“FortisBC”)

WHEREAS:

- A. BC Hydro and FortisBC are parties to a Power Purchase Agreement (the “Power Purchase Agreement”) entered into concurrently with this Agreement under which BC Hydro will supply Electricity to FortisBC;
- B. Section 2.6(a) of the Power Purchase Agreement provides as follows:

“FortisBC shall not export or permit its customers to export (except as permitted under Section 2.5(a)(iii)) any Electricity (including capacity and/or energy comprised therein) in any hour during which FortisBC is taking Electricity from BC Hydro under this Agreement, except during the term of, and to the extent specifically agreed under, and in accordance with, the terms and conditions of the Energy Export Agreement.”;
- C. FortisBC has entered into a capacity purchase agreement (the “WAX CAPA”) with Waneta Expansion Limited Partnership (“WELP”), which is constructing and will own and operate the Waneta expansion project (“WAX”), a 335 MW powerhouse adjacent to, and that uses the hydraulic head of, the Waneta Dam, under which FortisBC will purchase certain Entitlement Capacity attributable to WAX pursuant to the Canal Plant Agreement;
- D. BC Hydro has entered into an Electricity Purchase Agreement dated October 1, 2010 with WELP under which BC Hydro will purchase all Entitlement Energy, and associated Entitlement Capacity, attributable to WAX pursuant to the Canal Plant Agreement;

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- E. FortisBC intends to use Entitlement Capacity it has purchased from WELP under the WAX CAPA, in part to meet such of its Service Area Load Requirements as are unmet after application by FortisBC of its existing electricity resources, including electricity resources purchased under the Power Purchase Agreement, to meet such load requirements;
- F. FortisBC also intends from time to time while it is taking Electricity under the Power Purchase Agreement, to export from the FBC Service Territory energy acquired from certain eligible sources, using the Entitlement Capacity that it has purchased from WELP under the WAX CAPA; and
- G. The Parties have agreed on certain circumstances in which FortisBC may export Electricity from the FBC Service Territory while taking Electricity under the Power Purchase Agreement, on the terms and conditions of this Agreement.

THIS AGREEMENT WITNESSES in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement:

- (a) **"Accounting Procedures"** means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) **"Agreement"** means this Energy Export Agreement, as amended, restated and/or supplemented from time to time and includes any schedules or exhibits referred to in it as being attached to it;
- (c) **"Breach"** has the meaning ascribed to it in Section 4.1(a);
- (d) **"Brilliant Power Purchase Agreement"** means the agreement made as of the 4th day of April, 1996, between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as "West Kootenay Power Ltd."), as amended, restated and/or supplemented from time to time;
- (e) **"Business Day"** means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (f) **"Canal Plant Agreement"** means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and WELP, as amended, restated and/or supplemented from time to time;

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- (g) “**Commission**” means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
- (h) “**Contract Year**” means, in the first year of this Agreement, the period commencing on the Effective Date and ending on the following September 30, and in all subsequent years of this Agreement, a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2033, the last Contract Year shall end on the earlier termination date;
- (i) “**Day of Flow**” means the calendar day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, energy which is scheduled on a Preschedule Day is scheduled to flow; for greater certainty, a Day of Flow is a single calendar day even in the event that two or more calendar days are scheduled during the same Preschedule Day;
- (j) “**Effective Date**” has the meaning ascribed to it in Section 2.2(a);
- (k) “**Electricity**” means electric energy and its associated capacity;
- (l) “**Eligible Account Balance**” for any hour means the balance of Eligible Energy recorded in the applicable FBC Eligible Exchange Account at the end of the immediately preceding hour;
- (m) “**Eligible Energy**” means energy acquired by FortisBC that meets the requirements of Section 3.4;
- (n) “**Entitlement Parties**” means the parties to the Canal Plant Agreement, except BC Hydro;
- (o) “**Entitlement Parties’ System**” means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties’ transmission facilities through facilities owned by BC Hydro;
- (p) “**export**”, and all forms of the verb “to export”, means any transaction whereby Electricity is determined and calculated in accordance with the Accounting Procedures to transfer out of the FBC Service Territory, and without netting such transfers against concurrent imports, but specifically excludes the following:
 - (i) wheeling losses scheduled to BC Hydro;

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- (ii) Coordination Transfers to BC Hydro under the Canal Plant Agreement and
- (iii) such other exceptions as the Parties may agree to from time to time, acting reasonably;
- (q) **"FBC Eligible Exchange Account"** means one of the accounts established pursuant to Section 3.6 and **"FBC Eligible Exchange Accounts"** means both of such accounts;
- (r) **"FBC Entitlement Capacity"** means FortisBC's share of the Entitlement Capacity, as set out and described in Table 9 of the Canal Plant Agreement under **"FBC Projects"**, as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Capacity attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement, but specifically excludes WAX Capacity;
- (s) **"FBC Entitlement Energy"** means FortisBC's share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under **"FBC Projects"**, as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (t) **"FBC Service Territory"** means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (u) **"Imbalance Agreement"** means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (v) **"Master Accounting Agreement"** means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (w) **"material Breach"** has the meaning ascribed to it in Section 4.5;
- (x) **"Mid-Columbia Powerdex Realtime Hourly Index Price"** means for an hour the weighted average price reported in the Powerdex Realtime Mid-Columbia Power index, as published by Powerdex, Inc.;
- (y) **"NERC"** means the North American Electric Reliability Corp., or a successor organization;
- (z) **"Notice of Material Breach"** has the meaning ascribed to it in Section 4.5;

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- (aa) "Notice of Suspension" has the meaning ascribed to it in Section 4.5;
- (bb) "Parties" means the parties to this Agreement and "Party" means either of them;
- (cc) "Power Purchase Agreement" has the meaning ascribed to it in Recital A;
- (dd) "Preschedule Day" means a day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, Electricity is scheduled for delivery on one or more Day(s) of Flow; Preschedule Days and their corresponding Day(s) of Flow with respect to NERC holidays and any special scheduling days shall be as set forth in the WECC Preschedule Calendar;
- (ee) "Reference Date" has the meaning ascribed to it on the first page of this Agreement;
- (ff) "Service Area Load Requirements" means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;
- (gg) "WAX" has the meaning ascribed to it in Recital C;
- (hh) "WAX CAPA" has the meaning ascribed to it in Recital C;
- (ii) "WAX Capacity" in any hour means Entitlement Capacity attributable to WAX and purchased by and available to FortisBC under the WAX CAPA in that hour;
- (jj) "WAX Outage" means a partial or total reduction in WAX Capacity due to a cause beyond the reasonable control of the owner or operator of WAX, and, for greater certainty, excludes any planned outage;
- (kk) "WECC" means the Western Electricity Coordinating Council, or a successor organization;
- (ll) "WECC Preschedule Calendar" means the WECC Scheduling Calendar published annually by WECC that identifies certain NERC holidays and any special scheduling days which affect normal preschedule timelines and the days upon which prescheduling will take place to accommodate these identified days; and
- (mm) "WELP" has the meaning ascribed to it in Recital C.

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1.2. Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3. Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement is to the designated Section, subsection or other subdivision of this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; where indices used in this Agreement are denominated in US dollars, index amounts and US dollar amounts payable hereunder shall be converted from US dollars to Canadian dollars at the Bank of Canada noon spot rate on the applicable day(s); and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

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2. TERM AND CONDITIONS PRECEDENT

2.1. Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has been satisfied:

- (a) on or before December 1, 2013 or such later date as may be agreed between the Parties:
 - (i) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties; and
 - (ii) the Power Purchase Agreement has become effective in accordance with its terms; and
- (b) WAX Start-up has occurred.

2.2. Term of Agreement

- (a) This Agreement shall become effective at 2400 hours on the day (the "Effective Date") upon which the last of the conditions precedent described in Section 2.1 is satisfied and shall continue in force until the expiry or earlier termination of the Power Purchase Agreement. Termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.
- (b) Notwithstanding Sections 2.1 and 2.2(a), at any time on or after September 1, 2014 FortisBC may commence operating the FBC Eligible Exchange Accounts in accordance with Sections 3.6 and 3.7(a) as if this Agreement had become effective on September 1, 2014, for the limited purpose of recording Eligible Energy in the FBC Eligible Exchange Accounts. For greater certainty, FortisBC may not export Eligible Energy recorded in an FBC Eligible Exchange Account until the Effective Date.

2.3. Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

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3. FORTISBC RIGHT TO EXPORT

3.1. Right to Export

- (a) Pursuant to Section 2.6 of the Power Purchase Agreement, BC Hydro and FortisBC hereby agree that FortisBC may export Eligible Energy using WAX Capacity in accordance with this Agreement in any hour during which it is taking Electricity from BC Hydro under the Power Purchase Agreement, provided such exports:
 - (i) do not exceed the amount of WAX Capacity available to FortisBC under the WAX CAPA for that hour;
 - (ii) do not exceed the Eligible Account Balance for that hour; plus (i) Eligible Energy purchases in the hour; minus (iii) Eligible Energy used to meet FortisBC's Service Area Load Requirements in that hour; and
 - (iii) demonstrably do not result in increased purchases of Electricity under the Power Purchase Agreement.
- (b) The parties acknowledge and agree that the requirement in Section 3.1(a)(iii) is met as at the date of this Agreement if FortisBC complies with Sections 3.1(a)(i) and 3.1(a)(ii). Section 3.1(a)(iii) is not intended to restrict FortisBC from increasing purchases of Electricity to the extent provided for in, and subject to, the Power Purchase Agreement.
- (c) FortisBC shall not export FBC Entitlement Energy in any hour during which FortisBC is taking Electricity under the Power Purchase Agreement, except Eligible Energy to the extent expressly permitted under this Agreement and in accordance with its terms.
- (d) FortisBC shall not sell, exchange or otherwise transfer FBC Entitlement Energy or Eligible Energy to another Entitlement Party or any other person if the effect of the sale, exchange or transfer would be that (i) the FBC Entitlement Energy is exported, or (ii) the FBC Entitlement Energy is used and a like amount of Electricity is exported, or (iii) the Eligible Energy is exported using FBC Entitlement Capacity, in any such case during any hour when FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement.
- (e) For greater certainty, FortisBC may sell, assign, provide scheduling rights to, or otherwise permit any person to use WAX Capacity (i) to export Entitlement Energy, including Eligible Energy in any hour during which FortisBC is not taking Electricity under the Power Purchase Agreement, and (ii) to export Entitlement Energy, except FBC Entitlement Energy, at any time whether or not FortisBC is taking Electricity under the Power Purchase Agreement.

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Purchase Agreement, in either case subject to any requirements of the Canal Plant Agreement and any other applicable agreements.

- (f) BC Hydro acknowledges and agrees that nothing in this Agreement affects any right FortisBC has to export Electricity in any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement; provided such exports are in compliance with any applicable agreements to which FortisBC and BC Hydro are both parties.

3.2. Export During WAX Outage

Notwithstanding Section 3.1, BC Hydro and FortisBC hereby agree that during a WAX Outage FortisBC may export Electricity in accordance with this Agreement in any hour during which FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement, as follows:

- (a) for such period as may be specified in the applicable CPA Operating Procedure(s), using capacity in the form of operating reserves, provided the outage is an initiating event and FortisBC has taken all necessary steps to activate such reserves in accordance with such CPA Operating Procedure(s);
- (b) from the end of the period referred to in Section 3.2(a) until the end of the Day(s) of Flow covered by the schedule in effect when the WAX Outage occurred, FortisBC may export Electricity concurrently with an equivalent import that meets the requirements of Section 3.4 (but for greater certainty, may not export Eligible Energy from an FBC Eligible Exchange Account except to the extent there is WAX Capacity then available to FortisBC), in order to avoid having to cut a then existing export schedule; for greater certainty, new trades or schedules submitted after the WAX Outage occurred shall not be eligible for the exception in this Section 3.2(b); and
- (c) from the end of the period referred to in Section 3.2(b) until the units affected by the WAX Outage are fully back in service, FortisBC shall not export Electricity in any hour during which it is taking Electricity from BC Hydro under the Power Purchase Agreement, except to the extent there is WAX Capacity then available to FortisBC in the event the WAX Outage is a partial outage.

3.3. FortisBC to Notify if Exports are not Eligible Energy

In any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement, any export by FortisBC shall be deemed to be an export of Eligible Energy from the applicable FBC Eligible Exchange Account until there is no Eligible Energy remaining in the applicable FBC Eligible Exchange Account, unless prior to the hour of such export FortisBC has notified BC Hydro (in accordance with procedures agreed upon by the Parties, failing which agreement, either Party may submit

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the matter for dispute resolution in accordance with Section 7) that such export is not an export of Eligible Energy.

3.4. Eligible Energy

For purposes of this Agreement, "Eligible Energy" is, subject to Section 3.5, energy that is derived from any or all of the following:

- (a) Electricity acquired by FortisBC from the wholesale energy markets outside of British Columbia which is scheduled and delivered into the FBC Service Territory;
- (b) Electricity acquired from a FortisBC customer that has self-generation, to the extent such purchases demonstrably do not result in increased purchases of Electricity under the Power Purchase Agreement;
- (c) Electricity acquired from generation facilities within British Columbia that are not directly connected to the Entitlement Parties' System, which is scheduled and delivered into the FBC Service Territory;
- (d) Electricity acquired from the wholesale energy market within British Columbia which is scheduled and delivered into the FBC Service Territory, to the extent not more specifically addressed in Section 3.4(c);
- (e) Electricity acquired from generation facilities in the FBC Service Territory constructed or acquired by a third party or by FortisBC, or in which FortisBC acquires or holds an ownership interest, in each case after October 1, 2013;
- (f) Entitlement Energy acquired by FortisBC from another Entitlement Party, other than Entitlement Energy purchased by FortisBC pursuant to the Brilliant Power Purchase Agreement, provided that (i) such energy has never been FBC Entitlement Energy, and (ii) the receipt of such energy is notified to BC Hydro in advance and recorded as a usage of Entitlement Capacity of such other Entitlement Party under the Canal Plant Agreement; and
- (g) other Electricity not described in Section 3.4(a) through (f), by agreement between the Parties, that demonstrably does not result in increased purchases of Electricity under the Power Purchase Agreement;

provided that energy shall not be Eligible Energy unless (i) if generated within the FBC Service Territory, (A) it is telemetered (and the telemetered data is made available to BC Hydro) and (B) if FortisBC's acquisition is less than all of the telemetered generation, or metered net flow, from the applicable facility, FortisBC has pre-notified BC Hydro (in the manner agreed between the Parties, failing which agreement, either Party may submit the matter for dispute resolution in accordance with Section 7) of the amount purchased from the facility each hour, and (ii) if delivered into the FBC Service Territory, it is

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scheduled and delivered in compliance with the CPA-Related Agreements (as defined in the Master Accounting Agreement).

Energy derived from sources other than those identified in Section 3.4(a) through 3.4(g) shall not be Eligible Energy. For greater certainty, Electricity taken under the Power Purchase Agreement and Imbalance Energy (as defined in the Imbalance Agreement) in any hour shall not be Eligible Energy.

3.5. Storage Facilities

In the event that FortisBC acquires the right to own, operate or otherwise utilize any generating facility within the FBC Service Territory that has the ability to store energy, in any amounts and in any form, (e.g. batteries, pumped storage, storage hydro, etc.) the generation from such facility shall only be Eligible Energy to the extent that the originating source of Electricity for such generation is a source described in Section 3.4 and the Accounting Procedures have been amended to include a procedure for demonstrating that the originating source of Electricity for any such generation is a source described in Section 3.4.

3.6. FBC Eligible Exchange Accounts

For purposes of this Agreement, two accounts shall be established (one for the Storage Draft Season and one for the Storage Refill Season) (the "FBC Eligible Exchange Accounts") to enable the Parties to track the amount of Eligible Energy that is available to be exported in any hour. The FBC Eligible Exchange Accounts shall be subsets of the applicable Exchange Accounts under the Canal Plant Agreement. The balance of Eligible Energy in the applicable FBC Eligible Exchange Account at the end of any hour shall be the sum of:

- (a) the Eligible Account Balance;
- (b) plus, the total amount of Eligible Energy received in the FBC Service Territory in such hour and recorded in the applicable FBC Eligible Exchange Account;
- (c) minus, the total amount of Eligible Energy exported in such hour using WAX Capacity or sold, exchanged or otherwise transferred to another Entitlement Party or other person;
- (d) minus, the total amount of Eligible Energy exported in such hour using Entitlement Capacity other than WAX Capacity in any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement; and
- (e) minus, Eligible Energy used to meet the Service Area Load Requirements in such hour.

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The balance in the applicable FBC Eligible Exchange Account at the end of any hour shall be determined for each hour in accordance with the Accounting Procedures, and the terms and conditions of this Agreement.

The Parties acknowledge and agree that:

- (f) any non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour shall be applied to meet the Service Area Load Requirements in priority to any Entitlement Energy and/or Entitlement Capacity usage;
- (g) notwithstanding the resource stacking order acknowledged in Section 3.6(f), for the purposes of this Agreement, a subsequent calculation shall be completed that deems Eligible Energy acquired by FortisBC to be the last resource used to meet the Service Area Load Requirements such that Eligible Energy can be stored in the applicable FBC Eligible Exchange Account; and
- (h) while the FBC Eligible Exchange Accounts are subsets of the applicable Exchange Accounts under the Canal Plant Agreement, this does not imply that the storage or draft transactions for these accounts will be directly related. For greater certainty it is acknowledged that the aggregate energy stored in the applicable Exchange Accounts can increase, decrease or stay the same while Eligible Energy is being stored in the applicable FBC Eligible Exchange Account.
- (i) Eligible Energy in an FBC Eligible Exchange Account shall be deemed to be available to FortisBC for export at the Point of Supply as defined in the General Wheeling Agreement, unless the Parties agree to a different location.

3.7. FBC Eligible Exchange Account Balance as at certain dates

- (a) If at the time this Agreement becomes effective FortisBC is already operating the FBC Eligible Exchange Accounts pursuant to Section 2.2(b), then for the first hour after the Effective Date the Eligible Account Balance shall be determined as if this Agreement were already in effect during the immediately preceding hour.
- (b) If at the time this Agreement becomes effective FortisBC is not already operating the FBC Eligible Exchange Accounts pursuant to Section 2.2(b), then for the first hour after the Effective Date the Eligible Account Balance shall be deemed to be zero.

3.8. Maximum FBC Eligible Exchange Account balance

The balance in the applicable FBC Eligible Exchange Account at the end of any hour after the Effective Date shall not exceed the lesser of:

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- (a) 93 GWh; or
- (b) the balance, in the aggregate, in the Entitlement Parties' balance in the applicable Exchange Account, plus 46.5 GWh;

as determined in accordance with the Accounting Procedures. For greater certainty, the balance in the applicable FBC Eligible Exchange Account at the end of any hour shall not be less than zero.

In addition, the sum of the FBC Eligible Exchange Account for the Storage Draft Season and for the Storage Refill Season, calculated in accordance with the Accounting Procedures, shall not exceed 93 GWh. If the balance in the applicable FBC Eligible Exchange Account exceeds any of the foregoing limits at the end of any hour, the excess amount shall be deemed to be removed from the applicable FBC Eligible Exchange Account and shall not be Eligible Energy.

The balance in the FBC Eligible Exchange Accounts shall be calculated hourly, and the account limits shall be applied hourly. For purposes only of tracking and applying the hourly FBC Eligible Exchange Account limits under this Agreement, the aggregate balance in the Entitlement Parties' applicable Exchange Accounts shall be calculated hourly, using the same methodology as the accounting methodology described in the Canal Plant Agreement. For this purpose, hourly Aggregate Entitlement Energy shall be determined by dividing monthly Aggregate Entitlement Energy by the number of hours in the month and subtracting adjustments for Unit Outages and Unit Derates (each as defined in the Canal Plant Agreement) for each hour, or in such other manner as may be agreed to by the Parties from time to time to achieve accounting efficiencies.

If the aggregate balance in the Entitlement Parties' applicable Exchange Account exceeds the Exchange Account limits (as provided in the Canal Plant Agreement, but applied hourly) at the end of the hour, then the maximum increase in the FBC Eligible Exchange Account for that hour shall be equal to 46.5 GWh less the aggregate balance in the Entitlement Parties' applicable Exchange Account at the start of that hour, and any excess shall not be Eligible Energy.

Although the Canal Plant Agreement provides for the Exchange Account balances to be calculated at the end of each day, agrees (on its own behalf and not on behalf of any other Entitlement Party) that it will not plan to exceed the foregoing limits with respect to its use of the Exchange Accounts for any hour of any day.

4. REMEDIES FOR BREACH OF AGREEMENT

4.1. Payment for Certain Breaches

- (a) If FortisBC exports, or sells, exchanges or otherwise transfers Electricity in any hour during which FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement in breach of this Agreement, that shall be a "Breach" of this Agreement and for each MWh of Electricity so exported, sold, exchanged or otherwise transferred in Breach of this

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Agreement FortisBC shall pay BC Hydro an amount equal to the higher of (i) 150% of the Mid-Columbia Powerdex Realtime Hourly Index Price, and (ii) the profits earned by FortisBC in respect of any export, sale, exchange or transfer that was a Breach of this Agreement. The payment provided for in this Section 4.1 shall be in addition to the other rights and remedies under this Agreement.

- (b) If FortisBC Breaches this Agreement as described in Section 4.1(a), FortisBC shall promptly provide to BC Hydro all information that BC Hydro reasonably requests to verify the profits earned by FortisBC in respect of any export, sale, exchange or transfer that is a Breach of this Agreement.
- (c) If FortisBC persistently Breaches this Agreement, then, in addition and without prejudice to the other remedies under this Agreement, BC Hydro may apply to the Commission to amend this Agreement to include financial disincentives for Breaching this Agreement that are in addition to and/or different from the payments provided for in Section 4.1(a).
- (d) For greater certainty, if there is a Breach of this Agreement in any hour and a transfer of Imbalance Energy under the Imbalance Agreement in the same hour, FortisBC would be subject to both the payment under Section 4.1(a) and any applicable charge under the Imbalance Agreement.
- (e) If any amount becomes payable by FortisBC to BC Hydro hereunder as a result of a Breach, then BC Hydro may invoice FortisBC for such amount as soon as it becomes known. Invoices shall be due and payable upon receipt.

4.2. Deemed Material Breach

Without limiting what other matters may constitute a Breach of this Agreement or what other Breaches may be material, if

- (a) there occur more than 4 Breaches (regardless of duration) as described in Section 4.1, that each involves more than 4 MWhs in any hour of the Breach, in any Contract Year; or
- (b) there occur one or more Breaches (of any volume) as described in Section 4.1 in more than 24 hours, in the aggregate, in any Contract Year; or
- (c) there occur one or more Breaches, where the aggregate amount of Electricity exported under all Breaches exceeds 75 MWh, in any Contract Year;

then in each such case that shall be deemed to be a material Breach.

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4.3. Exception

Provided FortisBC is complying with its reporting obligations under the Master Accounting Agreement, including the Accounting Procedures thereunder, if there occurs a Breach (an “**Inadvertent Breach**”) that is only discovered through after-the-fact accounting and demonstrably (i) is not intentional, and (ii) could not have been discovered earlier through reasonable diligence, then only the first hour of such Inadvertent Breach shall count for purposes of Sections 4.2(a), 4.2(b), and 4.2(c).

4.4. Reporting of Breach

FortisBC shall self-report to BC Hydro if it becomes aware it has committed a Breach of this Agreement. If BC Hydro becomes aware of an error, omission or discrepancy which is unknown to FortisBC, the disclosure of which would enable FortisBC to avoid a subsequent Breach, but BC Hydro fails to inform FortisBC of the error, omission or discrepancy, then BC Hydro shall not rely on the error, omission or discrepancy to allege a subsequent Breach that could have been avoided had BC Hydro so informed FortisBC. For purposes of this Section 4.4, BC Hydro shall only be considered to become aware of an error, omission or discrepancy if a BC Hydro or Powerex employee involved in administering this Agreement has actual knowledge of the error, omission or discrepancy and the significance of the error, omission or discrepancy for preventing subsequent Breaches.

4.5. Notice of Material Breach/Notice of Suspension

If FortisBC Breaches this Agreement and the Breach is material, or if there are persistent Breaches (in either case, a “**material Breach**”), including any deemed material Breach as described in Section 4.2, BC Hydro may issue a notice (a “**Notice of Material Breach**”) and FortisBC shall have 7 days after delivery of the Notice of Material Breach to satisfy BC Hydro, acting reasonably, that the cause of the material Breach has been or will be addressed to BC Hydro’s reasonable satisfaction within the 7 day period. If FortisBC fails to do so, BC Hydro may issue a further notice (a “**Notice of Suspension**”) and FortisBC’s right to export Eligible Energy during any hour when it is taking Electricity from BC Hydro under the Power Purchase Agreement, and FortisBC’s right to record Eligible Energy in an FBC Eligible Exchange Account or to transfer Eligible Energy from an FBC Eligible Exchange Account, shall, effective on the date specified in the Notice of Suspension, be suspended until such time as FortisBC has established to BC Hydro’s satisfaction, acting reasonably (which may include consideration of previous Breaches and steps taken), that FortisBC has remedied the cause of the material Breach and put procedures in place designed to avoid a recurrence of the material Breach.

4.6. Good Faith Dispute

- (a) If FortisBC in good faith disputes that there has been a material Breach, then FortisBC may, provided it has given notice (a “**Notice of Dispute**”) within the 7 day period referred to in Section 4.5, submit the question for dispute resolution, and BC Hydro shall only issue a Notice of Suspension if the arbitrator agrees that there has been a material Breach. In the case of

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a deemed material Breach referred to in Section 4.2, the arbitrator shall only have the authority to determine whether one or more of the Breaches referred to in Sections 4.2(a), 4.2(b) or 4.2(c) has occurred (and whether the exception in Section 4.3 applies), and not whether the number, frequency or volume of Breaches referred to in those sections give rise to a material Breach.

- (b) If FortisBC in good faith disputes that BC Hydro has acted reasonably in determining that it is not satisfied that the cause of a material Breach has been or will be addressed within 7 days of the relevant Notice of Material Breach then, provided FortisBC has given timely Notice of Dispute, before issuing a Notice of Suspension, BC Hydro's Chief Executive Officer shall give at least 14 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to issue a Notice of Suspension. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to suspend. If they fail to resolve the issues to their mutual satisfaction within such 14 days, BC Hydro may nevertheless issue a Notice of Suspension.

4.7. Termination Right

If:

- (a) FortisBC exports Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour, during a period when its right to do so is suspended pursuant to Section 4.5;
- (b) FortisBC breaches Section 4.5;
- (c) FortisBC's right to export Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour is suspended for more than 30 days in any 12 month rolling period; or
- (d) FortisBC's right to export Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour is suspended more than 2 times during any 12 month rolling period;

then BC Hydro may terminate this Agreement, with the prior approval of the Commission. Before taking steps to terminate this Agreement, BC Hydro's Chief Executive Officer must give at least 30 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to terminate the Agreement. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to terminate. If they fail to resolve the issues to their mutual satisfaction within such 30 days, BC Hydro may apply to the Commission for approval to terminate the Agreement.

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4.8. Deemed Breach

If FortisBC does not provide timely and reliable information and accounting, as required by this Agreement or the Master Accounting Agreement, in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

5. INFORMATION, ACCOUNTING AND AUDITS

5.1. Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to determine or verify exports, amounts of Eligible Energy recorded in the applicable FBC Eligible Exchange Account, the Eligible Account Balance, WAX Capacity and FBC Entitlement Energy in any hour, all billing and payment amounts hereunder, and otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.
- (b) Each Party shall provide access to the books and records described in Section 5.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement as may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for all billings and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

5.2. Audits/Adjustments

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.7(j) of the Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.
- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 4.

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6. CONTRACT REPRESENTATIVES

6.1. Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

6.2. Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

6.3. Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

7. DISPUTE RESOLUTION

7.1. Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 7 in the absence of agreement, or (iii) any proposed amendment to this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 7. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 7.

7.2. Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and shall cause its Contract Representative to negotiate in good faith to resolve the Dispute.

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7.3. Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representative, or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 7.4. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their respective appointed senior executives within 30 days after notification.

7.4. Referral to Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;

in respect of the proposed amendment and the other Party may intervene in such proceeding; and

- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

7.5. Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;

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- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable; and
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

7.6. Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

ACCEPTED: _____

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7.7. Equitable Remedies

The arbitrator shall adjudicate the dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 7.5(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 7.5(a).

8. NOTICES

8.1. Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

(a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

(b) to FortisBC:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.

ACCEPTED: _____

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10th Floor
1111 West Georgia Street
Vancouver, B.C.V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

8.2. Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

8.3. Electronic Notices

As an alternative to the methods of giving notice described in Section 8.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 8.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

9. MISCELLANEOUS

9.1. Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice time shall be of the essence with respect to such obligations.

ACCEPTED: _____

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9.2. No Assignment Without Consent

- (a) Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.
- (b) Without limiting Section 9.2(a), a Party shall not sell, assign or transfer this Agreement or any of its rights, obligations and liabilities hereunder to any other person unless the Power Purchase Agreement is concurrently sold, assigned and transferred to the same person.

9.3. Reduction of FBC Entitlement Energy Upon Sale of Plant(s)

If FortisBC sells, assigns or transfers any of its Plants to a third party then, except to the extent that FortisBC is entitled to purchase Entitlement from the purchaser of such Plant(s), the FBC Entitlement Energy shall be reduced by the amount of Entitlement Energy to which the buyer of the Plant(s) becomes entitled under the Canal Plant Agreement.

9.4. No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any Person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

9.5. Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

9.6. No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 9.6 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

9.7. Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

ACCEPTED: _____

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9.8. Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

9.9. Reliance on Specified Indices

In the event that any provision of this Agreement relies on a specified index to determine or calculate a price or payment pursuant to such provision, and such index (i) ceases to exist or otherwise is no longer published or available to a Party (provided the Party subscribes to receive such index, where subscription is required), or (ii) ceases to be the index predominantly used to establish the market price for the applicable energy product in the applicable market, then the applicable index shall be such index that most closely applies to the provision and approximates the specified index (considering applicable factors, including delivery point, firmness of electricity, time of day and predominant use of such index by market participants), or such other index as the Parties may agree. If the Parties are unable to so agree within 30 days after the specified index ceases to exist or is no longer published or available to a Party or the foregoing notice is given, either Party may refer the matter to dispute resolution pursuant to Section 7.1. An arbitrator appointed under Section 7.5(a) is expressly authorized and directed to select a substitute index based on the foregoing criteria. Pending agreement on or determination of the substitute index, the Party entitled to be paid based on the index shall specify an interim index or pricing method, acting reasonably, and amounts so paid based on such interim index or pricing method shall be adjusted retroactively to the date the index ceased to exist or be published.

9.10. Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

9.11. Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

ACCEPTED: _____

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9.12. Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

9.13. Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

9.14. Restatement of Agreement Dated for Reference May 21, 2013

The Energy Export Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: 

Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

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9.12. Counterpart Execution

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IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By:  _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

ATTACHMENT 4

MASTER ACCOUNTING AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May 26, 2014

ACCEPTED: _____

ORDER NO. _____

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MASTER ACCOUNTING AGREEMENT

THIS AGREEMENT is made as of the 26th day of May, 2014 (the “**Reference Date**”), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir Street,
City of Vancouver, Province of British Columbia

(“**BC Hydro**”)

AND:

FORTISBC INC., a body corporate having an office at 10th Floor,
1111 West Georgia Street, City of Vancouver, Province of British
Columbia

(“**FortisBC**”)

WHEREAS:

- A. BC Hydro, FortisBC, Teck Metals Ltd (“**Teck**”), Brilliant Power Corporation (“**BPC**”), Brilliant Expansion Power Corporation (“**BEPC**”) and Waneta Expansion Limited Partnership (“**WELP**”) are parties to the Canal Plant Agreement, and certain of such parties are parties to the CPA-Related Agreements;
- B. BC Hydro and FortisBC are parties to the Non-CPA-Related Agreements;
- C. BC Hydro acts as the operator of the BC Control Area and the balancing authority in British Columbia and FortisBC operates an integrated generation and transmission system within the BC Control Area;
- D. The Parties have agreed to provide certain information and accounting with respect to both the CPA-Related Agreements and the Non-CPA-Related Agreements; and
- E. The Accounting Procedures established pursuant to this Agreement are intended to be adopted as an Operating Procedure under the Canal Plant Agreement, to the extent they are reasonably necessary to implement the Canal Plant Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) “**Accounting Procedures**” means the accounting procedures attached as Schedule A, including the Appendices thereto, as they may be amended from time to time in accordance with this Agreement;
- (b) “**Agreement**” means this Master Accounting Agreement, as amended, restated and/or supplemented from time to time, and specifically includes the Accounting Procedures;
- (c) “**BC Control Area**” has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the “BC Hydro Balancing Authority area”;
- (d) “**BC Hydro System**” means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties’ System), including all additions and modifications thereto and repairs or replacements thereof;
- (e) “**Brilliant Power Purchase Agreement**” means the agreement made as of the 4th day of April, 1996, between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as “West Kootenay Power Ltd.”), as amended, restated and/or supplemented from time to time;
- (f) “**Business Day**” means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (g) “**Canal Plant Agreement**” means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck, BPC, BEPC and WELP, as amended, restated and/or supplemented from time to time;
- (h) “**Commercial Arrangements**” means the commercial arrangements that are described in Section 3.5 of the Canal Plant Agreement and are in effect from time to time;
- (i) “**Commission**” means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;

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- (j) **“CPA-Related Agreements”** means:
- (i) the Canal Plant Agreement, including the Operating Procedures made pursuant to it;
 - (ii) the BEPC CPA Scheduling Option Agreement made as of the 1st day of July, 2005 and the Teck Cominco CPA Scheduling Agreement made as of the 1st day of July, 2005;
 - (iii) the Commercial Arrangements; and
 - (iv) other agreements that BC Hydro and FortisBC agree to from time to time, each acting in good faith and in a reasonable manner;
- each as they may be amended, restated and/or supplemented from time to time;
- (k) **“Effective Date”** means July 1, 2014, provided that the last of the conditions precedent in Section 2.2 has then been met;
- (l) **“Energy Export Agreement”** means the Energy Export Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (m) **“Entitlement Parties”** means the parties to the Canal Plant Agreement, except BC Hydro;
- (n) **“Entitlement Parties’ System”** means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties’ transmission facilities through facilities owned by BC Hydro;
- (o) **“FBC Entitlement Energy”** means FortisBC’s share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under “FBC Projects”, as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (p) **“FBC Service Territory”** means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties’ System;
- (q) **“General Wheeling Agreement”** means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;

ACCEPTED: _____

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- (r) "Imbalance Agreement" means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (s) "Non-CPA-Related Agreements" means:
 - (i) the Power Purchase Agreement;
 - (ii) the Energy Export Agreement;
 - (iii) the Imbalance Agreement;
 - (iv) the General Wheeling Agreement; and
 - (v) other agreements that BC Hydro and FortisBC agree to from time to time, each acting in good faith and in a reasonable manner;each as they may be amended, restated and/or supplemented from time to time;
- (t) "NERC" means the North American Electric Reliability Corp., or a successor organization;
- (u) "Parties" means the parties to this Agreement and "Party" means either of them;
- (v) "Power Purchase Agreement" means the Power Purchase Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (w) "Reference Date" has the meaning ascribed to it on the first page of this Agreement;
- (x) "WECC" means the Western Electricity Coordinating Council, or a successor organization; and
- (y) "WEPAS" means BC Hydro's Wheeling, Entitlement, Purchases Accounting System, or any future replacement accounting system (by whatever name it is known).

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Accounting Procedures Definitions

In this Agreement, named reports, summaries, forms and similar documents, that are not defined in Section 1.1 or in the Canal Plant Agreement but are defined or described in the

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Accounting Procedures shall be as described in, and shall have the meanings ascribed to them in, the Accounting Procedures.

1.4 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or other subdivision of, or Appendix to, this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND CONDITIONS PRECEDENT

2.1 Term of Agreement

Subject to Section 2.2, the term of this Agreement shall commence on the Effective Date and shall continue until the expiry or termination of the last of the CPA-Related Agreements and the Non-CPA-Related Agreements to expire or terminate.

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2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has, on or before December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties;
- (b) the Power Purchase Agreement has become, or will concurrently become, effective in accordance with its terms; and
- (c) Operating Procedure 20, in the form approved by the Parties as at May 21, 2013 (or in such other form as the Parties may subsequently agree), has been signed on behalf of all parties to the Canal Plant Agreement.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

3. INFORMATION/ACCOUNTING TO BE PROVIDED

3.1 Information/Accounting for Non-CPA-Related Agreements

FortisBC shall obtain and make available to BC Hydro hourly (segregated where reasonably required) energy and capacity information and accounting that BC Hydro reasonably requires to implement the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance by FortisBC with the Non-CPA-Related Agreements in accordance with their respective provisions.

3.2 Information/Accounting for CPA-Related Agreements

- (a) FortisBC shall obtain and make available to BC Hydro (on its own behalf and on behalf of the other Entitlement Parties) hourly (segregated where so provided by the Accounting Procedures or the CPA-Related Agreements) energy and capacity information and accounting that BC Hydro reasonably requires to implement the CPA-Related Agreements and/or to enable BC Hydro to confirm compliance by the other parties to the CPA-Related Agreements (including FortisBC) with those agreements, in accordance with their respective provisions, provided that either (i) the applicable CPA-Related Agreement to which an Entitlement Party whose information and/or accounting is to be provided is a party, contemplates the provision of such information and accounting to BC Hydro, or (ii) the agreement

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and consent of any Entitlement Party whose information and accounting is to be provided by FortisBC has been obtained. FortisBC acknowledges and agrees that agreement and consent by Entitlement Party(ies) to such information and accounting being provided by FortisBC to BC Hydro is evidenced by Operating Procedure 20 in the form agreed between the Parties as at May 21, 2013.

- (b) The Parties acknowledge and agree that the information and accounting required by Operating Procedure 20 is in addition to information and accounting requirements in other current Operating Procedures under the Canal Plant Agreement. If there are direct inconsistencies between the information and accounting required by Operating Procedure 20 and the other current Operating Procedures, the Parties shall use all reasonable efforts to ensure that such current Operating Procedures are amended as may be required to address such inconsistencies.
- (c) The Appendices to the Accounting Procedures set out and describe certain specific data points for information (and whether such information is to be aggregated or segregated) that, as at the Reference Date, the Parties reasonably believe is required for purposes of this Agreement, the CPA-Related Agreements and/or the Non-CPA-Related Agreements. FortisBC shall provide BC Hydro with such information as it relates to FortisBC in accordance with this Agreement. Subject to Section 3.2(a), FortisBC shall provide BC Hydro with such information as it relates to the other Entitlement Parties in accordance with this Agreement.

3.3 BC Hydro Information/Accounting

- (a) BC Hydro shall continue to provide FortisBC with hourly capacity information and accounting using WEPAS, as it may be updated from time to time. Such information and accounting shall be provided monthly, and otherwise as requested or as necessary to resolve accounting and/or billing discrepancies.
- (b) BC Hydro shall make available to FortisBC, from meters that BC Hydro owns or has access to, metering information that FortisBC reasonably requires in order to provide any of the information and accounting contemplated by this Agreement.
- (c) BC Hydro shall provide other information requested by FortisBC that is in BC Hydro's possession or control and that FortisBC reasonably requires to provide any of the information and accounting contemplated by this Agreement.

3.4 FBC Service Territory Load/Resource Accounting/ Metering

- (a) FortisBC shall consolidate and provide to BC Hydro, all information and accounting required to demonstrate the balancing of loads and resources in the FBC Service Territory, including at each "point of interconnection" and "point of supply" under the General Wheeling Agreement. FortisBC shall obtain all necessary information and accounting from the other Entitlement Parties and other third parties (including BC Hydro) to demonstrate the balancing of loads and resources. BC Hydro shall use such information and accounting provided by

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FortisBC, in conjunction with information BC Hydro obtains from other sources, to perform the requisite WEPAS accounting.

- (b) FortisBC shall make available to BC Hydro, from meters that FortisBC owns or has access to, metering information that BC Hydro reasonably requires in order to provide any of the information and accounting contemplated by this Agreement.
- (c) FortisBC shall comply with Operating Procedure 023 under the Canal Plant Agreement, which requires FortisBC to provide BC Hydro (Generation) with a forecast of the load on the Entitlement Parties' System for each hour, and to notify BC Hydro (Generation) of any forecast change in load that exceeds 10 MW, in each case in accordance with the same timelines as provided for in Operating Procedures under the Canal Plant Agreement. The Parties shall from time to time negotiate in good faith to establish a method of timely providing such information that is more efficient than the method provided for in Operating Procedure 023 as at the Reference Date, failing which either Party may submit the matter for dispute resolution in accordance with Section 10.

3.5 Required Information

For greater certainty, FortisBC acknowledges and agrees that hourly energy and capacity information and accounting, including for transactions:

- (a) that use or commit Entitlement Capacity, directly or indirectly; and/or
- (b) that commit capacity, including Entitlement Capacity, for reserves; and/or
- (c) that affect scheduled and/or actual power flows into or out of the Entitlement Parties' System, including imports or exports between the FBC Service Territory and any adjoining control area or balancing authority area, and transfers between the BC Hydro System and the Entitlement Parties' System; and/or
- (d) that involve generation within the FBC Service Territory, that is to be recorded as Eligible Energy under the EEA; and/or
- (e) that involve FortisBC power flows over the BC Hydro System or BC Hydro power flows over the Entitlement Parties' System; and/or
- (f) that involve a transfer of Entitlement Energy and associated Entitlement Capacity that is to be recorded as Eligible Energy under Section 3.4(f) of the Energy Export Agreement;

are reasonably required by BC Hydro to implement the CPA-Related Agreements and the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance with such Agreements in accordance with their respective provisions.

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3.6 Information May be Aggregated, Unless Otherwise Required

- (a) BC Hydro acknowledges and agrees that information and accounting for transactions referred to in Section 3.5 shall be provided (by FortisBC on its own behalf in the case of the Non-CPA Related Agreements, and on behalf of the Entitlement Parties (including FortisBC) in the case of the CPA-Related Agreements) on an aggregated hourly basis unless (i) in the case of the Non-CPA-Related Agreements, BC Hydro reasonably requires such information and/or accounting to be provided on a segregated basis (as between FortisBC, on the one hand, and the Entitlement Parties other than FortisBC, on the other hand) to implement and/or confirm compliance with such agreements and (ii) in the case of the CPA-Related Agreements, BC Hydro reasonably requires such information and/or accounting to be provided on a segregated basis to implement and confirm compliance with such agreement(s) and either (A) the applicable agreement(s), to which an Entitlement Party whose information and/or accounting is to be provided is a party, contemplates the provision of such information and accounting to BC Hydro on a segregated basis, or (B) the consent of any Entitlement Party(ies) (other than FortisBC) whose information and/or accounting is to be provided on a segregated basis by FortisBC has been obtained. FortisBC acknowledges and agrees that consent by the Entitlement Party(ies) to information and accounting being provided on a segregated basis is evidenced by Operating Procedure 20 (in the form agreed between the Parties as at May 21, 2013).

- (b) FortisBC acknowledges and agrees that information and accounting for determining:
 - (i) WAX Capacity usage, and Eligible Energy amounts, (as each of those terms is defined in the Energy Export Agreement) to implement and/or confirm compliance with the Energy Export Agreement;
 - (ii) FBC Entitlement Energy usage and Eligible Energy amounts, if and when FortisBC sells, exchanges, or otherwise transfers FBC Entitlement Energy or Eligible Energy to another Entitlement Party or any other person, to the extent required to confirm compliance with Section 3.1(d) the Energy Export Agreement;
 - (iii) Entitlement usage by or on behalf of an Entitlement Party, to implement and/or confirm compliance with the Commercial Arrangement(s) entered into by that Entitlement Party;
 - (iv) FortisBC imports into and exports from the FBC Service Territory, to the extent required to confirm compliance with any one or more of the Non-CPA Related Agreements; and
 - (v) exports by Entitlement Parties (other than FortisBC) or other persons, to the extent required to confirm compliance with Section 3.1(d) of the Energy Export Agreement; and

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- (vi) transfers of electrical energy that are deemed not to be transfers of Imbalance Energy pursuant to Section 5.4(e) of the Imbalance Agreement, unless the Parties have agreed on an alternative Accounting Procedure for determining such transfers;

must be provided on a segregated hourly basis for both capacity and energy amounts provided, in the case of a transaction described in paragraph (v) above, that the consent of the Entitlement Party(ies) (other than FortisBC) or other person whose information and/or accounting is to be provided on a segregated basis by FortisBC has been obtained. For greater certainty, "segregated" means the information is to be provided separately for a specific Entitlement Party, Plant or contract provision, as applicable to the extent reasonably required by BC Hydro to implement the CPA-Related Agreements or the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance with such agreements in accordance with their respective provisions.

3.7 Timing of Information/Accounting

- (a) Information and accounting to be provided under this Agreement shall be provided "after-the-fact", except where required by the CPA-Related Agreements and/or the Non-CPA-Related Agreements to be provided in advance.
- (b) FortisBC shall provide information and accounting on a daily and weekly (which may be a compilation of after-the-fact daily information) basis as follows:
 - (i) FortisBC shall use reasonable efforts to provide the Hourly CPA Capacity Report and, if applicable, a Contingency Reserve Usage Form and Imbalance Exception Report, in respect of each day by 1200 hours on the Business Day immediately following such day and in any event shall provide such report and form by no later than 1600 hours on the second Business Day following such day; and
 - (ii) FortisBC shall provide the Daily and Hourly CPA Energy Accounting Report, in respect of each week (Monday to Sunday) by no later than 1600 hours on the second Business Day following the end of such week;

A report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that if it includes any estimate, FortisBC shall use reasonable efforts to identify the parts of the report that are estimates.

- (c) BC Hydro shall provide the Monthly WEPAS Capacity Report providing the hourly capacity accounting in respect of each calendar month as soon as reasonably possible, and in any event by no later than the last day of the immediately following month; a report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that any estimate must be identified in such report;

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- (d) FortisBC shall provide the Monthly CPA Energy Accounting Report, the Monthly PPA Summary, the Monthly Imbalance Summary and the Monthly Metering Summary in respect of each calendar month as soon as reasonably possible, and in any event by no later than the last day of the immediately following month; a report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that any estimate must be identified in such report;
- (e) If any report provided under Sections 3.7(c) or 3.7(d) is based on estimates, the Party responsible for providing such report shall finalize such report as soon as possible, and in any event shall finalize it (or initiate dispute resolution pursuant to Section 10 if it involves a dispute that is not resolved) by the end of the calendar month after it was due to be provided;
- (f) BC Hydro shall review and notify FortisBC of any errors, omissions or discrepancies of which it becomes aware in:
 - (i) the Hourly CPA Capacity Report and, if applicable, the Contingency Reserve Usage Form and Imbalance Exception Report, provided by FortisBC in accordance with Section 3.7(b)(i) as soon as reasonably possible and in any event by no later than 5 Business Days after the day on which FortisBC provides such information and accounting to BC Hydro;
 - (ii) the Daily and Hourly CPA Energy Accounting Report provided by FortisBC in accordance with Section 3.7(b)(ii) as soon as reasonably possible and in any event by no later than 8 Business Days after the day on which FortisBC provides such Daily and Hourly CPA Energy Report to BC Hydro; and
 - (iii) the Monthly CPA Energy Accounting Report, the Monthly PPA Summary, the Monthly Imbalance Summary and the Monthly Metering Summary provided by FortisBC in accordance with Section 3.7(d) as soon as reasonably possible and in any event within 20 Business Days of receiving such information and accounting.
- (g) FortisBC shall review and notify BC Hydro of any errors, omissions or discrepancies of which it becomes aware in the Monthly WEPAS Capacity Report provided by BC Hydro in accordance with Section 3.7(c) as soon as reasonably possible and in any event within 10 Business Days of receiving such information and accounting.
- (h) It is acknowledged that the Monthly CPA Energy Reports are based on metered data whereas daily and weekly information is based on telemetered data. Further, after-the-fact information to be included in each Monthly CPA Energy Report may not be known until after the relevant month has ended. Accordingly, there may be slight discrepancies between (i) such monthly reports and (ii) such daily

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and weekly information. Any such discrepancies shall not be reconciled unless the differences are material.

- (i) Subject to Section 3.7(j), a Party may at any time inform the other Party of any material error, omission or discrepancy that it did not discover within the relevant time period described in Section 3.7(f) or 3.7(g), as applicable, and the Parties shall correct any such error, omission or discrepancy and make correcting adjustments and adjusting payments, if any. The Parties shall use good faith efforts to resolve any disputes with respect to such errors or omissions discovered, failing which either Party may submit the matter for dispute resolution in accordance with Section 10 and Section 10.4(e) shall apply.
- (j) If, within 12 months of the date a Party provides any information, accounting or report to the other Party in accordance with Sections 3.7(b), 3.7(c), or 3.7(d), as applicable, neither Party notifies the other of any errors, omissions or discrepancies in such information, accounting or report, then the Parties shall be entitled to assume that such information, accounting or report is accurate, and neither Party shall have any liability to the other Party for any error, omission or discrepancy subsequently discovered in such information or accounting.
- (k) Nothing in this Section 3.7 is intended to affect any obligations under the CPA-Related Agreements or the Non-CPA-Related Agreements that require scheduling notifications, estimated usage or other information to be provided in advance of an operating hour.
- (l) The Parties acknowledge and agree that the times specified in this Section 3.7 for providing reports and for reviewing and notifying a Party of errors, omissions or discrepancies may be adjusted from time to time in the Accounting Procedures by mutual agreement of their Technical Committee representatives, and the adjusted times shall thereupon govern, provided that a Party may, by reasonable notice to the other Party, reinstate the times provided for in this Agreement.

3.8 Coordination of Accounting Systems

The Parties acknowledge that certain of the information and accounting in connection with the CPA-Related Agreements and the Non-CPA-Related Agreements is financially significant to both Parties, is complicated and/or is sequential, with the rights and obligations of the Parties for any time period potentially being impacted by prior information and accounting. Accordingly, the Parties agree to use all reasonable efforts to ensure that information and accounting to be provided by one Party to the other Party under this Agreement is provided in an efficient manner, and to coordinate their respective accounting systems for this purpose, including the utilization of a database software structure where the cost is warranted.

3.9 Costs

All costs of providing information and accounting under this Agreement shall be borne by the Party required to provide same.

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3.10 A Party Remains responsible for Information/Accounting, Notwithstanding Usage by Others

Unless agreed by the other Party, neither Party shall, by engaging a marketing agent, or otherwise providing any or all of its rights under a CPA-Related Agreement or a Non-CPA-Related Agreement (including rights to schedule imports or exports) to a third party, be relieved of responsibility for obtaining and providing the required information and accounting in relation to such agreement in accordance with this Agreement.

3.11 All Reasonable Efforts to Ensure Accuracy

Each Party shall use all reasonable efforts to ensure that information and accounting provided by the Party under this Agreement is complete and accurate and shall, subject to Section 3.7(j), promptly take steps to correct and reconcile any information and accounting that is found to be incomplete or inaccurate.

3.12 Confidentiality and Use of Information

(a) Each Party ("Receiving Party") shall, except with the prior written consent of the other Party ("Providing Party"), keep confidential all information and accounting that is provided by the Providing Party (whether of the Providing Party itself or, where the Providing Party is FortisBC, of an Entitlement Party other than FortisBC, and whether aggregated or segregated) under any of this Agreement, the CPA-Related Agreements and/or the Non-CPA-Related Agreements, and that the Receiving Party reasonably believes the Providing Party intends should be kept confidential, other than information that is or becomes public through no breach of this Agreement by the Receiving Party ("Confidential Information"), and shall limit disclosure of the same to:

- (i) its directors, officers, employees, agents, professional advisors, consultants or affiliates (or any affiliates' respective directors, officers, employees, agents, professional advisors or consultants) who reasonably need such information or accounting for a purpose or purposes contemplated by this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements; or
- (ii) an auditor appointed pursuant to and in accordance with the provisions of this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements.

Each Party will take all reasonable precautions to ensure that any such person to whom such Confidential Information is disclosed abides by the obligation of confidentiality under this Section 3.12(a). Nothing in this Section 3.12(a) shall limit disclosure required by law or in connection with regulatory requirements and/or filings.

(b) Neither Party shall use, or permit any person referred to in Section 3.12(a)(i) to use, Confidential Information provided under this Agreement by the other Party,

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if (i) such Confidential Information is market sensitive at the time of use, and (ii) such use would be contrary to laws, regulations, market rules or policies and procedures applicable to such Party or person, or would unduly discriminate against, or deliberately and unfairly prejudice, the other Party, provided that nothing in this Section 3.12(b) is intended to prevent a Party from enforcing its rights under this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements.

- (c) Nothing in this Section 3.12 is intended to derogate from the obligations of confidentiality under the Canal Plant Agreement with respect to Confidential Information provided pursuant to that agreement

4. ACCOUNTING PROCEDURES

4.1 Parties to Develop and Maintain Accounting Procedures

BC Hydro and FortisBC shall develop and maintain Accounting Procedures from time to time that describe in reasonable detail the capacity and energy information and accounting that is required to be provided by the Parties, whether it is to be hourly, aggregated or segregated and the time and method of providing same, all pursuant to and in accordance with this Agreement.

4.2 Accounting Procedures at Effective Date

The Accounting Procedures as at May 21, 2013 are attached as Schedule A. The Accounting Procedures have been developed to reflect the requirements of this Agreement, which the Parties agree are reasonably required to implement and/or confirm compliance with the CPA-Related Agreements and the Non-CPA-Related Agreements.

4.3 Accounting for GWA Purposes

- (a) There shall be an allocation order of how resources shall be accounted for, and allocated to "points of interconnection" and "points of supply" as defined under the General Wheeling Agreement. The initial allocation order is set out in the Accounting Procedures as at May 21, 2013;
- (b) The allocation order referred to in Section 4.3(a) may be changed by FortisBC only if there is a material change in the CPA-Related Agreements or the Non-CPA-Related Agreements or the Entitlement Parties' System that would adversely affect FortisBC's ability to meet its load at the "points of interconnection" or "point of supply", and provided that FortisBC has given notice to BC Hydro that is adequate in the circumstances.

4.4 Certain Requirements for Accounting Procedures

In addition to the requirements of Section 4.1, the Accounting Procedures in place from time to time shall provide for the following:

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- (a) there shall be one or more stacking orders of how resources shall be accounted for, such stacking orders to be consistent with requirements of this Agreement, the CPA-Related Agreements and the Non-CPA-Related Agreements;
- (b) the Party providing information for transactions shall provide the information on the basis of an hourly scheduling period, unless agreed otherwise by the Parties;
- (c) the Party providing information shall ensure that it is consistent across all timeframes, products and components, as appropriate and applicable;
- (d) FortisBC shall provide all its inputs into the required accounting, including FortisBC's hourly load, imports and exports between the FBC Service Territory and any adjoining control area or balancing authority area, and transfers between the BC Hydro System and the Entitlement Parties' System;
- (e) BC Hydro shall provide all its inputs into the required accounting, including the WEPAS Report;
- (f) FortisBC shall report the amount of reserves it held, and was obligated to hold, under the CPA-Related Agreements;
- (g) FortisBC shall provide unit outage and derate information (including the starting and ending times for outages and derates) with respect to the Entitlement Parties' Plants;
- (h) FortisBC shall provide hourly FBC Eligible Exchange Account (as defined in the Energy Export Agreement) balances;
- (i) for the purposes only of tracking and applying the hourly FBC Eligible Exchange Account limits under Section 3.8 of the Energy Export Agreement, FortisBC shall calculate and provide the hourly aggregate balance in the Entitlement Parties' applicable Exchange Accounts under the Canal Plant Agreement;
- (j) there shall be a process for timely acceptance and sign-off by the Parties on the monthly reports;
- (k) FortisBC shall provide telemetered and metered generation information, and document any differences between telemetered and metered records;
- (l) treatment of station service losses (including WAX) and transmission losses, as appropriate and applicable;
- (m) upon request, each Party shall provide such other information as may be reasonably required to implement the CPA-Related Agreements and the Non-CPA-Related Agreements, and to confirm whether those agreements have been complied with; and

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- (n) each Party shall ensure information and accounting meets legal obligations and is consistent with information filed or provided to regulatory authorities.

4.5 Accounting Procedures Binding on the Parties

The Accounting Procedures in effect from time to time shall be binding on each of the Parties from the date agreed to by the Parties (or determined by an arbitrator if the Parties are unable to agree) until they are modified or replaced in accordance with this Agreement, and the Parties shall take all steps necessary to implement the Accounting Procedures. If any information or accounting that is reasonably required to implement the Non-CPA-Related Agreements and/or the CPA-Related Agreements and/or to enable the other Party to confirm compliance with the CPA-Related Agreements or Non-CPA-Related Agreements in accordance with their respective provisions is not provided for under the Accounting Procedures, the Parties shall, subject to Section 3.2, act reasonably and in good faith to timely provide such information and accounting pending amendments to the Accounting Procedures.

4.6 Accounting Procedures to be Reviewed Periodically, and Amended as Required

The Accounting Procedures shall be reviewed from time to time at the request of a Party if it believes that they do not adequately meet the requirements of this Agreement, if there have been changes to the Non-CPA-Related Agreements, CPA-Related Agreements or if a Party reasonably believes that system, market or operational changes require changes to the Accounting Procedures. Agreed amendments shall become effective on the date specified therein. If the Parties are unable to agree on appropriate amendments to the Accounting Procedures within 90 days of a Party's request, then either Party may submit the matter for dispute resolution in accordance with Section 10.

5. CPA-RELATED AGREEMENTS AND OPERATING PROCEDURE 20

5.1 Accounting Procedures and Operating Procedure 20

It is intended that the Accounting Procedures form a single, integrated document providing for certain information and accounting in respect of both the Non-CPA-Related Agreements and the CPA-Related Agreements. The Canal Plant Agreement provides for the parties to that agreement to develop Operating Procedures from time to time that are reasonably required to implement the Canal Plant Agreement. It is the intent of the Parties that those parts of the Accounting Procedures from time to time that are reasonably required to implement the CPA-Related Agreements will be approved by the parties to the Canal Plant Agreement as Operating Procedure 20 under the Canal Plant Agreement. The Parties shall cause their representatives on the Canal Plant Agreement Operating Committee to vote to adopt Operating Procedure 20 (initially in the form agreed between the Parties as at May 21, 2013) and shall use all reasonable efforts to have the other Entitlement Parties' representatives on the Canal Plant Agreement Operating Committee vote to adopt Operating Procedure 20, as it may be amended from time to time in accordance with this Agreement and/or the Canal Plant Agreement.

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Notwithstanding Section 2.2, the obligations of the Parties under this Section 5.1 shall be effective on May 21, 2013.

5.2 Information/Accounting for CPA-Related Agreements

FortisBC's obligation to provide information and accounting in respect of any CPA-Related Agreements to which it is not a party shall continue only for so long as it continues to be system operator in respect of the Plants of the other Entitlement Parties and the Entitlement Parties' System. If FortisBC ceases to be system operator, it must use commercially reasonable efforts to ensure that this obligation is assumed by the person who replaces FortisBC as the system operator.

5.3 Amendments to Accounting Procedures re: CPA-Related Agreements

If the Accounting Procedures are proposed to be amended from time to time (whether by agreement of the Parties or by determination of an arbitrator under Section 10), then, to the extent the amendments relate to the CPA-Related Agreements, the Parties shall give notice to the other Entitlement Parties under the Canal Plant Agreement. If the other Entitlement Parties (or those Entitlement Parties affected thereby) agree to the amendments, then the Accounting Procedures and Operating Procedure 20 shall be amended accordingly to incorporate the amendments. If the other Entitlement Parties (or those Entitlement Parties affected thereby) do not agree to the amendments, then either Party (as a party to the Canal Plant Agreement) may dispute the failure to agree in accordance with Section 12 of the Canal Plant Agreement on the basis that the proposed amendments are, or are not, reasonably required to implement the CPA-Related Agreements. Regardless of the outcome of dispute resolution under the Canal Plant Agreement, BC Hydro and FortisBC shall nevertheless honour the amendments as between themselves.

6. THIRD PARTY INFORMATION/ACCOUNTING

6.1 Third Party Information

The Parties agree as follows:

- (a) Certain information and accounting which FortisBC makes available, or is obliged to make available, hereunder to BC Hydro is first made available to FortisBC by Entitlement Parties (other than FortisBC) who are party to one or more of the CPA-Related Agreements (the "Third Party Information");
- (b) FortisBC shall use commercially reasonable efforts consistent with its role as agent for the other Entitlement Parties and system operator of the Entitlement Parties' System to ensure that Third Party Information is accurate and timely provided by the other Entitlement Parties and shall cooperate and assist in having errors or issues relating to timely and accurate provision of such information and accounting corrected; and

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- (c) FortisBC shall not be responsible or liable for any loss or damages whatsoever suffered or incurred by BC Hydro, arising from or in connection with BC Hydro's use of or reliance upon, any Third Party Information which FortisBC makes available hereunder to BC Hydro, unless and then only to the extent that such loss or damage is caused by the negligence or wilful misconduct of FortisBC in the collection or provision of such Third Party Information to BC Hydro.

6.2 Limitations on Providing Information

The obligation of a Party (the "Disclosing Party"):

- (a) to obtain and provide information and accounting relating to agreements to which the Disclosing Party is not a party; and
- (b) to permit the other Party to conduct an audit of the Disclosing Party's records and transactions pursuant to Section 7.1 in relation to any agreement to which the Disclosing Party is not a party;

is subject to the relevant other Party first having authorized the Disclosing Party to release the applicable information and accounting to the other Party in relation to such agreement, if such authorization is required. In its dealings with any other relevant party, each Party shall use all reasonable efforts to obtain such authorization. The Disclosing Party shall require as a condition of any agreement it enters into after June 5, 2012 that it be permitted to provide, and the other relevant party be required to provide, the information and accounting described in this Agreement (including the Accounting Procedures) and permit the audit described in Section 7.

6.3 Acknowledgement re CPA-Related Agreements

FortisBC acknowledges that Operating Procedure 20 provides the authorization to disclose information of or relating to the other Entitlement Parties in respect of CPA-Related Agreements.

7. INFORMATION AND AUDITS

7.1 Information

- (a) FortisBC shall keep sufficient books and records in relation to its performance of those of the CPA-Related Agreements and the Non-CPA-Related Agreements to which it is a party, so as to enable an auditor to confirm FortisBC's compliance therewith.
- (b) FortisBC shall keep records of its third party purchases and sales and other transactions as may be required to verify the information and accounting required to be provided under this Agreement.

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7.2 Audits

Either Party (the "Auditing Party") shall be entitled to retain an independent third party auditor to audit the books, records, operations and transactions of the other Party (the "Audited Party"), on a confidential basis, to review the accuracy of information input into the Accounting Procedures and the accuracy, timeliness and appropriateness of the accounting outputs to enable the Auditing Party to confirm whether the Audited Party is in compliance with this Agreement and those of the CPA-Related Agreements and/or the Non-CPA-Related Agreements to which it is a party. The auditor shall not provide commercially sensitive information to the Auditing Party or any other person in the course of the audit or in the report of the results of its audit, but shall provide a report of the results of its audit to the Auditing Party, with a copy to the Audited Party. The Audited Party shall make available to any such auditor all applicable records for purposes of the auditor's review. The Auditing Party shall bear the costs of the audit, unless the audit shows that the Audited Party has failed to comply with this Agreement or any of the CPA-Related Agreements and/or the Non-CPA-Related Agreements to which it is a party, in which case the Audited Party shall pay the cost of the audit.

8. TECHNICAL COMMITTEE

8.1 Establishment of Technical Committee/Members

A Technical Committee shall be established and maintained throughout the term of this Agreement, consisting of two representative of each Party, each of whom shall serve until notice has been given to the other Party of the selection of a successor.

8.2 Alternate Members

Each Party may give notice to the other Party of an alternate who shall serve during the inability or absence of the representative of the Party giving notice.

8.3 Role of Technical Committee

The Technical Committee shall determine all matters relating to administration and operation of this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement, and shall consider and decide questions relating to operations under those agreements, the Accounting Procedures and the method of calculating and accounting for electricity taken, Exports, Point of Delivery allocations, and other similar matters. The Technical Committee:

- (a) may, from time to time, modify, terminate or replace the Accounting Procedures and shall modify, terminate or replace same as may be reasonably required to implement this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement;
- (b) shall make such determinations, take such actions and perform such other roles and responsibilities as are contemplated by this Agreement, or as the parties direct; and

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- (c) shall promptly notify the parties of all modifications or replacements of the Accounting Procedures and other actions and decisions taken by the Technical Committee pursuant to this Agreement.

The Technical Committee may recommend amendments to the Parties, but shall not have the authority to amend this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement, either expressly or by course of conduct

8.4 Coordination with Canal Plant Agreement Operating Committee

Where practical, at least one of a Party's representatives on the Technical Committee shall be one of the Party's representatives on the Operating Committee appointed under the Canal Plant Agreement. In any event, the Technical Committee shall work closely with the Operating Committee under the Canal Plant Agreement and shall work to ensure that operations under this Agreement, the Power Purchase Agreement, the Imbalance Agreement, the General Wheeling Agreement and the Energy Export Agreement are coordinated with the Canal Plant Agreement and that the Accounting Procedures are administered in a coordinated manner with the relevant Operating Procedure(s) under the Canal Plant Agreement.

8.5 Basis for decisions

No decision or action of the Technical Committee shall be effective unless it has been approved by the affirmative votes of all representatives of the Parties or by written instrument signed by all representatives of the Parties. In reaching decisions, the Technical Committee shall attempt to achieve a just and equitable resolution of disagreements consistent with this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement and generally accepted utility practice.

8.6 Meetings

The Technical Committee shall meet (in person at a location convenient to the parties or by telephone or video conference) as often as required to carry out its duties and responsibilities under this Agreement, and at least once each quarter, and shall keep, and promptly forward to each of the parties a copy of, written records of its meetings and determinations. Any Party may require that a meeting of the Technical Committee be held by giving notice of the time and location (or telephone or video conference arrangements) and notice of the topics to be discussed at the meeting, to the other parties at least 10 days prior to the date of the meeting. A quorum for a meeting of the Technical Committee shall be one representative or alternate representative of each Party, except that if a quorum has not been present at two consecutive meetings for which proper notice has been given, the quorum for the next meeting shall be those representatives or alternate representatives in attendance. The Technical Committee shall establish additional rules, procedures and terms of reference governing its own meetings and determinations.

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9. CONTRACT REPRESENTATIVES

9.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Specialist Engineer, Generation Resource Management; and
- (b) for FortisBC, Power Supply Operations Manager.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

9.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

9.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite Contract Representatives under other agreements between the Parties, or representatives of the Operating Committee under the Canal Plant Agreement, to attend meetings.

10. DISPUTE RESOLUTION

10.1 Definition of Dispute

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute"), including: (i) the interpretation of any provision of this Agreement (including the Accounting Procedures); or (ii) the failure to agree whether all or any part of the Accounting Procedures are reasonably required to be amended or replaced and the terms thereof; or (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 10 in the absence of agreement, then a party may give to the other party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 10. All Disputes must be resolved in accordance with the provisions of this Section 10.

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10.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute.

10.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 10.4. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

10.4 Referral to Arbitration

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if any party fails to appoint a senior executive for that purpose, then either party may submit the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia). The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties, or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses, filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;

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- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

10.5 Authority of Arbitrator

If the Dispute involves the Accounting Procedures (including the failure to agree on any proposed amendment, termination or replacement thereof), or relates to a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination, including to amend or replace all or any part of the Accounting Procedures in order to resolve the Dispute, and such Accounting Procedures shall be binding on the Parties, until further amendments are agreed or determined by dispute resolution. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

10.6 Equitable Remedies

The arbitrator shall adjudicate the dispute, and may grant remedies in both law and equity. The parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other party of its obligations under this Agreement. Subject to 10.4(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 10.4(a).

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11. REMEDIES FOR BREACH

11.1 Notice

If a Party (the "Non-Breaching Party") considers that the other Party (the "Breaching Party") has breached this Agreement, including the Accounting Procedures (a "Breach"), and (i) the Breach is material, or (ii) there are persistent Breaches (in each such case, a "material Breach") the Non-Breaching Party may give notice (the "Notice of Breach") to the Breaching Party identifying actions of the Breaching Party that the Non-Breaching Party considers to represent a material Breach. The Breaching Party shall within 15 days respond to the Notice of Breach, advising of the processes, procedures and controls that the Breaching Party shall implement to ensure that such Breaches will not recur in the future, or disputing the Notice of Breach. If the Breaching Party disputes the Notice of Breach, the Notice of Breach and the Breaching Party's response shall be referred for dispute resolution in accordance with Section 10. If the matter is not resolved in accordance with Section 10.2 or Section 10.3, either Party may submit the matter for arbitration pursuant to Section 10.4 and the arbitrator is authorized and directed to determine whether the Breaching Party has committed a material Breach of this Agreement and, if so, the processes, procedures and controls that the Breaching Party must implement to ensure that such Breaches will not recur in the future. In determining what processes, procedures and controls that the Breaching Party must implement, the arbitrator shall consider, among all other relevant factors, the cost to the Breaching Party of implementing such processes, procedures and controls.

11.2 Second Notice

If the Breaching Party acknowledges or an arbitrator determines that the Breaching Party has committed a material Breach of this Agreement and the Non-Breaching Party again considers that the Breaching Party has committed a material Breach of this Agreement, then the Non-Breaching Party may give a further notice ("Second Notice") to the Breaching Party identifying actions of the Breaching Party that the Non-Breaching Party considers to represent a material Breach and the provisions of Section 11.1 shall again apply. If the matter is not resolved in the manner provided for in Section 11.1 and the arbitrator determines that the Breaching Party has committed a material Breach of this Agreement or that any processes, procedures or controls that the Breaching Party was to implement were not satisfactorily implemented, then the Non-Breaching Party may apply to the Commission for remedies that the Non-Breaching Party considers appropriate in the circumstances.

11.3 Remedies under other Agreements Unaffected

The Parties acknowledge and agree that the foregoing remedies are intended to be in addition to any remedies they may have under any of the CPA-Related Agreements or the Non-CPA-Related Agreements.

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11.4 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting as required pursuant to this Agreement in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

12. NOTICES

12.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

- (a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3
- Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

- (b) to FortisBC
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3
- Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

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With a copy to:

FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

12.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

12.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 12.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 12.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

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13. MISCELLANEOUS

13.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

13.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

13.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any Person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

13.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

13.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 13.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

13.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

13.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable,

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shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

13.8 Amendments

- (a) No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission. For greater certainty, an amendment to the Accounting Procedures shall not be considered an amendment to this Agreement.
- (b) Neither Party shall apply to the Commission for approval of or to object to any amendment of the Accounting Procedures agreed to or determined by an arbitrator pursuant to the terms of this Agreement.

13.9 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

13.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

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13.12 Restatement of Agreement Dated for Reference May 21, 2013

The Master Accounting Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: 
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

13.12 Restatement of Agreement Dated for Reference May 21, 2013

The Master Accounting Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.
By:  _____
Authorized Signatory

ACCEPTED: _____

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APPENDIX A

Attached.

ACCEPTED: _____

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COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment B

**RS 3808
Clean**

SCHEDULE 3808 – TRANSMISSION SERVICE – FORTISBC

Availability: This schedule is available to FortisBC in accordance with the terms and conditions of the Agreement between BC Hydro and FortisBC entered into and deemed effective the 1st day of July 2014 (the "Power Purchase Agreement"). The Contract Demand shall not exceed 200 MW in any hour.

Applicable in: For Electricity delivered to FortisBC at each Point of Delivery as defined in the Power Purchase Agreement.

Rate: Demand Charge: \$6.925 per kW of Billing Demand per Billing Month plus

Tranche 1 Energy Price: 4.059¢ per kW.h

Tranche 2 Energy Price: 12.97¢ per kW.h

Billing Demand: The Demand for billing purposes in any Billing Month shall be the greatest of:

1. the maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement, for any hour of the Billing month;
2. 75% of the maximum amount of electricity (in kW) scheduled under the Power Purchase Agreement in any hour in the 11 months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Month); and
3. 50% of the Contract Demand (in kW) for the Billing Month.

If FortisBC has reduced the Contract Demand in accordance with the Power Purchase Agreement, the amount of Electricity specified in Section 2 above may not exceed an amount equal to 100% of the Contract Demand.

Maximum Tranche1 Amount The Maximum Tranche 1 Amount for each Contract Year is 1,041 GW.h.

Scheduled Energy Less Than or Equal to Annual Energy Nomination In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

- (a) The Tranche 1 Energy Price for each kW.h of such Scheduled Energy taken or deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and
- (b) The Tranche 2 Energy Price for each kW.h of such Scheduled Energy taken that exceeds the Maximum Tranche 1 Amount.

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Scheduled Energy Exceeding the Annual Energy Nomination

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each kW.h of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination, but is less than or equal to the Maximum Tranche 1 Amount; and
- (b) 115% of the Tranche 2 Energy Price, for each kW.h of such Scheduled Energy taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

Annual Minimum Take

In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination, and shall be responsible for any Annual Shortfall.

Note:

The terms and conditions under which service is supplied to FortisBC are contained in the Power Purchase Agreement.

Taxes:

The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

Rate Rider:

The Deferral Account Rate Rider as set out in Rate Schedule 1901 applies to all charges payable under this Rate Schedule, before taxes and levies.

Rate Increase:

The Tranche 1 Energy Price and Demand Charge are subject to the same rate adjustments as Schedule 1827. Tranche 2 Energy Price is subject to changes as provided for in the Power Purchase Agreement.

Effective April 1, 2014 the Tranche 1 Energy Price and the Demand Charge under this schedule includes an increase of 9.0% before rounding, approved by BCUC Order No. G-48-14.

ACCEPTED: _____

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COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment C

**TS No. 2
Clean**

AMENDED AND RESTATED WHEELING AGREEMENT

This Amended and Restated Wheeling Agreement is made as of the 26th day of May, 2014, to be effective on the Effective Date.

BETWEEN: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,
having its head office at 333 Dunsmuir Street, Vancouver, British
Columbia

("BC Hydro")

AND: FORTISBC INC., a body corporate having its head office at 10th Floor,
1111 West Georgia Street, Vancouver, British Columbia

("FortisBC")

WHEREAS:

- A. BC Hydro and FortisBC (then known as "West Kootenay Power and Light Company Limited") entered into a general wheeling agreement made as of October 15, 1986 (together with amendments thereto, the "Original GWA");
- B. FortisBC and BC Hydro serve adjacent areas in British Columbia and have various points of electrical system interconnection which permit the transfer of electricity to and from their respective systems;
- C. FortisBC desires to wheel electricity on a firm basis over BC Hydro transmission facilities and on a non-firm basis in certain circumstances;
- D. BC Hydro is willing to wheel electricity for FortisBC under the terms and conditions as are provided for by this Agreement; and
- E. The Parties have recently entered into a Power Purchase Agreement respecting power purchases by FortisBC from BC Hydro, and other associated agreements including the Imbalance Agreement and the Master Accounting Agreement, all of which required them to make certain changes to the Original GWA; and in addition the Parties desire to update the Original GWA, as reflected in this Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

ACCEPTED: _____

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) “**Accounting Procedures**” means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) “**Agreement**” means this Agreement, as amended, restated and/or supplemented from time to time, and any schedules or exhibits referred to in it as being attached to it;
- (c) “**Allocated Resources**” at a Point of Interconnection means the total amount of resources available to FortisBC pursuant to (i) the Power Purchase Agreement, and (ii) this Agreement, including General Wheeling and Emergency Wheeling but excluding any POI Imbalance Wheeling, as allocated to that Point of Interconnection in accordance with the Accounting Procedures. For clarity, unless there is an Energy Deficit or Energy Surplus, the Allocated Resources at a Point of Interconnection will be equal to the Net Obligations at that Point of Interconnection;
- (d) “**Billing Month**” means a calendar month;
- (e) “**Business Day**” means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (f) “**Canal Plant Agreement**” means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;
- (g) “**Commission**” means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
- (h) “**Contract Year**” means, in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2045, the last Contract Year shall end on the earlier termination date;
- (i) “**Creston Point of Interconnection**” has the meaning given to it in Appendix I;

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- (j) **“Effective Date”** means July 1, 2014, provided that the last of the conditions precedent in Section 2.4 has then been met;
- (k) **“electricity”** means inclusively electric capacity and electric energy unless the context requires otherwise;
- (l) **“Emergency Wheeling”** means the transmission by BC Hydro of FortisBC’s electricity from the Point of Supply to a Point of Interconnection in excess of the applicable Nominated Wheeling Demand to serve FortisBC’s Net Obligations at that Point of Interconnection, where such excess is required by FortisBC to meet unforeseen transmission outages or other bona fide emergencies on FortisBC’s transmission system, or is otherwise permitted by Section 4.2(b) or paragraph 2 of Appendix III of this Agreement;
- (m) **“Energy Deficit”** means that FortisBC’s Net Obligations at a Point of Interconnection exceed the amount of its Allocated Resources at that Point of Interconnection, as calculated for that Point of Interconnection pursuant to and in accordance with the Accounting Procedures;
- (n) **“Energy Surplus”** means that FortisBC’s Net Obligations at a Point of Interconnection are negative, as calculated for that Point of Interconnection pursuant to and in accordance with the Accounting Procedures;
- (o) **“Force Majeure”** means any cause which is beyond a Party’s reasonable control, in each case that directly affects the Party’s ability to perform hereunder; a Force Majeure event does not include an act of negligence or intentional wrongdoing or lack of money or credit or economic hardship;
- (p) **“General Wheeling”** means the transmission by BC Hydro of FortisBC’s electricity from the Point of Supply to a Point of Interconnection to serve FortisBC’s Net Obligations at that Point of Interconnection;
- (q) **“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the WECC region;
- (r) **“Imbalance Agreement”** means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with the Power Purchase Agreement, as amended, restated and/or supplemented from time to time;

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- (s) “load” at a Point of Interconnection means the sum of all telemetered generation within the load centre served by that Point of Interconnection less the amount of electricity metered as flowing out of the load centre, calculated in accordance with paragraph 3 of Appendix III;
- (t) “Master Accounting Agreement” means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with the Power Purchase Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (u) “Net Obligations” means the total load at a Point of Interconnection, less any generation at that Point of Interconnection, less all imports scheduled to that Point of Interconnection, plus all exports scheduled from that Point of Interconnection. For clarity, Net Obligations at a Point of Interconnection, where positive, will be equal to the Allocated Resources at that Point of Interconnection plus any POI Imbalance Wheeling to that Point of Interconnection;
- (v) “Nominated Wheeling Demand” means the maximum rate as nominated by FortisBC and at which BC Hydro agrees to provide continuous firm General Wheeling from the Point of Supply to a particular Point of Interconnection during a stated Contract Year;
- (w) “OATT” means BC Hydro’s Open Access Transmission Tariff as approved by the Commission from time to time;
- (x) “Okanagan Point of Interconnection” has the meaning given to it in Appendix I;
- (y) “Parties” means the parties to this Agreement and “Party” means either of them;
- (z) “POI Imbalance Wheeling” means the transmission by BC Hydro of FortisBC’s electricity on a non-firm basis:
 - (i) from the Point of Supply to a Point of Interconnection, in the event of an Energy Deficit at that Point of Interconnection; and
 - (ii) from a Point of Interconnection to the Point of Supply, in the event of an Energy Surplus at that Point of Interconnection;
- (aa) “Point of Interconnection” means a point exclusive of the Point of Supply as specifically identified in accordance with Section 3;
- (bb) “Point of Supply” means the “Kootenay Interconnection” as defined in the Canal Plant Agreement. For purposes of this Agreement, the points of interconnection enumerated in such definition will, except in respect of Sections 4 and 10, be deemed, collectively, to be a single point of supply;

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- (cc) **"Power Purchase Agreement"** means the Power Purchase Agreement between BC Hydro and FortisBC, to be effective July 1, 2014, as amended, restated and/or supplemented from time to time;
- (dd) **"Prime Rate"** means the annual rate of interest designated by the Bank of Montreal as its "prime rate" for Canadian dollar commercial loans to customers in Canada;
- (ee) **"Princeton Point of Interconnection"** has the meaning given to it in Appendix I;
- (ff) **"Rate Schedule 3817"** means Rate Schedule 3817 to BC Hydro's Electric Tariff as approved by the Commission from time to time;
- (gg) **"Term"** has the meaning given to it in Section 2.1;
- (hh) **"Total Transmission Nomination"** means the amount nominated by FortisBC for each Point of Interconnection and accepted by BC Hydro pursuant to Section 6.2 for a stated Contract Year;
- (ii) **"WECC"** means the Western Electricity Coordinating Council, or a successor organization;
- (jj) **"Wheeling"** and all forms of the verb to **"Wheel"** means General Wheeling, Emergency Wheeling or POI Imbalance Wheeling, as applicable; and
- (kk) **"WTS-VAS Loop"** means, collectively, FortisBC's transmission lines connecting its Vaseux Lake and Warfield Terminal Stations.

1.2 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;

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- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or other subdivision of, or Appendix to, this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency;
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party; and
- (h) in the event of any express conflict or inconsistency between this Agreement and the Master Accounting Agreement or the Accounting Procedures, this Agreement shall have priority and prevail.

2. TERM

2.1 Term

Subject to Section 2.4, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until September 30, 2045 and thereafter unless terminated pursuant to Section 2.2. Expiry or early termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Termination and Notice

At any time after October 1, 2039, either Party may notify the other of its intention that this Agreement be terminated and upon giving of such notice, this Agreement shall terminate without further notice or action by either Party, on the last day of September which next follows the passage of five full years from the date of the notice.

2.3 Regulatory Changes

- (a) If, at any time, there occurs a regulatory change that would result in a material incremental cost:
 - (i) to BC Hydro in providing General Wheeling to either (or both) of the Creston Point of Interconnection or the Princeton Point of Interconnection;
or

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- (ii) to FortisBC in taking General Wheeling at either (or both) of the Creston Point of Interconnection or the Princeton Point of Interconnection,

then, notwithstanding Sections 2.1 and 2.2, the Party so affected may notify the other of its intention to terminate General Wheeling to such relevant Point(s) of Interconnection.

- (b) Upon giving of such notice by either Party, General Wheeling and Emergency Wheeling to the specified Point of Interconnection shall terminate without further notice or action by either Party on the last day of September which next follows the passage of five full years from the date of the notice, and subject to Section 6.1(f) such Point(s) of Interconnection shall be deemed to be removed from this Agreement for the purposes of General Wheeling and Emergency Wheeling only.

2.4 Conditions Precedent to Agreement Becoming Effective

This Agreement and any amendments to Rate Schedule 3817 required as a result of this Agreement shall not be effective unless each of the following conditions precedent has, on or before December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* (British Columbia) approving this Agreement, including the amended Rate Schedule 3817 attached as Appendix II, without imposing changes unless acceptable to both Parties; and
- (b) each of the Power Purchase Agreement, Imbalance Agreement and the Master Accounting Agreement has become, or will concurrently become, effective in accordance with its respective terms.

2.5 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement and the amendments to Rate Schedule 3817 contemplated in this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

2.6 Agreement Amends and Restates the Original GWA

The Original GWA, including all technical decisions thereunder, is as of the Effective Date amended and restated in its entirety by this Agreement, provided that such amendment and restatement of the Original GWA shall not relieve either Party from any liability or obligation accrued but unsatisfied thereunder as at the Effective Date, and

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provided that the Nominated Wheeling Demands delivered by FortisBC to and accepted by BC Hydro pursuant to the Original GWA shall continue to apply for the purposes of this Agreement in accordance with Section 6.3(a).

3. POINTS OF INTERCONNECTION AND SUPPLY

The Points of Interconnection between BC Hydro and FortisBC to which electricity may be Wheeled from the Point of Supply (or from which electricity may be Wheeled to the Point of Supply, in the event of an Energy Surplus) under this Agreement are as listed in Appendix I, which may be amended from time to time by agreement between the Parties.

4. INTERCONNECTED OPERATION

4.1 Maintenance of Voltage

BC Hydro shall operate its system facilities to maintain, under normal conditions and in accordance with Good Utility Practice, the voltage at the Point of Supply and each Point of Interconnection within plus or minus 10 percent of the nominal voltage (SOD, 230, 138, 63 kV) assuming that the FortisBC power flow taken at each Point of Interconnection is between unity power factor and 0.95 power factor leading.

4.2 Reactive Power (var) Requirement

- (a) FortisBC shall use its best efforts to plan and operate in accordance with Good Utility Practice to operate at reasonable reactive power (var) flow at the Point of Supply and zero var flow at each Point of Interconnection. If, in BC Hydro's opinion, actual operation indicates that excessive var flows occur at any of these Points, BC Hydro shall have the right to give notice to FortisBC to either rectify the situation or pay for the supply, installation and operation of var flow equipment necessary to rectify the situation.
- (b) During periods of time when the 40 Mvar capacitor bank installed at Vernon Terminal (paid for by FortisBC) is available for service, the var flow that is specified in this Section will be adjusted by the vars that are provided by such 40 Mvar capacitor bank. BC Hydro shall use reasonable efforts to plan the operation of such capacitor bank so that any required outages at Vernon have minimum cost impact on FortisBC. For emergency outages of the capacitor bank, BC Hydro will apply its post-contingency operating criteria in determining the var flow requirements at Vernon Terminal, and FortisBC may request relief under the Emergency Wheeling provisions of this Agreement.

4.3 Loop Operations

The Parties shall operate their respective transmission systems on a closed loop basis, except that the Creston Point of Interconnection and the Princeton Point of Interconnection may each be radially-connected to the FortisBC transmission system. If

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FortisBC desires closed loop operation for the Creston Point of Interconnection and/or the Princeton Point of Interconnection, then:

- (a) FortisBC shall give advance notice to BC Hydro of such desire;
- (b) BC Hydro shall make reasonable efforts to accommodate FortisBC and shall give notice to FortisBC of the times and extent to which closed loop operation will be acceptable to BC Hydro; and
- (c) BC Hydro, in consultation with FortisBC, shall correct for the effect of loop flows by making appropriate adjustments for billing purposes for periods of closed loop operation.

5. PLANNING AND OPERATING INFORMATION

5.1 General Information Requests

BC Hydro and FortisBC agree to cooperate in the full exchange of, and shall provide, such planning and operating information as may be reasonably necessary for the timely and efficient performance of the Parties' obligations or the exercise of the Parties' rights under this Agreement. Such information shall be provided on a timely basis and no reasonable request shall be refused.

5.2 Load-Resource Forecasts

By June 30 of each Contract Year, FortisBC shall provide BC Hydro with a forecast for the next ten Contract Years of loads and resources in its electrical system. Each such forecast shall include programs for resource acquisition, transmission and firm loads, and shall contain such detail as BC Hydro may reasonably require for purposes of planning to meet its obligations under this Agreement.

6. NOMINATIONS

6.1 General Wheeling Nominations

- (a) For each Contract Year during the Term in respect of which nominations are required pursuant to Section 6.3 or 6.4, as applicable, FortisBC shall provide to BC Hydro a proposed Nominated Wheeling Demand for each Point of Interconnection.
- (b) For the Okanagan Point of Interconnection, the proposed Nominated Wheeling Demand for any Contract Year shall not decrease by more than 15% of the Nominated Wheeling Demand for the immediately preceding Contract Year. Subject to the foregoing, the Nominated Wheeling Demand for the Okanagan Point of Interconnection at any time during the Term after October 1, 2014 may be any amount up to 600 MW; but any amount in excess of 600 MW will be

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subject to Section 6.1(c) below and will only be accepted by BC Hydro in its sole discretion.

- (c) Following receipt of a proposed Nominated Wheeling Demand from FortisBC, BC Hydro shall respond within 90 days and shall deliver to FortisBC a notice either (i) accepting such proposed Nominated Wheeling Demand as the Nominated Wheeling Demand for the applicable Point of Interconnection and the applicable Contract Year or (ii) stating the maximum amount that can be wheeled on a firm basis to such Point of Interconnection during that Contract Year by existing BC Hydro facilities and new facilities that are planned to be brought into service.
- (d) BC Hydro shall not be obligated to change its development, operation, maintenance or other plans for its transmission or substation facilities to accommodate FortisBC's General Wheeling requirements under this Agreement in respect of the Creston Point of Interconnection or the Princeton Point of Interconnection, or in respect of the Okanagan Point of Interconnection if any proposed Nominated Wheeling Demand for the Okanagan Point of Interconnection exceeds 600 MW. BC Hydro may consider changes to such plans to accommodate FortisBC's General Wheeling requirements if mutual agreement can be reached on the compensation payable to BC Hydro for the additional costs to be incurred.
- (e) If BC Hydro gives notice to FortisBC that it cannot accommodate a proposed Nominated Wheeling Demand for a particular Contract Year for any Point of Interconnection, then within 30 days after receiving such notice FortisBC may modify any or all of the proposed Nominated Wheeling Demands for that Contract Year. Provided that the new proposed Nominated Wheeling Demands do not exceed the maximums that BC Hydro can accommodate, and subject to Section 6.1(b), the new proposed Nominated Wheeling Demands shall be accepted by BC Hydro as the Nominated Wheeling Demands.
- (f) For greater certainty, POI Imbalance Wheeling will continue to be provided at each Point of Interconnection as long as the Imbalance Agreement remains in effect, and FortisBC must still provide Total Transmission Nominations for each Point of Interconnection and otherwise comply with Section 6.2 and any other relevant terms of this Agreement, even where the Nominated Wheeling Demand for the Point of Interconnection is nil or the Point of Interconnection is deemed to be removed from this Agreement for the purposes of General Wheeling and Emergency Wheeling pursuant to Section 2.3(b).

6.2 Total Transmission Nominations

- (a) Total Transmission Nominations for a Contract Year represent the total firm transmission required at a Point of Interconnection to accommodate the Nominated Wheeling Demand and deliveries under the Power Purchase

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Agreement for that Contract Year at the Point of Interconnection, and the Total Transmission Nomination amount is the aggregate firm import limit for that Point of Interconnection under this Agreement and the Power Purchase Agreement. The firm transmission capacity reserved by BC Hydro for deliveries under the Power Purchase Agreement to a Point of Interconnection will not exceed the "Contract Demand" (as defined in the Power Purchase Agreement).

- (b) For each Contract Year during the Term in respect of which nominations are required pursuant to Section 6.3 or 6.4, as applicable, FortisBC shall provide to BC Hydro a proposed Total Transmission Nomination for each Point of Interconnection.
- (c) Following receipt of a proposed Total Transmission Nomination from FortisBC, BC Hydro shall respond within 90 days and shall deliver to FortisBC a notice either (i) accepting such proposed Total Transmission Nomination as the Total Transmission Nomination for the applicable Point of Interconnection and the applicable Contract Year or (ii) stating the maximum amount that can be accommodated at such Point of Interconnection during that Contract Year by existing BC Hydro facilities and new facilities that are planned to be brought into service.
- (d) BC Hydro shall not be obligated to change its development, operation, maintenance or other plans for its transmission or substation facilities to accommodate Total Transmission Nominations under this Agreement in respect of the Creston Point of Interconnection or the Princeton Point of Interconnection, or in respect of the Okanagan Point of Interconnection if the proposed Total Transmission Nomination for the Okanagan Point of Interconnection exceeds 600 MW. BC Hydro may consider changes to such plans to accommodate FortisBC's requests if mutual agreement can be reached on the compensation payable to BC Hydro for the additional costs to be incurred.
- (e) For the Okanagan Point of Interconnection, the Total Transmission Nomination may be any amount up to 600 MW at any time during the Term; but any amount in excess of 600 MW will be subject to Section 6.2(d) above and will only be accepted by BC Hydro in its sole discretion.
- (f) If BC Hydro gives notice to FortisBC that it cannot accommodate the proposed Total Transmission Nomination for a particular Contract Year for any Point of Interconnection, then within 30 days after receiving such notice FortisBC may modify any or all of the proposed Total Transmission Nominations for that Contract Year. Provided that the new proposed Total Transmission Nominations do not exceed the maximums that BC Hydro can accommodate, the new proposed Total Transmission Nominations shall be accepted by BC Hydro as the Total Transmission Nominations.

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- (g) BC Hydro will only Wheel or deliver, including deliveries under the Power Purchase Agreement, in excess of a Total Transmission Nomination on an as available basis.

6.3 Initial Nominations

- (a) Nominated Wheeling Demands delivered by FortisBC to and accepted by BC Hydro pursuant to the Original GWA for the period from the Effective Date up to and including September 30, 2018 shall continue to apply for the purposes of this Agreement.
- (b) For the first Contract Year of this Agreement, the Total Transmission Nominations will be deemed to be the following:
 - (i) for the Princeton Point of Interconnection: 30 MW;
 - (ii) for the Creston Point of Interconnection: 35 MW; and
 - (iii) for the Okanagan Point of Interconnection: 400 MW.
- (c) Within thirty (30) days after the Effective Date, FortisBC shall provide proposed Total Transmission Nominations for each Point of Interconnection for each of the four Contract Years immediately following the first Contract Year of the Term. Such nominations shall be subject to acceptance by BC Hydro pursuant to Section 6.2 and to the following. FortisBC's proposed Total Transmission Nominations for each of such four Contract Years will be subject to BC Hydro's acceptance after consideration of any constraints on BC Hydro's transmission system. If FortisBC's request cannot be accommodated, FortisBC and BC Hydro will seek to reach agreement, acting reasonably, on the Total Transmission Nomination for each Point of Interconnection for each of the four Contract Years. If the Parties fail to reach agreement on the Total Transmission Nomination for any Point of Interconnection for any one of the four Contract Years, then the Total Transmission Nomination for such Point of Interconnection for that Contract Year will be the same as the Total Transmission Nomination for that Point of Interconnection for the most recently-preceding Contract Year in respect of which the Parties have agreed or, if none has been agreed to, then as for the first Contract Year as set out in Section 6.3(b).

6.4 Nominations in Subsequent Contract Years

- (a) By June 30 in each Contract Year of the Term, FortisBC shall provide proposed Nominated Wheeling Demands and Total Transmission Nominations for each Point of Interconnection for the ensuing fifth Contract Year. Such nominations shall be subject to acceptance by BC Hydro as described in Sections 6.1 or 6.2, as applicable.

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- (b) If FortisBC fails to submit a proposed Nominated Wheeling Demand for a Point of Interconnection by June 30 in any Contract Year, the Nominated Wheeling Demand for that Point of Interconnection for the applicable Contract Year shall be deemed to be:
 - (i) the same as the applicable Nominated Wheeling Demand for the immediately preceding Contract Year, in the case of the Okanagan Point of Interconnection; and
 - (ii) nil, in the case of either the Creston Point of Interconnection or the Princeton Point of Interconnection.

- (c) If FortisBC fails to submit a proposed Total Transmission Nomination for a Point of Interconnection by June 30 in any Contract Year, the Total Transmission Nomination for that Point of Interconnection for the applicable Contract Year shall be deemed to be:
 - (i) the same as the applicable Total Transmission Nomination for the immediately preceding Contract Year, in the case of the Okanagan Point of Interconnection; and
 - (ii) the Total Transmission Nomination for the immediately preceding Contract Year, less the Nominated Wheeling Demand for the immediately preceding Contract Year, in the case of either the Creston Point of Interconnection or Princeton Point of Interconnection.

- (d) If FortisBC fails to submit a proposed Nominated Wheeling Demand or Total Transmission Nomination by June 30 in any Contract Year, resulting in a deemed Nominated Wheeling Demand or Total Transmission Nomination pursuant to Section 6.4(b) or 6.4(c), respectively, then BC Hydro will not unreasonably refuse any subsequent request from FortisBC to change such Nominated Wheeling Demand or Total Transmission Nomination (as the case may be) at any time prior to September 30 of that Contract Year, provided that such subsequently proposed amounts remain subject to acceptance by BC Hydro as described in Sections 6.1 or 6.2, as applicable, and provided further that FortisBC agrees to compensate BC Hydro for any incremental costs or expenses reasonably or necessarily incurred by BC Hydro in reviewing and accepting such subsequent request and changing the applicable Nominated Wheeling Demand or Total Transmission Nomination, as the case may be.

6.5 Studies

BC Hydro will prepare a transmission study in response to the proposed Nominated Wheeling Demands and Total Transmission Nominations submitted by FortisBC for the applicable Contract Year in accordance with this Agreement and will provide the results to FortisBC, which study will provide a forecast of non-firm available transmission

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capacity for the Points of Interconnection for that Contract Year, and BC Hydro may post such study on BC Hydro's transmission website for information purposes at its discretion. As reasonably requested by FortisBC, BC Hydro may complete additional studies for other time periods, or shorter-term transmission studies on a semi-annual basis.

7. GENERAL WHEELING

7.1 General Wheeling Obligation

BC Hydro shall use its best efforts to provide General Wheeling up to the limits defined by the Nominated Wheeling Demands determined under Section 6.1.

7.2 Determination of Volumes

(a) In each hour, the amounts of electricity which BC Hydro Wheels to the Creston Point of Interconnection or the Princeton Point of Interconnection under General Wheeling shall be deemed to be the lesser of:

- (i) the Nominated Wheeling Demand for that Point of Interconnection, plus the amount of any Emergency Wheeling to that Point of Interconnection; and
- (ii) the Net Obligations at that Point of Interconnection less the amount, if any, of scheduled deliveries under the Power Purchase Agreement allocated to that Point of Interconnection in priority to the General Wheeling amount in accordance with the Accounting Procedures,

and shall be calculated for and allocated to that Point of Interconnection in accordance with the Accounting Procedures. For greater certainty, the Accounting Procedures as at the Effective Date do not allocate any scheduled deliveries under the Power Purchase Agreement to either the Creston Point of Interconnection or the Princeton Point of Interconnection in priority to the General Wheeling amount.

(b) In each hour, the amounts of electricity which BC Hydro Wheels to the Okanagan Point of Interconnection under General Wheeling shall be deemed to be the lesser of:

- (i) the Nominated Wheeling Demand for that Point of Interconnection, plus the amount of any Emergency Wheeling to that Point of Interconnection plus 120 MW when the WTS-VAS Loop is in operation; and
- (ii) the Net Obligations at that Point of Interconnection less the amount, if any, of scheduled deliveries under the Power Purchase Agreement allocated to that Point of Interconnection in priority to the General Wheeling amount in accordance with the Accounting Procedures,

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and shall be calculated for and allocated to the Okanagan Point of Interconnection in accordance with the Accounting Procedures. For greater certainty, the Accounting Procedures as at the Effective Date allocate scheduled deliveries under the Power Purchase Agreement to the Okanagan Point of Interconnection in priority to the General Wheeling amount.

- (c) The 120 MW referenced in Section 7.2(b)(i) will not be taken into account for any purpose other than to determine the amount of General Wheeling pursuant to this Agreement.

7.3 Limits of Obligation

BC Hydro shall not be required to provide General Wheeling above the applicable Nominated Wheeling Demands under this Agreement unless otherwise agreed to in writing and in advance by BC Hydro. For greater certainty, any Energy Surplus or Energy Deficit at a Point of Interconnection will result in POI Imbalance Wheeling.

7.4 General Wheeling Rate

FortisBC shall pay for General Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

8. POI IMBALANCE WHEELING

8.1 Obligation to Avoid POI Imbalance Wheeling and to Balance on a Planned Basis

- (a) Notwithstanding the availability of POI Imbalance Wheeling under this Agreement, FortisBC must still plan to balance its Net Obligations and Allocated Resources at each Point of Interconnection and the Point of Supply, and must use all reasonable efforts to ensure that its Net Obligations and Allocated Resources are in fact balanced at each Point of Interconnection and the Point of Supply.
- (b) FortisBC will not plan for an Energy Deficit or an Energy Surplus in any hour, and if an Unexpected Condition (as defined in the Imbalance Agreement) occurs that causes or may cause such an Energy Deficit or an Energy Surplus, then FortisBC shall use all reasonable efforts to avoid, minimize the amount and duration of, and end, such Energy Deficit or Energy Surplus, as the case may be.

8.2 POI Imbalance Wheeling

- (a) If there occurs an Energy Deficit or an Energy Surplus at a Point of Interconnection, BC Hydro will provide POI Imbalance Wheeling.
- (b) No POI Imbalance Wheeling will be available at the Point of Supply.

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- (c) BC Hydro's OATT Schedule 6 (Energy Imbalance) is not available to FortisBC and there will be no application of unauthorized use of BC Hydro's transmission system pursuant to the OATT.

8.3 Determination of Volumes

The amount of POI Imbalance Wheeling in any hour will be the aggregate sum of the absolute values of all Energy Deficits and Energy Surplus at each Point of Interconnection, as calculated in accordance with the Accounting Procedures.

8.4 Reporting

For each event resulting in the use of POI Imbalance Wheeling, FortisBC will:

- (a) use reasonable efforts to provide to BC Hydro a report containing its calculation of the amount of POI Imbalance Wheeling by 1200 hours on the first Business Day following the day on which such event occurs, and in any event FortisBC will provide such report to BC Hydro by no later than 1600 hours on the second Business Day following the day on which such event occurs; and
- (b) provide a report to BC Hydro describing the circumstances resulting in the use of POI Imbalance Wheeling, within five Business Days after the day on which the event occurs.

8.5 Excessive POI Imbalance Wheeling

For any Point of Interconnection, if more than 8 hours or 50 MWh of POI Imbalance Wheeling occurs in a Contract Year, then the Technical Committee will convene to discuss the circumstances regarding the use of POI Imbalance Wheeling, and potential solutions for FortisBC to avoid the use of POI Imbalance Wheeling in future. If the Technical Committee cannot agree on a solution, then either Party may initiate a Dispute pursuant to Section 15, on the basis that repeated or continued use of POI Imbalance Wheeling in excess of the amounts set out in this Section 8.5 is not acceptable and is not contemplated by the POI Imbalance Wheeling provisions of this Agreement.

8.6 POI Imbalance Wheeling Rate

FortisBC shall pay for POI Imbalance Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

9. EMERGENCY WHEELING

9.1 Emergency Wheeling

- (a) BC Hydro shall provide Emergency Wheeling to the extent that the normal operation of BC Hydro's system and service to BC Hydro's customers shall not

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be impaired. FortisBC must advise BC Hydro that FortisBC wishes the Emergency Wheeling provisions of this Agreement to apply to any otherwise unauthorized use of BC Hydro's transmission system as soon as reasonably practicable in the circumstances, but in any event no later than two (2) hours after the occurrence of the relevant event, and must provide an estimate of the amount and duration of Emergency Wheeling required at that time. BC Hydro reserves the right to deny a request for Emergency Wheeling in circumstances which do not satisfy the definition of "Emergency Wheeling" in Section 1.1(k) or where FortisBC has not advised BC Hydro within the two (2)-hour time limit specified in this Section.

- (b) For greater certainty, Emergency Wheeling does not include additional transmission requirements due to planned outages for maintenance and construction.

9.2 Determination of Volumes

In any hour, the amounts of electricity which BC Hydro Wheels to any Point of Interconnection under Emergency Wheeling shall be calculated for and allocated to that Point of Interconnection in accordance with the Accounting Procedures.

9.3 Emergency Wheeling Rate

FortisBC shall pay for Emergency Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

9.4 Reporting

Without limiting the notification requirements in Section 9.1(a), for each event of Emergency Wheeling, FortisBC will use reasonable efforts to provide to BC Hydro a report containing its calculation of the actual amount of Emergency Wheeling by 1200 hours on the first Business Day immediately following the day on which such event occurs, and in any event FortisBC will provide such report to BC Hydro by no later than 1600 hours on the second Business Day following the day on which such event occurs.

10. METERING FACILITIES

10.1 Metering

- (a) Electricity under this Agreement shall be measured and recorded at each Point of Interconnection and at the Point of Supply by energy and demand meters having one hour integrating intervals (or such other intervals as the Parties may from time to time agree), which meters shall be of types approved for revenue metering by the Canadian Department of Consumer and Corporate Affairs and shall comply with the provisions of the *Electricity and Gas Inspection Act* (Canada), as amended from time to time.

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- (b) Each Party shall, if possible, make available to the other Party the second set of secondaries of the metering transformers owned by it for the purpose of installing backup metering, telemetering and control equipment as may be mutually agreed by the Parties and shall provide space for the location of such equipment. In cases where back-up meters are installed, the Parties shall designate one meter to be used for revenue billing.

10.2 Tests of Metering Installations

- (a) Each Party shall, at its expense, test its metering components associated with this Agreement as provided by the *Electricity and Gas Inspection Act (Canada)* and field test the metering installation at least once every two years. If requested to do so, each Party shall make additional tests or inspections of such installations, the expense of which shall be paid by such other requesting Party unless such additional tests or inspections show the measurements of such installations to be registering outside the prescribed limit of error. Each Party shall give reasonable notice of the time when any such test or inspection is to be made to the other Party, who may have representatives present at such test or inspection. Any component of such installations found to be defective or inaccurate shall be adjusted, repaired, or replaced to provide accurate metering.
- (b) If a meter is found to be not functioning accurately, the amount of electricity wheeled shall be determined as provided for in the *Electricity and Gas Inspection Act (Canada)*.

10.3 Access to Equipment and Facilities

- (a) If any equipment or facilities associated with any Point of Supply or Point of Interconnection and belonging to a Party are, or are to be, located on the property of the other Party, a permit to install, test, maintain, inspect, replace, repair, and operate during the Term and to remove such equipment and facilities at the expiration of the Term, together with the right of entry to said property at all reasonable times in such Term, is hereby granted by the other Party.
- (b) Each Party shall have the right by giving suitable notice to enter the property of the other Party at all reasonable times for the purpose of reading any and all meters mentioned in this Agreement which are installed on such property.
- (c) If either Party is required or permitted to install, test, maintain, inspect, replace, repair, remove, or operate equipment on the property of the other, the owner of such property shall furnish the other Party with accurate drawings and wiring diagrams of associated equipment and facilities, or, if such drawings or diagrams are not available, shall furnish accurate information regarding such equipment or facilities. The owner of such property shall notify the other Party of any subsequent modification which may affect the duties of the other Party in regard to such equipment, and furnish the other Party with accurate revised drawings, if possible.

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10.4 Ownership of Facilities

- (a) Except as otherwise expressly provided, ownership of any and all equipment installed or previously installed by either Party on the property of the other Party shall be and remain with the installing Party.
- (b) Each Party shall identify all equipment which is installed by it on the property of the other, by permanently affixing thereto suitable markers plainly stating the name of the owner of the equipment so identified within a reasonable time subsequent to initial installation, and subsequent to any modification of such installation, representatives of the Parties shall jointly prepare an itemized list of said equipment so installed.

10.5 Inspection of Facilities

Each Party may, for any reasonable purpose under this Agreement, inspect the other Party's electric installation at any reasonable time after giving suitable notice. Such inspection, or failure to inspect, shall not render such Party, its officers, agents, or employees, liable or responsible for any injury, loss, damage, or accident resulting from defects in such electric installation, or for violation of this Agreement. The inspecting Party shall observe written instructions and rules posted in facilities and such other necessary instructions or standards for inspection as the Parties agree to. Only those electric installations used in complying with the terms of this Agreement shall be subject to inspection.

11. OTHER RELEVANT INSTRUMENTS

11.1 Accounting Procedures

In the event of any change to the Accounting Procedures that renders calculations required under this Agreement impossible or meaningless, then the Parties agree to negotiate in good faith to restore or replace the applicable provisions of the Accounting Procedures as reasonably required to have the same effect in relation to this Agreement as the provisions replaced prior to such change. If the Parties are unable to agree on the replacement provisions, the matter will be subject to dispute resolution in accordance with the applicable provisions of the Master Accounting Agreement.

11.2 Rates and Agreements

In the event of any change to the Power Purchase Agreement, Imbalance Agreement, BC Hydro's OATT or BC Hydro's Electric Tariff that renders calculations required under this Agreement impossible or meaningless, then the Parties agree to negotiate in good faith an amendment to this Agreement containing such replacement provisions as may reasonably be required to have the same effect as the provisions replaced prior to such change. If the Parties are unable to agree on the replacement provisions, the matter will be subject to dispute resolution in accordance with Section 15.

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12. INVOICES AND PAYMENT

12.1 Invoices

BC Hydro shall render an invoice monthly in respect of any General Wheeling, Emergency Wheeling or POI Imbalance Wheeling provided by BC Hydro under this Agreement in the immediately preceding month, based on best available billing and accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. Invoices shall be due and payable upon receipt.

12.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of General Wheeling, Emergency Wheeling or POI Imbalance Wheeling, are exclusive of all applicable taxes, including federal goods and services tax and provincial sales tax.

12.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may dispute the invoice or the billing or accounting information on which it was based in accordance with Section 15.4. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

12.4 Late Payment

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount will be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

13. TRANSMISSION LOSSES

13.1 Responsibility for Deemed Wheeling Losses

In recognition of the fact that there will be transmission losses associated with General Wheeling, Emergency Wheeling and POI Imbalance Wheeling, the Parties agree that FortisBC shall make up for the amount of the deemed Wheeling losses pursuant to the terms of this Article 13.

13.2 Calculation

Until otherwise agreed, the deemed Wheeling losses in a given hour shall be calculated as 5 percent of the total hourly capacity and energy Wheeled by BC Hydro from the Point of

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Supply to all Points of Interconnection (or from a Point of Interconnection to the Point of Supply in the event of an Energy Surplus). Unless otherwise agreed, Wheeling losses shall be scheduled to BC Hydro at the Point of Supply.

13.3 Obligation to Schedule

During each hour of the Term, FortisBC shall schedule to BC Hydro amounts of firm electricity equivalent to the hourly Wheeling losses calculated to have occurred in the 168th preceding hour. Fractional losses (i.e. less 1 MW/h) shall be truncated and added to losses calculated to have occurred in the hour immediately following such hour, to be scheduled together with such losses.

13.4 Technical Committee Review

From time to time the Technical Committee may review all relevant facts and technical information, and may, if it considers a change justified, revise the percentage to be used thereafter to calculate Wheeling losses.

14. TECHNICAL COMMITTEE

14.1 Establishment of Technical Committee

There shall be established and maintained throughout the Term, a technical committee ("Technical Committee") consisting of one representative of each Party, each of whom shall serve until written notice has been given to the other Party of the selection of his successor.

14.2 Alternates

Each Party may give notice to the other Party of an alternate who shall serve during the inability or absence of the representative of the Party giving notice.

14.3 Authority of Technical Committee

Each Party's representative on the Technical Committee shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Technical Committee shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

14.4 Function and Meetings

The Technical Committee shall determine all matters relating to administration and operation of this Agreement and shall decide questions that arise in operations under this Agreement. The Technical Committee shall meet upon the request of either Party's representative.

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14.5 Resolution

In reaching its decisions, the Technical Committee shall attempt to achieve a just and equitable resolution of any disagreements based on Good Utility Practice and shall not vary or amend the provisions of the Agreement in any way.

14.6 Written Records

The Technical Committee shall keep a written record of its decisions and shall promptly forward to each of the Parties a copy of the written record. Attached as Appendix III are operational considerations resulting from technical decisions made under the Original GWA which will continue to apply under this Agreement.

15. DISPUTE RESOLUTION

15.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 15 in the absence of agreement, or (iv) any proposed amendment to this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 15. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 15.

15.2 Technical Committee to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to the Technical Committee and cause its representative on the Technical Committee to negotiate in good faith to resolve the Dispute. This stage is not necessary where the Dispute has been initiated by the Technical Committee, in which case the Dispute should proceed directly to Section 15.3.

15.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Technical Committee or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 15.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Technical Committee has not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

ACCEPTED: _____

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15.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the expedited dispute resolution process in Section 15.6(e).

15.5 Referral to a Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;in respect of the proposed amendment, and the other Party may intervene in such proceeding; and
- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Arbitration Act* (British Columbia) for resolution.

15.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;

ACCEPTED: _____

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- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

15.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

ACCEPTED: _____

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15.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 15.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 15.6(a).

16. FORCE MAJEURE

Neither Party to this Agreement shall be considered to be in default in the performance of any of its obligations under this Agreement to the extent that performance of those obligations is prevented or delayed by Force Majeure. If either Party is delayed or prevented from its performance at any time by Force Majeure, the Party so prevented or delayed shall give notice to the other Party of the cause of the prevention or delay but notwithstanding giving of that notice, the Party shall promptly and diligently use its best efforts to remove the cause of the prevention or delay.

17. INTERRUPTION OF TRANSMISSION

17.1 No Warranty of Continuous Transmission

BC Hydro does not warrant continuous or uninterrupted transmission of electricity or the maintenance of unvaried frequency or voltage.

17.2 Request to Suspend or Reduce

At any time, in the event there is a transmission outage or emergency on BC Hydro's transmission system, whether actual or apprehended by BC Hydro, BC Hydro may request FortisBC to curtail Wheeling. If FortisBC does not curtail Wheeling as requested, BC Hydro may suspend or reduce the Wheeling of electricity under this Agreement to FortisBC. BC Hydro shall use its reasonable efforts to advise FortisBC and to curtail service to FortisBC on a pro-rata basis with other BC Hydro transmission customers.

18. LIABILITY/INDEMNITY

18.1 Liability

- (a) All responsibility of BC Hydro for electricity Wheeled under this Agreement shall cease at the applicable Point of Interconnection.
- (b) Neither Party, its servants or agents, shall be liable to the other Party for any loss, injury, damages or expense of the other Party caused by or resulting from any suspension, discontinuance or defect in the transmission of electricity, or the

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maintenance of unvaried frequency or voltage alleged or caused by an act or omission of the other Party, its servants or agents.

18.2 Indemnity

FortisBC shall indemnify BC Hydro and save it harmless from any and all claims from FortisBC's customers or other third parties in connection with the transmission of, or any suspension, discontinuance or defect in the transmission of, electricity, or the maintenance of unvaried frequency or voltage, by BC Hydro under this Agreement.

19. NOTICES

19.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement (except for any advice or request given by FortisBC pursuant to Section 9.1(a)) shall be in writing, and shall be sufficient in all respects if delivered, or if sent by fax, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

(a) BC Hydro:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Vice President, Grid Operations
Fax Number: (604) 623-3578

With a copy to:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Fax Number: (604) 623-3606

(b) FortisBC:

FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.

ACCEPTED: _____

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COMMISSION SECRETARY

V6E 4M3

Attention: Vice-President, Energy Supply
Fax Number: (604) 592-7620

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

19.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by fax, on the Business Day next following the date of transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within seven days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by fax.

19.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 19.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 19.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

20. MISCELLANEOUS

20.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

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20.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

20.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

20.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

20.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement.

20.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

20.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act* (British Columbia), as amended or re-enacted from time to time, and (b) to the jurisdiction of the Commission.

20.8 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in

ACCEPTED: _____

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COMMISSION SECRETARY

accordance with its authority under the *Utilities Commission Act* (British Columbia), either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

20.9 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

20.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

20.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

20.12 Restatement of Agreement Dated for Reference July 16, 2013

The Amended and Restated Wheeling Agreement dated for reference July 16, 2013, and filed with the Commission on July 16, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: _____
Authorized Signatory

FORTISBC INC.
Per:  _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

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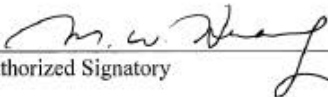
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IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: 
Authorized Signatory

FORTISBC INC.

Per: _____
Authorized Signatory

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

APPENDIX I

POINTS OF INTERCONNECTION

The Points of Interconnection between BC Hydro and FortisBC to or from which electricity may be Wheeled under this Agreement are as follows:

- (a) FortisBC's 230 kV bus at the Lambert Substation (the "**Creston Point of Interconnection**").
- (b) BC Hydro's 230 kV bus at the Vernon Substation (the "**Vernon Delivery Point**"), and the point where BC Hydro's 500 kV bus interconnects with FortisBC's 500 kV transformer disconnects at the Vaseux Lake Terminal Station (the "**VAS Delivery Point**", and collectively with the Vernon Delivery Point, the "**Okanagan Point of Interconnection**"). For the purposes of this Agreement, Wheeling at the Okanagan Point of Interconnection will be summed and treated as a single delivery point.
- (c) FortisBC's tap on BC Hydro's transmission line 1L251 near Princeton (the "**Princeton Point of Interconnection**").

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

APPENDIX II
RATE SCHEDULE 3817

See attached.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

SCHEDULE 3817 – WHEELING SERVICE – FORTISBC INC.

Availability: This schedule is available to FortisBC Inc. for the Wheeling of electricity over BC Hydro's transmission facilities in accordance with the terms and conditions of the Amended and Restated Wheeling Agreement entered into between BC Hydro and FortisBC Inc. and deemed effective the 1st day of July 2014 (the "Amended and Restated Wheeling Agreement").

Applicable in: The Point of Supply and the Points of Interconnection specified in the Amended and Restated Wheeling Agreement.

CPI Adjustment: Each Contract Year, the applicable rates for General Wheeling and Emergency Wheeling to each Point of Interconnection identified in this Rate Schedule will be adjusted by increasing the prior Contract Year's applicable rates by the annual rate of inflation as published by Statistics Canada using the British Columbia Consumer Price Index (all items) for the month of July preceding the commencement of the Contract Year in which the adjustment will apply. These adjustments will become effective at the commencement of the next Contract Year on October 1 of that calendar year, and the adjusted rates will be posted on BC Hydro's transmission website.

Annual General Wheeling Rates: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, for the purposes of calculating the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the Contract Year commencing October 1, 2013, the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the prior Contract Year are:

1. Point of Supply to Creston Point of Interconnection
\$13,411.12 per MW of Nominated Wheeling Demand
2. Point of Supply to Okanagan Point of Interconnection
\$20,578.55 per MW of Nominated Wheeling Demand
3. Point of Supply to Princeton Point of Interconnection
\$54,874.45 per MW of Nominated Wheeling Demand

Monthly Charge: The monthly charge shall be one twelfth of the above annual rate per MW of Nominated Wheeling Demand for each Point of Interconnection.

Nominated Wheeling Demand: The maximum amount of electricity, as determined in Section 6.1 of the Amended and Restated Wheeling Agreement, that BC Hydro will Wheel for FortisBC, Inc. under General Wheeling to each Point of Interconnection during a stated Contract Year.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

POI Imbalance Wheeling: A rate shall be charged for each MW of POI Imbalance Wheeling that is equal to 200% of the then-current maximum rate that would apply to FortisBC Inc. under Schedule 01 of BC Hydro's Open Access Transmission Tariff for Hourly Non-Firm Point-To-Point Transmission Service.

Emergency Wheeling: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, a rate of 0.110¢ per kW.h shall be charged for each kW.h of Emergency Wheeling. This charge would only apply to Wheeled energy which cannot be accommodated within the limits of the Nominated Wheeling Demand applicable to the Point of Interconnection, and which meets the criteria for Emergency Wheeling in accordance with the Amended and Restated Wheeling Agreement.

Note: The terms and conditions under which Wheeling is provided to FortisBC Inc. are contained in the Amended and Restated Wheeling Agreement. All terms capitalized above are defined in the Amended and Restated Wheeling Agreement.

Taxes: The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

APPENDIX III

OPERATIONAL CONSIDERATIONS FROM PRIOR TECHNICAL DECISIONS
AND ACCOUNTING PROCEDURES

1. At any time during the term of this Agreement, BC Hydro's obligations hereunder at the Vernon Delivery Point and the VAS Delivery Point, respectively, will be limited to the planned capability of the Vernon Delivery Point or the VAS Delivery Point, as the case may be, provided that the aggregate planned capability of the Vernon Delivery Point and the VAS Delivery Point is at least equal to: (i) 400 MW prior to September 30, 2014; and (ii) 600 MW thereafter. If and for so long as the aggregate planned capability of the Vernon Delivery Point and the VAS Delivery Point is less than such amount, this limitation will not apply.
2. For every hour during which the Parties' systems are transitioning from open-loop to closed-loop, or from closed-loop to open-loop, configuration at the Okanagan Point of Interconnection the systems will, for purposes of all immediate operating considerations, be deemed to be operating on an open-loop basis for the entire hour. Detailed calculations of loads and deemed transfers on FortisBC's No. 48 Line at Bentley will be performed manually on an after-the-fact basis. During any such transitioning BC Hydro will provide required Emergency Wheeling in accordance with then current practices under this Agreement.
3. The calculation of the load at the three load centres served by the Points of Interconnection is done as follows:
 - (a) For the Princeton Point of Interconnection, the load is the sum of all telemetered generation in the Princeton area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Princeton Point of Interconnection;
 - (b) For the Creston Point of Interconnection, the load is the sum of all telemetered generation in the Creston area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Creston Point of Interconnection; and
 - (c) For the Okanagan Point of Interconnection, the load is the sum of all telemetered generation in the Okanagan area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Okanagan Point of Interconnection, plus the telemetered amount of electricity flowing from South Slocan to the Okanagan as measured on FortisBC's No. 48 Line at Bentley if the WTS-VAS Loop is in operation, less the Duck Lake load.

For the purposes of these calculations, the "Entitlement Parties' System" shall have the meaning ascribed thereto in Canal Plant Agreement.

ACCEPTED: _____

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COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment D

**RS 3817
Clean**

SCHEDULE 3817 – WHEELING SERVICE – FORTISBC INC.

Availability: This schedule is available to FortisBC Inc. for the Wheeling of electricity over BC Hydro’s transmission facilities in accordance with the terms and conditions of the Amended and Restated Wheeling Agreement entered into between BC Hydro and FortisBC Inc. and deemed effective the 1st day of July 2014 (the “Amended and Restated Wheeling Agreement”).

Applicable in: The Point of Supply and the Points of Interconnection specified in the Amended and Restated Wheeling Agreement.

CPI Adjustment: Each Contract Year, the applicable rates for General Wheeling and Emergency Wheeling to each Point of Interconnection identified in this Rate Schedule will be adjusted by increasing the prior Contract Year’s applicable rates by the annual rate of inflation as published by Statistics Canada using the British Columbia Consumer Price Index (all items) for the month of July preceding the commencement of the Contract Year in which the adjustment will apply. These adjustments will become effective at the commencement of the next Contract Year on October 1 of that calendar year, and the adjusted rates will be posted on BC Hydro’s transmission website.

Annual General Wheeling Rates: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, for the purposes of calculating the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the Contract Year commencing October 1, 2013, the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the prior Contract Year are:

1. Point of Supply to Creston Point of Interconnection
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\$20,578.55 per MW of Nominated Wheeling Demand
3. Point of Supply to Princeton Point of Interconnection
\$54,874.45 per MW of Nominated Wheeling Demand

Monthly Charge: The monthly charge shall be one twelfth of the above annual rate per MW of Nominated Wheeling Demand for each Point of Interconnection.

Nominated Wheeling Demand: The maximum amount of electricity, as determined in Section 6.1 of the Amended and Restated Wheeling Agreement, that BC Hydro will Wheel for FortisBC, Inc. under General Wheeling to each Point of Interconnection during a stated Contract Year.

ACCEPTED: _____

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COMMISSION SECRETARY

POI Imbalance Wheeling: A rate shall be charged for each MW of POI Imbalance Wheeling that is equal to 200% of the then-current maximum rate that would apply to FortisBC Inc. under Schedule 01 of BC Hydro's Open Access Transmission Tariff for Hourly Non-Firm Point-To-Point Transmission Service.

Emergency Wheeling: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, a rate of 0.110¢ per kW.h shall be charged for each kW.h of Emergency Wheeling. This charge would only apply to Wheeled energy which cannot be accommodated within the limits of the Nominated Wheeling Demand applicable to the Point of Interconnection, and which meets the criteria for Emergency Wheeling in accordance with the Amended and Restated Wheeling Agreement.

Note: The terms and conditions under which Wheeling is provided to FortisBC Inc. are contained in the Amended and Restated Wheeling Agreement. All terms capitalized above are defined in the Amended and Restated Wheeling Agreement.

Taxes: The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment E

**TS No. 3
Black-lined**

ATTACHMENT 1

POWER PURCHASE AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May 21, 201326, 2014

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

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POWER PURCHASE AGREEMENT

THIS AGREEMENT is made as of the ~~21st~~^{26th} day of May, ~~2013~~²⁰¹⁴ (the "Reference Date"), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir
Street, City of Vancouver, Province of British Columbia

("BC Hydro")

AND:

FORTISBC INC., a body corporate having an office at
10th Floor, 1111 West Georgia Street, City of Vancouver,
Province of British Columbia

("FortisBC")

WHEREAS:

- A. BC Hydro and FortisBC (then known as "West Kootenay Power Ltd.") entered into a power purchase agreement made as of October 1, 1993 (together with amendments thereto, the "1993 Agreement"), the term of which agreement expires was set to expire on September 30, 2013 but has been extended by agreement between BC Hydro and FortisBC to June 30, 2014; and
- B. BC Hydro has agreed to sell Electricity to FortisBC, and FortisBC has agreed to purchase Electricity from BC Hydro, at the rates and under the terms and conditions specified in this Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) "1993 Agreement" has the meaning ascribed to it in Recital A;
- (b) "Accounting Procedures" means the accounting procedures established from time to time under the Master Accounting Agreement;

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- (c) "Agreement" means this Power Purchase Agreement, as amended, restated and/or supplemented from time to time, and includes any appendices referred to in it as being attached to it;
- (d) "Annual Energy Nomination" means the annual amount of energy (in GWh) that FortisBC nominates for purchase under this Agreement in a Contract Year, in accordance with and subject to Section 5.1;
- (e) "Annual Minimum Take" has the meaning ascribed to it in Section 5.4(a);
- (f) "Annual Shortfall" has the meaning ascribed to it in Section 5.4(b);
- (g) "BC Control Area" has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the "BC Hydro Balancing Authority area";
- (h) "BC Hydro System" means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties' System), including all additions and modifications thereto and repairs or replacements thereof;
- (i) "Billing Demand" has the meaning ascribed to it in Section 8.2;
- (j) "Billing Month" means a calendar month;
- (k) "Breach" has the meaning ascribed to it in Section 14.1(a);
- (l) "Breaching Party" has the meaning ascribed to it in Section 14.1(a);
- (m) "Brilliant Plant" has the meaning ascribed to it in the Canal Plant Agreement;
- (n) "Brilliant Power Purchase Agreement" means the agreement made as of the 4th day of April, 1996 between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as "West Kootenay Power Ltd."), as amended, restated and/or supplemented from time to time;
- (o) "Business Day" means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (p) "Canal Plant Agreement" means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta

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Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;

- (q) **"Commission"** means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act (British Columbia)*, or a successor thereto;
- (r) **"Contract Demand"** means the maximum demand (in MW) that FortisBC may schedule and take under this Agreement in any hour, being 200 MW, unless reduced in accordance with Section 5.6;
- (s) **"Contract Year"** means, ~~in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2033, the last Contract Year shall end on the earlier termination date;~~
- (t) **"Day of Flow"** means the calendar day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, energy which is scheduled to flow, for greater certainty, a Day of Flow is a single calendar day even in the event that two or more calendar days are scheduled during the same Preschedule Day;
- (u) **"Demand Charge"** means the monthly demand charge to be paid by FortisBC to BC Hydro for supplying Electricity pursuant to this Agreement, to be determined from time to time in accordance with Section 8;
- (v) **"Effective Date"** means ~~October 1, 2013~~ July 1, 2014, provided that the last of the conditions precedent in Section 2.2 ~~have then~~has been met;
- (w) **"Electricity"** means electric energy and its associated capacity;
- (x) **"Energy Export Agreement"** means the Energy Export Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (y) **"Entitlement Energy"** has the meaning ascribed to it in the Canal Plant Agreement;
- (z) **"Entitlement Parties"** means the parties to the Canal Plant Agreement, except BC Hydro;
- (aa) **"Entitlement Parties' System"** means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all

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additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties' transmission facilities through facilities owned by BC Hydro;

- (bb) "Exchange Accounts" has the meaning ascribed to it in the Canal Plant Agreement;
- (cc) "export", and all forms of the verb "to export", means any transaction whereby Electricity is determined and calculated in accordance with the Accounting Procedures to transfer out of the FBC Service Territory, and without netting such transfers against concurrent imports, but specifically excludes the following:
 - (i) wheeling losses scheduled to BC Hydro;
 - (ii) Coordination Transfers to BC Hydro under the Canal Plant Agreement; and
 - (iii) such other exceptions as the Parties may agree to from time to time, acting reasonably;
- (dd) "Force Majeure" means any cause which is beyond a Party's reasonable control, in each case that directly affects the Party's ability to perform hereunder; a Force Majeure event does not include an act of negligence or intentional wrongdoing or lack of money or credit or economic hardship;
- (ee) "FBC Entitlement Energy" means FortisBC's share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under "FBC Projects", as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (ff) "FBC Service Territory" means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (gg) "Final Notice of Pending Complaint" has the meaning ascribed to it in Section 14.1(d);
- (hh) "Freshest Period" means the period from May 1 through July 31 in each year;
- (ii) "General Wheeling Agreement" or "GWA" means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;

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- (jj) **"Imbalance Agreement"** means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (kk) **"Imbalance Energy"** has the meaning ascribed to it in the Imbalance Agreement;
- (ll) **"Interconnection Agreement"** means the interconnection agreement entered into between BC Hydro and FortisBC dated May 16, 2013, as amended, restated and/or supplemented from time to time;
- (mm) **"Master Accounting Agreement"** means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (nn) **"material Breach"** has the meaning ascribed to it in Section 14.1(a);
- (oo) **"Maximum Tranche 1 Amount"** means 1041 GWh each Contract Year;
- (pp) **"NERC"** means the North American Electric Reliability Corp., or a successor organization;
- (qq) **"Notice of Material Breach"** has the meaning ascribed to it in Section 14.1(a);
- (rr) **"Notice of Pending Complaint"** has the meaning ascribed to it in Section 14.1(c);
- (ss) **"OATT"** means BC Hydro's Open Access Transmission Tariff as approved by the Commission from time to time;
- (tt) **"Other Party"** has the meaning ascribed to it in Section 14.1(a);
- (uu) **"Parties"** means the parties to this Agreement and **"Party"** means either of them;
- (vv) **"Points of Delivery"** means the Point of Supply and the Points of Interconnection as identified and defined in the General Wheeling Agreement;
- (ww) **"Preschedule"** means a schedule provided by FortisBC to BC Hydro by the Prescheduling Deadline setting out FortisBC's scheduled Electricity purchases under this Agreement for each hour of each of the following Day(s) of Flow, that complies with, and is delivered in accordance with, Section 6.1, and, if a change to any such schedule is provided in

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- compliance with Section 6.1 for any hour, means the schedule as so changed;
- (xx) "Preschedule Day" means a day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, Electricity is scheduled for delivery on one or more Day(s) of Flow; Preschedule Days and their corresponding Day(s) of Flow with respect to NERC holidays and any special scheduling days shall be as set forth in the WECC Preschedule Calendar;
- (yy) "Preschedule Change" means a change to a Preschedule made pursuant to and in accordance with Section 6.2(b);
- (zz) "Prescheduled Energy" means for any hour of a Day of Flow the amount of Electricity to be delivered by BC Hydro to FortisBC pursuant to the Preschedule for that hour;
- (aaa) "Prescheduling Deadline" has the meaning ascribed to it in Section 6.1;
- (bbb) "Prime Rate" means the annual rate of interest designated by the Bank of Montreal as its "prime rate" for Canadian dollar commercial loans to customers in Canada;
- (ccc) "Reference Date" has the meaning ascribed to it on the first page of this Agreement;
- (ddd) "Schedule" means a Preschedule provided by FortisBC to BC Hydro pursuant to Section 6.1 that has become a Schedule pursuant to Section 6.2, setting out FortisBC's scheduled Electricity purchases under this Agreement for the following hour;
- (eee) "Scheduled Energy" means for any hour of a Day of Flow the amount of Electricity to be delivered by BC Hydro to FortisBC pursuant to the Schedule for that hour;
- (fff) "Scheduling Deadline" has the meaning ascribed to it in Section 6.2;
- (ggg) "Service Area Load Requirements" means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;
- (hhh) "Term" has the meaning ascribed to it in Section 2.1;
- (iii) "Tranche 1 Energy" means the volume of energy (in GWh) taken, or deemed to be taken, under this Agreement in any Contract Year that is less than or equal to the Maximum Tranche 1 Amount;

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- (jjj) "Tranche 1 Energy Price" means the price (in \$/MWh) for Tranche 1 Energy, to be determined from time to time in accordance with Section 7.1;
- (kkk) "Tranche 2 Energy" means the volume of energy (in GWh) taken, or deemed to be taken, under this Agreement in any Contract Year that exceeds the Maximum Tranche 1 Amount;
- (lll) "Tranche 2 Energy Price" means the charge (in \$/MWh) for Tranche 2 Energy, to be determined from time to time in accordance with Section 7.2;
- (mmm) "WECC" means the Western Electricity Coordinating Council, or a successor organization; and
- (nnn) "WECC Preschedule Calendar" means the WECC Scheduling Calendar published annually by WECC that identifies certain NERC holidays and any special scheduling days which affect normal preschedule timelines and the days upon which prescheduling will take place to accommodate these identified days.

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or

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other subdivision of, or Appendix to, this Agreement, unless the context otherwise requires;

- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND PURPOSE

2.1 Term of Agreement

Subject to Section 2.2, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until September 30, 2033 unless terminated earlier pursuant to Section 5.6(b) or an order of the Commission. Expiry or early termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement and the amendments to Rate Schedule 3808 contemplated in this Agreement shall not be effective unless each of the following conditions precedent has, on or before ~~October 1, 2013~~ December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, including the amended Rate Schedule 3808 attached as Appendix 1, without imposing changes unless acceptable to both Parties;
- (b) each of the Imbalance Agreement and the Master Accounting Agreement has become, or will concurrently become, effective in accordance with its respective terms; and
- (c) the condition precedent in Section 2.1(a)(i) of the Energy Export Agreement has been, or will concurrently be, satisfied.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement and the amendments to Rate Schedule 3808 contemplated in

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this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

2.4 Agreement Replaces the 1993 Agreement

This Agreement replaces the 1993 Agreement as of the Effective Date; provided that replacement of the 1993 Agreement shall not relieve either Party from any liability or obligation accrued but unsatisfied thereunder as at the Effective Date. ~~The Parties agree that the termination date of the 1993 Agreement is the day prior to the Effective Date of this Agreement.~~

2.5 Purpose/Limitation of use of Scheduled Energy

(a) Electricity taken under this Agreement:

- (i) is to be used solely for the purpose of supplementing FortisBC's resources to enable FortisBC to serve the Service Area Load Requirements and shall not be (A) exported or used to support or enable exports, (B) sold, exchanged or transferred to any person without load, or an obligation to serve load, in the FBC Service Territory, or (C) stored; provided that nothing contained herein shall prohibit FortisBC from storing FBC Entitlement Energy in the Exchange Accounts pursuant to the Canal Plant Agreement;
- (ii) shall not be sold to any FortisBC customer with self-generation facilities, or used by FortisBC to serve any such customer's load, when such customer is selling self-generated Electricity unless a portion of the customer's load equal to or greater than the customer-specific baseline is being served by Electricity that is not Electricity taken under this Agreement, where such customer-specific baseline is as ~~agreed between the Parties (acknowledging that such baseline shall be determined in a manner consistent with how BC Hydro establishes a generator baseline for its own customers), failing which agreement either Party may submit the matter for dispute resolution in accordance with Section 13 determined in accordance with Commission-approved guidelines, and in consultation with the customer; and~~
- (iii) may be sold to any FortisBC customer with self-generation facilities, or used by FortisBC to serve any such customer's load, when such customer (A) is not selling self-generated Electricity, or (B) is selling self-generating Electricity and a portion of the customer's load equal to or greater than the customer-specific

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baseline is being served by Electricity that is not Electricity taken under this Agreement, where such customer-specific baseline is as determined in accordance with Section 2.5(a)(ii).

- (b) For greater certainty, Section 2.5(a)(ii) is intended to prevent FortisBC from increasing its purchases of Electricity under this Agreement if such increased purchases would be a result of FortisBC's customers with self-generation facilities purchasing Electricity from FortisBC at regulated rates and simultaneously selling Electricity at higher rates, except as otherwise approved by the Commission.

2.6 Limitation on Exports While Taking Electricity under this Agreement

- (a) FortisBC shall not export or permit its customers to export (except as permitted under Section 2.5(a)(iii)) any Electricity (including capacity and/or energy comprised therein) in any hour during which FortisBC is taking Electricity from BC Hydro under this Agreement, except during the term of, and to the extent specifically agreed under, and in accordance with, the terms and conditions of, the Energy Export Agreement.
- (b) BC Hydro acknowledges and agrees that nothing in this Agreement affects any right FortisBC has to export Electricity in any hour during which FortisBC is not taking Electricity from BC Hydro under this Agreement, provided such exports are in compliance with any applicable agreements to which FortisBC and BC Hydro are both parties.

3. POINTS OF DELIVERY / INTERCONNECTED OPERATION

3.1 Electricity to be Delivered and Received at Points of Delivery

BC Hydro shall deliver and FortisBC shall take Electricity scheduled under this Agreement at the Points of Delivery. Such deliveries and take shall be deemed to occur and be allocated among the Points of Delivery in accordance with the Accounting Procedures.

3.2 Provision of Generation Reserves

BC Hydro shall be responsible for supplying reserves associated with deliveries of Scheduled Energy to FortisBC under this Agreement.

3.3 Interconnection Agreement

The Parties acknowledge and agree that interconnection related issues as between them shall be governed by the Interconnection Agreement.

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3.4 General Wheeling Agreement

The Parties agree to negotiate in good faith and use all reasonable efforts to reach agreement on and execute amendments to the General Wheeling Agreement that reasonably result from this Agreement and the other agreements referred to in Section 2.2, by the Effective Date. The obligations in this Section 3.4 shall be effective and binding on the Parties as of the date of executing this Agreement, notwithstanding that this Agreement shall not otherwise be effective until the Effective Date.

4. SUPPLY AND USAGE OF ELECTRICITY

4.1 Supply of Electricity

FortisBC may schedule Electricity under this Agreement for any hour up to the Contract Demand in aggregate at the Points of Delivery. BC Hydro shall deliver, and FortisBC shall take and pay for, the Scheduled Energy, subject to and in accordance with this Agreement.

4.2 Electricity is Bundled Product

Electricity to be delivered by BC Hydro to FortisBC under this Agreement shall at all times be energy with associated capacity and such capacity shall be used in the determination of Billing Demand. FortisBC shall not take delivery of energy without associated capacity and shall not take capacity without associated energy.

5. ANNUAL ENERGY NOMINATIONS AND CONTRACT DEMAND

5.1 Annual Energy Nomination

FortisBC may, by notice to BC Hydro provided on or before June 30, 2013 (as if this Agreement were then effective) specify the Annual Energy Nomination for the first Contract Year ~~(commencing October 1, 2013)~~; if FortisBC does not provide such Annual Energy Nomination by June 30, 2013, the Annual Energy Nomination for the first Contract Year shall be deemed to be 1041 GWh. On or before June 30 of each Contract Year, FortisBC shall provide BC Hydro with notice of its Annual Energy Nomination for the Contract Year that commences on the following October 1. If the Annual Energy Nomination for a Contract Year is not received by BC Hydro by June 30 of the immediately preceding Contract Year, then the Annual Energy Nomination for the Contract Year shall be deemed to be the same as the Annual Energy Nomination for the immediately preceding Contract Year.

5.2 Maximum Annual Energy Nomination

The maximum Annual Energy Nomination for any Contract Year shall be the lesser of (i) 1752 GWh, and (ii) the product of the Contract Demand for that Contract Year and 8760 hours.

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5.3 Limitation on Changes to Annual Energy Nomination

- (a) Subject to Section 5.2, the Annual Energy Nomination for any Contract Year shall not be more than 120% of, or less than 80% of, the Annual Energy Nomination for the immediately preceding Contract Year.
- (b) If in respect of a Contract Year FortisBC provides an Annual Energy Nomination that is not in compliance with Section 5.3(a), then FortisBC shall be deemed to have not provided an Annual Energy Nomination for that Contract Year, in which case the Annual Energy Nomination for the Contract Year shall be deemed to be the same as the Annual Energy Nomination for the immediately preceding Contract Year.

5.4 Annual Minimum Take/ Take or Pay

- (a) In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination for that Contract Year, less:
 - (i) Scheduled Energy FortisBC is prevented from taking by a Force Majeure event, as described in Section 6.4(a)(i); and
 - (ii) Scheduled Energy not delivered by BC Hydro, other than by reason of FortisBC's unexcused failure to take the Scheduled Energy, as described in Section 6.4(a)(ii)

(the "Annual Minimum Take").

- (b) The amount of Electricity scheduled and taken by FortisBC in each Contract Year shall be the sum of the Scheduled Energy for each hour of the Contract Year that FortisBC is deemed to have taken pursuant to Section 6.4(a).

If FortisBC schedules and takes an amount of Electricity in any Contract Year that, in the aggregate, is less than the Annual Minimum Take for that Contract Year (the difference in MWh between the Annual Minimum Take and the amount FortisBC schedules and takes, being referred to as the "Annual Shortfall"), then in addition to the amount FortisBC has scheduled and taken, BC Hydro shall also be deemed to have delivered, and FortisBC shall be deemed to have taken and shall pay for, the Annual Shortfall.

- (c) BC Hydro shall have no obligation to deliver the Annual Shortfall, if any, at any future time.
- (d) The price payable for each MWh of the Annual Shortfall shall be the Tranche 1 Price or Tranche 2 Price, as applicable, as determined in accordance with Section 7.3.

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5.5 Single Nomination for all Points of Delivery

The Annual Energy Nomination shall be a single nomination for all Points of Delivery.

5.6 Contract Demand Reduction; Termination

- (a) On or before June 30 of each Contract Year, FortisBC may by notice to BC Hydro reduce the Contract Demand, as follows, to be effective:
 - (i) on October 1 of the 3rd following Contract Year (or earlier by mutual agreement), if FortisBC is building or acquiring new generation resources to serve the Service Area Load Requirements, and
 - (ii) on October 1 of the 2nd following Contract Year, if FortisBC has lost significant load or for any other reason, except if FortisBC is building or acquiring new generation resources to serve the Service Area Load Requirements.

Any such reduction in Contract Demand shall apply for the balance of the Term, unless the Parties mutually agree otherwise by written agreement.

- (b) If by a notice provided pursuant to Section 5.6(a), FortisBC reduces the Contract Demand to zero, then this Agreement shall automatically terminate on the day immediately prior to the effective date of such reduced Contract Demand.

5.7 Power Purchase Agreement may be Amended

The Contract Demand and maximum Annual Energy Nomination may be amended by agreement in writing of the Parties if there is an agreed transfer of load between FortisBC and BC Hydro. Nothing in this Agreement requires either Party to agree to amendments to this Agreement.

6. ELECTRICITY TO BE SCHEDULED

6.1 FortisBC to Preschedule Electricity Requirements

FortisBC shall schedule its Electricity purchases under this Agreement in the following manner:

- (a) by 05:30 hours prevailing Pacific Time (the "Prescheduling Deadline") on each and every Preschedule Day, FortisBC shall provide BC Hydro with a Preschedule (not to exceed the Contract Demand in any hour) for each hour of each of the following Day(s) of Flow;

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- (b) for greater certainty, FortisBC may provide one or more changes to a Preschedule so long as any such change is provided on or before the Prescheduling Deadline;
- (c) Preschedules shall be in such form, and delivered to BC Hydro to such person(s) and in such manner, as BC Hydro may reasonably specify from time to time; and
- (d) if FortisBC does not provide BC Hydro with a Preschedule for any Day of Flow by the Prescheduling Deadline, then FortisBC shall be deemed to have provided a Preschedule the same as the Preschedule submitted for the most recent 'like day'. For this purpose, a 'like day' shall be the same day in the immediately preceding week (for example, the previous Tuesday if the Day of Flow is a Tuesday or the previous Saturday if the Day of Flow is a Saturday); provided that if the same weekday in the preceding week is a BC holiday (for example, the previous Tuesday is a BC holiday), the like day shall be deemed to be the day immediately preceding the BC holiday (or the day immediately following, if the day immediately preceding the BC holiday is itself a holiday or is a weekend day).

6.2 Preschedule Changes

- (a) A Preschedule for an hour, as changed by a Preschedule Change, if any, shall be deemed to become a "Schedule" provided by FortisBC for the purposes of this Agreement, at 10 minutes prior to the deadline in the WECC region for making real time changes (as such deadline is amended from time to time, and which as of the Reference Date is 20 minutes prior to the start of the hour that energy is scheduled to flow) (the "Scheduling Deadline").
- (b) FortisBC may submit a change to a Preschedule after the Prescheduling Deadline but before the Scheduling Deadline, provided that:
 - (i) during the Freshet Period, the Scheduled Energy for any hour may not exceed the Prescheduled Energy (as at the Prescheduling Deadline) for that hour by more than 25 MW, and may not be less than the Prescheduled Energy (as at the Prescheduling Deadline) for that hour;
 - (ii) at any time other than during the Freshet Period, the Scheduled Energy may not exceed, or be less than, the Prescheduled Energy (as at the Prescheduling Deadline) for that hour by more than 25 MW;
 - (iii) after the Prescheduling Deadline, only one change can be made to a Preschedule for any hour; and
 - (iv) if

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- A. a change to a Preschedule after the Prescheduling Deadline would reduce the amount of Scheduled Energy (as compared to the amount of Prescheduled Energy (as at the Prescheduling Deadline)) for any hour, and a change to aggregate Interchange Schedules for that same hour would reduce exports from, or increase imports to, the FBC Service Territory, then the combined magnitude of the change to the Preschedule and the change to the Interchange Schedule shall not exceed the Late Schedule Change Limit;
 - B. a change to a Preschedule after the Prescheduling Deadline would increase the amount of Scheduled Energy (as compared to the amount of Prescheduled Energy (as at the Prescheduling Deadline)) for any hour, and a change to aggregate Interchange Schedules for that same hour would increase exports from, or decrease imports to, the FBC Service Territory, then the combined magnitude of the change to the Preschedule and the change to the Interchange Schedule shall not exceed the Late Schedule Change Limit.
- (c) BC Hydro shall have the right to reject a Preschedule Change for any hour if such Schedule does not comply with the foregoing requirements. A Schedule shall be in such form as the Parties may agree from time to time, acting reasonably, and delivered to BC Hydro to such person(s) and in such manner as BC Hydro may reasonably specify from time to time. Failing agreement on the form of Schedule, either Party may submit the matter for dispute resolution in accordance with Section 13. If BC Hydro rejects a Preschedule Change, then the Scheduled Energy for any hour is deemed to be the Prescheduled Energy (as at the Prescheduling Deadline) for that hour.

6.3 No Changes to Schedules

From and after the Scheduling Deadline, no changes to a Schedule shall be permitted for any reason.

6.4 Take and Pay for Scheduled Energy

- (a) FortisBC shall be deemed to have taken in any hour, and shall pay for, all Scheduled Energy, except if, and only to the extent:
 - (i) FortisBC is prevented from taking Scheduled Energy by a Force Majeure event, provided that FortisBC immediately advises BC Hydro of, and reasonably establishes the occurrence of the Force Majeure event and inability to take Scheduled Energy, and further

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provided that FortisBC has taken all reasonable steps to mitigate the effect of the Force Majeure event and to promptly overcome the Force Majeure event, or

- (ii) BC Hydro fails to deliver Scheduled Energy for any reason, other than by reason of FortisBC's unexcused failure to take the Scheduled Energy.
- (b) BC Hydro shall have no obligation to deliver the untaken Scheduled Energy at any future time
- (c) FortisBC shall have no obligation to pay for Scheduled Energy not delivered by BC Hydro (other than by reason of FortisBC's unexcused failure to take the Scheduled Energy) or not taken by reason of FortisBC being prevented from taking the Scheduled Energy by a Force Majeure event as described in Section 6.4(a)(i).
- (d) The Accounting Procedures shall account for Scheduled Energy that is deemed to be taken as provided for in Section 6.4(a).

6.5 Imbalance Energy

If there is Imbalance Energy in any hour, it shall be dealt with in accordance with the Imbalance Agreement.

7. ENERGY PRICE

7.1 Tranche 1 Energy Price

- (a) The Tranche 1 Energy Price ("Tranche 1 Energy Price") shall be established by Rate Schedule 3808 from time to time and shall reflect the energy charge component of BC Hydro's rate for customers taking Electricity at transmission voltages that are exempted from Rate Schedule 1823 by the Commission. As at the Reference Date, the Parties agree that this rate is represented by BC Hydro's Rate Schedule 1827, as it may be amended from time to time, and as at April 1, 2013 is \$37.24 per MWh (\$0.03724 per kWh).
- (b) If and when the Commission approves changes to the energy charge component of Rate Schedule 1827, the Parties agree that Rate Schedule 3808 shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof. If there is a material change in the underlying design for the energy charge component of Rate Schedule 1827, the Parties shall negotiate in good faith for a replacement rate for the Tranche 1 Energy Price and BC Hydro shall seek approval of the Commission of any agreed rate. If despite good faith negotiations, the Parties are unable to agree, BC Hydro may apply to the Commission for approval of a proposed replacement rate and FortisBC may intervene in

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such proceeding or file a complaint with respect to the proposed replacement rate.

7.2 Tranche 2 Energy Price

- (a) The Tranche 2 Energy Price ("Tranche 2 Energy Price") shall be established by Rate Schedule 3808, from time to time and shall reflect BC Hydro's most recent proxy for long run marginal cost for firm energy (the "LRMC"), as determined by BC Hydro and as accepted by the Commission for rate making purposes, which shall not include an amount on account of distribution losses but shall include an amount on account of transmission losses and an adjustment for inflation. As at the Reference Date, BC Hydro's most recent proxy for the LRMC used for ratemaking purposes is as accepted by the Commission in BC Hydro's 2010 Residential Inclining Block Rate Re-pricing Application. The Parties agree that as at April 1, 2013 the Tranche 2 Energy Price, determined as described above, is \$129.70 per MWh (\$0.1297 per kWh).
- (b) If a new proxy for the LRMC is accepted by the Commission for rate-making purposes, the Tranche 2 Energy Price shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof.
- (c) If the LRMC is no longer used by BC Hydro for rate-making purposes other than for this Agreement, the Parties shall negotiate in good faith for a replacement rate for the Tranche 2 Energy Price and BC Hydro shall seek approval of the Commission of any agreed replacement rate. If despite good faith negotiations, the Parties are unable to agree on a replacement rate, (i) BC Hydro may apply to the Commission for approval of a proposed replacement rate and FortisBC may intervene in such proceeding or file a complaint with respect to the proposed replacement rate, or (ii) if BC Hydro fails to apply to the Commission for approval of a proposed replacement rate, FortisBC may file a complaint with the Commission seeking to change the then existing rate.

7.3 Price for Scheduled Energy Less Than or Equal to Annual Energy Nomination

In any Contract Year, for the amount of Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

- (a) the Tranche 1 Energy Price for each MWh of such Scheduled Energy taken or deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and

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- (b) the Tranche 2 Energy Price for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Maximum Tranche 1 Amount.

7.4 Price for Scheduled Energy Exceeding the Annual Energy Nomination

In any Contract Year, for the amount of Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination but is less than or equal to the Maximum Tranche 1 Amount, and
- (b) 115% of the Tranche 2 Energy Price, for each MWh of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

8. CAPACITY PRICE

8.1 Demand Charge

- (a) In addition to an energy price applicable to Scheduled Energy, FortisBC shall pay a monthly demand charge (in \$ per kW/month) ("Demand Charge") based on its Billing Demand, as determined in accordance with Section 8.2. The Demand Charge shall be established in Rate Schedule 3808 from time to time and shall reflect the demand charge component of BC Hydro's rate for customers taking Electricity at transmission voltages that are exempted from Rate Schedule 1823 by the Commission. As at the Reference Date, the Parties agree that this rate is represented by BC Hydro's Rate Schedule 1827, as it may be amended from time to time, and as at April 1, 2013 is \$6.353 per kW/month.
- (b) If and when the Commission approves changes to the demand charge component of Rate Schedule 1827, the Parties agree that Rate Schedule 3808 shall be amended accordingly and, if required, BC Hydro shall apply to the Commission for approval thereof. If there is a material change in the underlying design for the capacity charge component of Rate Schedule 1827, the Parties shall negotiate in good faith for a replacement rate for the Demand Charge and BC Hydro shall seek approval of the Commission of any agreed rate. If, despite good faith negotiations, the Parties are unable to agree, BC Hydro may apply to the Commission for approval of a proposed replacement rate for the Demand Charge and FortisBC may intervene in such proceeding or file a complaint with respect to the proposed replacement rate.

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8.2 Calculation of Monthly Demand Charge

The Demand Charge for each Billing Month of the Term shall be applied to the highest of the following amounts of Electricity (the "Billing Demand"), in the period specified:

- (a) the maximum amount of Electricity (in kW) scheduled under this Agreement, for any hour of the Billing Month;
- (b) subject as hereinafter provided, 75% of the maximum amount of Electricity (in kW) scheduled under this Agreement in any hour in the 11 months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Billing Month); and
- (c) 50% of the Contract Demand (in kW) for the Billing Month.

If FortisBC has reduced the Contract Demand pursuant to Section 5.6, the amount of Electricity specified in Section 8.2(b) may not exceed an amount equal to 100% of the Contract Demand.

9. PLANNING AND OPERATING INFORMATION

9.1 General Information Requests

BC Hydro and FortisBC agree to cooperate in the full exchange of, and shall provide, such planning and operating information as may be reasonably necessary for the timely and efficient performance of the Parties' obligations or the exercise of rights under this Agreement. Such information shall be provided on a timely basis and no reasonable request shall be refused. FortisBC acknowledges and agrees that planning and operating information related to other agreements may be required by BC Hydro for the purpose of administering and implementing this Agreement.

9.2 Load-Resource Forecasts

By June 30 of each year, FortisBC shall provide BC Hydro with a forecast for the next ten years of (i) loads in the FBC Service Territory and (ii) annual purchases under this Agreement. The forecast shall contain such detail as BC Hydro may reasonably require for purposes of resource planning to meet its obligations under this Agreement.

10. INVOICES AND PAYMENT

10.1 Invoices

BC Hydro shall render an invoice monthly in respect of Demand Charges and Scheduled Energy taken or deemed to be taken in the immediately preceding

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Billing Month, based on best available billing and accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. BC Hydro shall render an invoice within 30 days after the end of each Contract Year for the Annual Shortfall, if any. Invoices shall be due and payable upon receipt.

10.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of Demand Charges and Scheduled Energy taken or deemed to be taken, are exclusive of all applicable taxes, including federal goods and services tax, provincial sales tax, and harmonized sales tax (or any successor or replacement tax therefor).

10.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may dispute the invoice or the billing or accounting information on which it was based in accordance with Section 13.4. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

10.4 Late Payment Charge

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount shall be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

11. INFORMATION, ACCOUNTING AND AUDITS

11.1 Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to determine or verify all purchases and sales of Electricity hereunder, the Demand Charge payable each month, all amounts of Electricity scheduled, taken and/or deemed taken hereunder, all amounts required for determining the Annual Shortfall, if any, all billing and payment amounts hereunder, and otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.

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- (b) Each Party shall provide access to the books and records described in Section 11.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement that may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for purchases and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

11.2 Audits

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.6(j) of the Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.
- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 14.1.

12. CONTRACT REPRESENTATIVES

12.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

12.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day

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management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

12.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

13. DISPUTE RESOLUTION

13.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 13 in the absence of agreement, or (iv) any proposed amendment to this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 13. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 13.

13.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute.

13.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 13.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

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13.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the expedited dispute resolution process in Section 13.6(e).

13.5 Referral to a Third Party for resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;in respect of the proposed amendment, and the other Party may intervene in such proceeding; and
- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

13.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;

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- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

13.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

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13.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 13.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 13.6(a).

14. REMEDIES FOR BREACH

14.1 Breach of Agreement

- (a) Subject to Section 14.1(b), if either Party (the "Breaching Party") breaches this Agreement (a "Breach"), and the Breach is material or if there are persistent Breaches (in either case, a "material Breach"), the other Party (the "Other Party") may issue a notice describing the material Breach (a "Notice of Material Breach") and the Breaching Party shall have 7 days to satisfy the Other Party, acting reasonably, that the cause of the material Breach has been or will be addressed to the Other Party's reasonable satisfaction within the 7 day period.
- (b) If FortisBC Breaches Section 2.6, such Breach shall be considered a Breach under the Energy Export Agreement to be dealt with in accordance with the Energy Export Agreement.
- (c) If the Breaching Party fails to satisfy the Other Party, acting reasonably, that the cause of the material Breach has been or will be addressed to the Other Party's reasonable satisfaction within the 7 day period referred to in Section 14.1(a), the Other Party may at any time thereafter issue to the Breaching Party a notice (a "Notice of Pending Complaint") that it intends to file a complaint to the Commission with regard to the material Breach and/or any previous material Breach.
- (d) If, within 14 days of the Other Party issuing a Notice of Pending Complaint, the Breaching Party has not established to the Other Party's satisfaction, acting reasonably (which may include consideration of previous Breaches and steps taken), that the Breaching Party has remedied the cause of the material Breach and put procedures in place designed to avoid a recurrence of the material Breach, the Other Party's Chief Executive Officer may give notice (a "Final Notice of Pending Complaint") to the Breaching Party's Chief Executive Officer of the Other Party's intent to apply to the Commission for such remedies as the Other Party considers appropriate in the circumstances.

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- (e) The Chief Executive Officers shall meet within 10 days of the Final Notice of Pending Complaint to try to resolve the issues giving rise to the Other Party's Final Notice of Pending Complaint. If they fail to resolve the issues to their mutual satisfaction within 30 days of the Final Notice of Pending Complaint, the Other Party may apply to the Commission for such remedies as the Other Party considers appropriate in the circumstances.
- (f) If the Commission declines to adjudicate whether there has been a material Breach of this Agreement, either Party may submit the matter for dispute resolution in accordance with the *Commercial Arbitration Act* (British Columbia) pursuant to Section 13. The arbitrator shall have the authority to determine whether there has been a material Breach of this Agreement and to order appropriate remedies.

14.2 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting, as required by this Agreement and/or the Master Accounting Agreement, in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

15. SUPPLY; SUSPENSION OF SUPPLY

15.1 No Warranty of Continuous Supply

BC Hydro does not warrant a continuous supply of Electricity or the maintenance of unvaried frequency or voltage.

15.2 Request to Suspend or Reduce Taking

At any time, in the event there is a shortage of Electricity, whether actual or apprehended by BC Hydro, BC Hydro may request FortisBC to reduce its taking of Electricity at the Points of Delivery. If FortisBC does not suspend or reduce its take of Electricity as requested, BC Hydro may suspend or reduce the supply of Electricity under this Agreement to FortisBC. BC Hydro shall use its reasonable efforts to advise FortisBC and to curtail service to FortisBC on a pro-rata basis with other BC Hydro load.

16. LIABILITY/INDEMNITY

16.1 Liability

- (a) All responsibility of BC Hydro for Electricity delivered to FortisBC under this Agreement shall cease at the applicable Point of Delivery.
- (b) Neither Party, its servants or agents, shall be liable to the other Party for any loss, injury, damages or expense of the other Party caused by or

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resulting from any suspension, discontinuance or defect in the supply of Electricity, or the maintenance of unvaried frequency or voltage alleged or caused by an act or omission of the other Party, its servants or agents.

16.2 Indemnity

FortisBC shall indemnify BC Hydro and save it harmless from any and all claims from FortisBC's customers or other third parties in connection with the supply of, or any suspension, discontinuance or defect in the supply of, Electricity, or the maintenance of unvaried frequency or voltage, by BC Hydro under this Agreement.

17. NOTICES

17.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement (except those given pursuant to Section 6 which shall be given as provided for therein, or otherwise in accordance with standard scheduling requirements in the BC Control Area) shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

(a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

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(b) to FortisBC:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C. V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

17.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

17.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 17.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 17.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic

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mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

18. MISCELLANEOUS

18.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

18.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

18.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

18.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

18.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 18.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

18.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall

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not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

18.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) to the jurisdiction of the Commission.

18.8 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

18.9 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

18.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

18.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

18.12 Restatement of Agreement Dated for Reference May 21, 2013

The Power Purchase Agreement dated for reference May 21, 2013 ("2013 PPA") and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement provided that the Annual Energy Nomination delivered by FortisBC and accepted by BC Hydro pursuant to Section 5.1 of the 2013 PPA shall continue to apply for the purposes of this Agreement. The Parties further agree that because the 1st Contract Year will be for a period of less than 365 days, the Annual Energy Nomination and Annual Minimum Take

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will be determined in accordance with the provisions outlined in the letter agreement executed by the Parties dated October 1, 2013.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

7943666.9

ACCEPTED: _____

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Appendix 1

RATE SCHEDULE 3808 attached

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SCHEDULE 3808 – TRANSMISSION SERVICE – FORTISBC

Availability: This schedule is available to FortisBC in accordance with the terms and conditions of the Agreement between BC Hydro and FortisBC entered into and deemed effective the 1st day of October 2013 (the "Power Purchase Agreement"). The Contract Demand shall not exceed 200 MW in any hour.

Applicable in: For Electricity delivered to FortisBC at each Point of Delivery as defined in the Power Purchase Agreement.

Rate: Demand Charge: \$6.353 per kW of Billing Demand per Billing Month

plus

Tranche 1 Energy Price: 3.724¢ per kW.h

Tranche 2 Energy Price: 12.97¢ per kW.h

Billing Demand: The Billing Demand for billing purposes in any Billing Month shall be the greatest of:

1. The maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement, for any hour of the Billing Month;
2. Subject as hereinafter provided, 75% of the maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement in any hour in the 11th months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Month); and
3. 50% of the Contract Demand (in kW) for the Billing Month.

If FortisBC has reduced the Contract Demand in accordance with the Power Purchase Agreement, the amount of Electricity specified in Section 2 above may not exceed an amount equal to 100% of the Contract Demand.

Maximum Tranche 1 Amount The Maximum Tranche 1 Amount for each Contract Year is 1041 GWh.

Scheduled Energy Less Than or Equal to Annual Energy Nomination.

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

(a) The Tranche 1 Energy Price for each kW.h of such Scheduled Energy taken or

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Scheduled Energy Exceeding the Annual Energy Nomination deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and

(b) The Tranche 2 Energy Price for each kWh of such Scheduled Energy taken that exceeds the Maximum Tranche 1 Amount.

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each kWh of such Scheduled Energy taken or deemed taken that exceeds the Annual Energy Nomination, but is less than or equal to the Maximum Tranche 1 Amount; and
- (b) 115% of the Tranche 2 Energy Price, for each kWh of such Scheduled Energy taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

Annual Minimum Take In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination, and shall be responsible for any Annual Shortfall.

Note: The terms and conditions under which service is supplied to FortisBC are contained in the Power Purchase Agreement.

Taxes: The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

Rate Rider: The Deferral Account Rate Rider as set out in Rate Schedule 1901 applies to all charges payable under this Rate Schedule, before taxes and levies.

Rate Increase: The Tranche 1 Energy Price and Demand Charge are subject to the same rate adjustments as Schedule 1827. Tranche 2 Energy Price is subject to changes as provided for in the Power Purchase Agreement.

Effective April 1, 2013 the Tranche 1 Energy Price and the Demand Charge under this schedule includes an increase of 1.44% before rounding, approved by BCLUC Order No. G-77-12A.

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ATTACHMENT 2

IMBALANCE AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May ~~21, 2013~~ 26, 2014

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IMBALANCE AGREEMENT

THIS AGREEMENT is made as of the ~~21st~~26th day of May, ~~2013~~2014 (the "Reference Date"), to be effective on the Effective Date.

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY, having its Head Office at 333 Dunsmuir Street, City of Vancouver, Province of British Columbia

("BC Hydro")

AND:

FORTISBC INC., a body corporate having an office at 10th Floor, 1111 West Georgia Street, City of Vancouver, Province of British Columbia

("FortisBC")

WHEREAS:

- A. FortisBC and BC Hydro serve adjacent areas in British Columbia and have various points of electrical system interconnection which permit the flow of electricity to and from their respective systems;
- B. FortisBC and BC Hydro, among other parties, are parties to the Canal Plant Agreement, pursuant to which FortisBC receives from BC Hydro a capacity and energy entitlement that is not scheduled and the usage of which is determined on an after-the-fact basis;
- C. Concurrently with this Agreement, BC Hydro and FortisBC are entering into a power purchase agreement to be effective ~~October~~July 1, 20132014 (the "Power Purchase Agreement"), pursuant to which FortisBC has agreed to schedule and purchase, and BC Hydro has agreed to supply and sell, Electricity to be delivered from the BC Hydro System;
- D. BC Hydro acts as the operator of the BC Control Area and the balancing authority in British Columbia and FortisBC operates an integrated generation and transmission system within the BC Control Area;
- E. From time to time Unexpected Conditions may occur that will cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa; and
- F. The Parties have agreed that FortisBC will pay BC Hydro an amount for transfers of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System and, in Negative Price Hours, from the Entitlement Parties' System to the BC Hydro System, all on the terms and conditions specified in this Agreement.

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THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

- (a) "Accounting Procedures" means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) "AESO" means the Alberta Electric System Operator, or a successor organization;
- (c) "AESO Hourly Pool Price" means the price for each hour, in \$/MWh, established and reported by AESO, in accordance with the AESO rules, for electric energy exchanged through the Alberta power pool;
- (d) "Agreement" means this Imbalance Agreement, as amended, restated and/or supplemented from time to time and includes any schedules or exhibits referred to in it as being attached to it;
- (e) "BC Control Area" has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the "BC Hydro Balancing Authority area";
- (f) "BC Hydro System" means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties' System), including all additions and modifications thereto and repairs or replacements thereof;
- (g) "Business Day" means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (h) "Canal Plant Agreement" means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;
- (i) "Capacity Buffer" means, in respect of any hour, an amount of reserves held by FortisBC immediately prior to the start of that hour, in addition to (i) the capacity required to meet FortisBC's reasonably forecast load obligations, (ii) the ancillary services requirements in Sections 6.2 and 6.7(a) of the Canal Plant Agreement, and (iii) reserve requirements under

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any other CPA-Related Agreement (as defined in the Master Accounting Agreement);

- (j) "COB or NOB HASP LMP" means for an hour the index representing the market price for real time sales to the California Independent System Operator ("CAISO") from sources in the Pacific Northwest, and, as at the date of this Agreement, is the average of the four 15 minute Locational Marginal Prices for the hour for either the MALIN_5_N01 (COB) node or the SYLMARDC_2_N501 (NOB) node, whichever is higher, as published by the CAISO;
- (k) "Commission" means the British Columbia Utilities Commission, established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
- (l) "Contract Year" means, in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates on a day other than September 30, the last Contract Year shall end on the date of termination;
- (m) ~~"Dow Jones Mid-Columbia Daily Firm Off-Peak Index" means for an hour the price as reported in the Dow Jones Mid-Columbia Daily Firm Off-Peak Index, as published by Dow Jones;~~
- (n) ~~"Dow Jones Mid-Columbia Daily Firm On-Peak Index" means for an hour the price as reported in the Dow Jones Mid-Columbia Daily Firm On-Peak Index, as published by Dow Jones;~~
- (o) ~~(e)~~ "Effective Date" means ~~October~~ July 1, 2013, 2014, provided that the last of the conditions precedent in Section 2.2 have~~as~~ then been met;
- (p) ~~(f)~~ "Electricity" means electric energy and its associated capacity;
- (q) ~~(g)~~ "Entitlement Parties" means the parties to the Canal Plant Agreement, except BC Hydro;
- (r) ~~(h)~~ "Entitlement Parties' System" means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties' transmission facilities through facilities owned by BC Hydro;

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- (g) ~~(s)~~ "FBC Service Territory" means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (h) ~~(t)~~ "General Wheeling Agreement" or "GWA" means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;
- (i) "ICE Mid-C Off-Peak Index" means for an hour the price as reported in the ICE Mid-C Off-Peak Index, as published by ICE in the ICE Day Ahead Power Price Report;
- (j) "ICE Mid-C Peak Index" means for an hour the price as reported in the ICE Mid-C Peak Index, as published by ICE in the ICE Day Ahead Power Price Report;
- (u) "Imbalance Energy" has the meaning ascribed to it in Section 5.3;
- (v) "Imbalance Energy Charge" has the meaning ascribed to it in Section 6.1;
- (w) "Master Accounting Agreement" means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (x) "Mid-Columbia Powerdex Realtime Hourly Index Price" means for an hour the weighted average price for that hour reported in the Powerdex Realtime Mid-Columbia Power index, as published by Powerdex, Inc.;
- (y) "Negative Price Hour" means any hour in which either (i) the ~~Dow Jones~~ICE Mid-Columbia Daily Firm-On-C Peak Index or ~~Dow Jones~~ICE Mid-Columbia Daily Firm-C Off-Peak Index, as applicable to that hour, or (ii) the Mid-Columbia Powerdex Realtime Hourly Index Price applicable to that hour, is reported as being a negative price;
- (z) "NERC" means the North American Electric Reliability Corp., or a successor organization;
- (aa) "Parties" means the parties to this Agreement and "Party" means either of them;
- (bb) "Points of Delivery" means the Point of Supply and the Points of Interconnection as identified and defined in the General Wheeling Agreement;
- (cc) "Power Purchase Agreement" has the meaning ascribed to it in Recital C;

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- (dd) "Powerex" means Powerex Corp., a wholly-owned subsidiary of BC Hydro;
- (ee) "Prime Rate" means the annual rate of interest designated by the Bank of Montreal as its "prime rate" for Canadian dollar commercial loans to customers in Canada;
- (ff) "Service Area Load Requirements" means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;
- (gg) "Term" has the meaning ascribed to it in Section 2.1;
- (hh) "Unexpected Condition" means any of the following:
 - (i) an unexpected transmission limitation;
 - (ii) an unexpected change to generation availability caused by a generation outage;
 - (iii) an unexpected change to reasonably forecasted load requirements in the FBC Service Territory, or
 - (iv) any other unexpected circumstance affecting imports or exports into or out of the FBC Service Territory (excluding curtailments, reinstatements, adjustments and/or withdrawals of schedules other than for emergency reasons), loads in the FBC Service Territory or resources in the FBC Service Territory used to serve such loads;that could reasonably be expected to, or does, cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa; and
- (ii) "WECC" means the Western Electricity Coordinating Council or a successor organization.

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Meaning of "transfer"

In this Agreement, any reference to Imbalance Energy that "transfers" from the BC Hydro System to the Entitlement Parties' System, or vice versa, means Imbalance Energy that is determined and calculated in accordance with the

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Accounting Procedures to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa.

For the purposes of this Agreement, any transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, shall be deemed to occur at the Point of Supply (as that term is defined in the General Wheeling Agreement).

1.4 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement is to the designated Section, subsection or other subdivision of this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency, where indices used in this Agreement are denominated in US dollars, index amounts and US dollar amounts payable hereunder shall be converted from US dollars to Canadian dollars at the Bank of Canada noon spot rate on the applicable day(s); and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

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2. TERM AND CONDITIONS PRECEDENT

2.1 Term of Agreement

- (a) Subject to Section 2.2, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until either Party elects to terminate this Agreement upon at least one year's notice to the other Party; provided that neither Party may give notice to terminate this Agreement to be effective prior to the expiry or earlier termination (as the case may be) of the Power Purchase Agreement.
- (b) If a Party gives notice to terminate this Agreement pursuant to Section 2.1(a) and the Canal Plant Agreement is then in force, the Parties shall negotiate in good faith the terms and conditions of an agreement to replace this Agreement upon its termination; failing agreement, either Party may submit the matter for dispute resolution in accordance with Section 10.
- (c) Termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has, on or before ~~October 1, 2013~~ December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties; and
- (b) the Power Purchase Agreement has become, or will concurrently become, effective in accordance with its terms.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application; provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

3. IMBALANCE ENERGY IS NOT A SERVICE

3.1 Imbalance Energy is Not a Service

- (a) FortisBC acknowledges that, despite that BC Hydro acts as the operator of the BC Control Area, BC Hydro is not, pursuant to this Agreement or otherwise, offering to FortisBC an imbalance energy service and that any

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transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is not authorized. If Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, or vice versa, as determined in accordance with the Accounting Procedures, FortisBC shall pay BC Hydro for such transfer in accordance with this Agreement.

- (b) FortisBC shall not plan for a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, to occur in any hour for any purpose, including to serve load, to meet reserve requirements or to support imports, exports or other marketing activities by FortisBC or any other person.
- (c) If an Unexpected Condition occurs in any hour, FortisBC shall use all reasonable efforts to avoid, minimize and/or end any transfer of Imbalance Energy, in accordance with Sections 5.1(c) and 5.1(d).
- (d) FortisBC shall not enter into any purchases, sales or other transactions with third parties (including customers, third party generators, marketers, or Entitlement Parties) under which such third party would be permitted to take any action that would cause Imbalance Energy to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa.

3.2 BC Hydro Entitled to Assume No Imbalance Energy Transfers

BC Hydro shall be entitled to operate the BC Hydro System assuming there will be no Imbalance Energy transfers at any time.

4. POINTS OF DELIVERY / INTERCONNECTED OPERATION

4.1 Imbalance Energy transfers at Points of Delivery

For purposes of this Agreement only, transfers of Imbalance Energy shall be deemed to occur as a result of system-to-system imbalances between the BC Hydro System and the Entitlement Parties' System. Imbalances occurring at individual Points of Delivery shall be derived in accordance with the Accounting Procedures and shall be netted against each other on an aggregate basis, to determine whether there is a transfer of Imbalance Energy between the BC Hydro System and the Entitlement Parties' System for purposes of this Agreement.

5. IMBALANCE ENERGY

5.1 Imbalance Energy Transfers to be Avoided

FortisBC shall use all reasonable efforts to avoid, minimize and/or end as soon as possible (as applicable) transfers of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, in any hour. This shall include FortisBC:

- (a) undertaking the following actions at all times during the Term:

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- (i) maintaining a Capacity Buffer of at least the greater of (A) 15 MW; or (B) 10% of scheduled exports by or on behalf of FortisBC from the FBC Service Territory to outside the BC Control Area, to respond to Unexpected Conditions; and
 - (ii) maintaining continuous real-time monitoring of actual loads, resources, imports, exports, schedules and etags so it is able to timely respond to Unexpected Conditions;
- (b) at all times during the Term:
- (i) not under-scheduling resources;
 - (ii) not over-scheduling resources;
 - (iii) not relying on or using Imbalance Energy as a firming service; and
 - (iv) planning to balance loads and resources at each Point of Delivery, including securing and scheduling transmission rights on the BC Hydro System;
- (c) if an Unexpected Condition occurs, undertaking such actions as would in all the circumstances reasonably be expected to avoid or minimize any such transfers of Imbalance Energy that might be caused thereby, including any or all of the actions described in Section 5.1(d);
- (d) if an Unexpected Condition occurs and a transfer of Imbalance Energy is caused thereby in any hour, undertaking such actions as would in all the circumstances reasonably be expected to end such transfer as soon as possible after its commencement (and in any event by the end of that hour or by the end of the next hour if the Unexpected Condition arises within 30 minutes before the start of the next hour), including:
- (i) acquiring additional capacity resources;
 - (ii) using all other resources available to FortisBC (for example, Canal Plant Agreement, operating reserves);
 - (iii) curtailing and/or adjusting scheduled imports and/or exports, as permitted by industry practices;
- but shall not include requiring FortisBC to curtail load on the Entitlement Parties' System or compensate third parties to curtail load; provided that nothing herein affects any obligations to curtail load under other agreements or pursuant to reliability orders; and
- (e) if an Unexpected Condition occurs in any hour which affects the Capacity Buffer, undertaking such actions as would in all the circumstances reasonably be expected to re-establish the required Capacity Buffer as soon as possible.

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5.2 **Change to Capacity Buffer**

If there is a material change in loads and/or resources in the FortisBC Service Territory, the Parties shall negotiate in good faith a revised Capacity Buffer amount for purposes of Section 5.1(a)(i); failing agreement, either Party may submit the matter for dispute resolution in accordance with Section 10.

5.3 **Imbalance Energy is a Derived Amount**

- (a) For purposes of this Agreement, "Imbalance Energy" is a derived amount, determined and calculated in accordance with the Accounting Procedures, that is intended to be the net amount of electrical energy that is considered to transfer from the BC Hydro System to the Entitlement Parties' System, or vice versa, in any hour. The determination of Imbalance Energy takes into account scheduled deliveries under the Power Purchase Agreement, scheduled imports and/or exports to or from the FBC Service Territory, generation and loads within the FBC Service Territory, Entitlement Energy usage under the Canal Plant Agreement (within the limits of the applicable Exchange Accounts), or other resources used by FortisBC. Imbalance Energy is not metered and the Parties recognize that Imbalance Energy transfers do not represent actual flows of energy between the BC Hydro System and Entitlement Parties' System in any hour.
- (b) The Parties acknowledge and agree that any non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour shall be applied to serve the Service Area Load Requirements in priority to any Entitlement Energy and/or any Entitlement Capacity usage.
- (c) FortisBC acknowledges that BC Hydro is, as at ~~the Reference Date, May 21, 2013~~, a party to the following CPA-Related Agreements (referred to as "commercial arrangements" in Section 3.5 of the Canal Plant Agreement):
- (i) Surplus Power Rights Agreement made as of March 5th, 2010 between BC Hydro and Teck Metals Ltd.;
 - (ii) Electricity Purchase Agreement made as of November 5th, 2003 between BC Hydro and Brilliant Expansion Power Corporation and Electricity Purchase Agreement made as of August 31st, 2006 between BC Hydro and Brilliant Expansion Power Corporation; and
 - (iii) Electricity Purchase Agreement made October 1, 2010 between BC Hydro and Waneta Expansion Limited Partnership;

which together have the effect of limiting the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour, to an amount equal to the Service Area Load Requirements plus FortisBC exports from the FBC Service Territory in

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that hour (the "Maximum FBC Hourly Imports"). For so long as all such "commercial arrangements" are in effect (including any "commercial arrangements" that may amend or supplement same), any amount of non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour that is in excess of the Maximum FBC Hourly Imports shall be deemed to be Imbalance Energy. Nothing in this Section 5.3(c) is intended to imply what limits, if any, apply to the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour if any of the "commercial arrangements" expires or is earlier terminated or is replaced. The Parties shall negotiate in good faith in an effort to agree on what limits, if any, will apply to the amount of non-Canal Plant Agreement Electricity that FortisBC may acquire and deliver into the FBC Service Territory in any hour if any or all of the "commercial arrangements" expires or is earlier terminated or is replaced, or if any other "commercial arrangement" is entered into by an Entitlement Party. Failing such agreement, either Party may submit the matter for dispute resolution in accordance with Section 10;

- (d) The Parties acknowledge and agree that, for the purposes of the Energy Export Agreement, a subsequent calculation shall be completed to recognize the storage of Eligible Energy in the applicable FBC Eligible Exchange Account.
- (e) The Parties acknowledge and agree that commitments of Entitlement Capacity to be held by FortisBC as reserves shall be applied under the Accounting Procedures in priority to all other capacity uses so that any capacity deficit in any hour shall be deemed to result in an Imbalance Energy transfer.

5.4 Imbalance Energy Transfers Caused by Third Parties

- (a) FortisBC shall pay BC Hydro for Imbalance Energy that transfers from the BC Hydro System to the Entitlement Parties' System in any hour, regardless of how such transfer is caused, in accordance with Section 6.2. BC Hydro shall cooperate with FortisBC and shall provide such information as BC Hydro has (and is permitted to disclose to FortisBC, having taken reasonable steps to obtain such permission from all relevant third parties) and that FortisBC may reasonably request for the purpose of FortisBC seeking recovery from relevant third parties responsible for any Imbalance Energy Charges incurred by FortisBC pursuant to this Agreement.
- (b) BC Hydro shall own Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System and FortisBC shall pay BC Hydro for Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System in any Negative Price Hour, regardless of how such transfer is caused, all in accordance with Section 6.4. FortisBC shall

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hold BC Hydro harmless against any claim by any third party for payment for, or return of, any Imbalance Energy that so transfers.

- (c) Despite Sections 5.4(a) and 5.4(b), if a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is caused by a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent), then to the extent the transfer of Imbalance Energy is the result of such cause, BC Hydro shall reduce any resulting Imbalance Energy Charge to the lower of: (i) the Tranche 1 Energy Price (as defined and determined under the Power Purchase Agreement), and (ii) the Mid-Columbia Powerdex Realtime Hourly Index Price.
- (d) To the extent any transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, is caused by:
- (i) a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent); or
 - (ii) an act or omission of an Entitlement Party other than FortisBC;

such transfer of Imbalance Energy shall not be taken into account in determining whether any threshold identified in 6.2(b)(i) or 6.2(b)(ii) is exceeded, provided that if the cause is one referred to in Section 5.4(d)(ii), BC Hydro is satisfied, acting reasonably, based on information provided by FortisBC to BC Hydro, that the transfer was caused by an act or omission of an Entitlement Party other than FortisBC and could not have been avoided by reasonable diligence on the part of FortisBC.

- (e) If and to the extent a transfer of electrical energy between the BC Hydro System and the Entitlement Parties' System in any hour that would, but for this Section 5.4(e), result in a transfer of Imbalance Energy for that hour, is bona fide settled after-the-fact pursuant to the Co-Ownership and Operating Agreement dated as of March 5th, 2010 between Teck Metals Inc. and BC Hydro, by payment of liquidated damages to BC Hydro thereunder, or otherwise, such transfer shall be deemed not to be a transfer of Imbalance Energy for that hour. The Accounting Procedures shall provide for such accounting as may be required to identify transfers of Imbalance Energy that are subject to this Section 5.4(e).
- (f) If BC Hydro enters into any contractual arrangement with any third party having generation in the FBC Service Territory (including an Entitlement Party other than FortisBC) after the Reference Date that provides for liquidated damages or a similar specific remedy in the event of an imbalance, then the Parties will negotiate in good faith to agree whether, and if so how, such remedy would impact transfers of Imbalance Energy for purposes of this Agreement.

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6. PAYMENT FOR IMBALANCE ENERGY

6.1 Imbalance Energy Transfers from BC Hydro to FortisBC

Despite FortisBC using all reasonable efforts to avoid transfers of Imbalance Energy, including undertaking actions described in Section 5.1, and regardless of the cause, if Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in any hour, FortisBC shall pay BC Hydro an imbalance energy charge (the "Imbalance Energy Charge") determined in accordance with Section 6.2.

6.2 Charges for Imbalance Energy Transfers from BC Hydro to FortisBC

(a) Subject to Section 5.4(c), for every hour in which Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, FortisBC shall pay to BC Hydro an amount equal to the greatest of:

- (i) \$1,000;
- (ii) for each MWh of Imbalance Energy that transfers, \$50/MWh; and
- (iii) for each MWh of Imbalance Energy that transfers, 150% of the higher of the following two (or, if applicable, three) indices for the hour:
 - (A) the Mid-Columbia Powerdex Realtime Hourly Index Price;
 - (B) the COB or NOB HASP LMP;

and, if FortisBC or any person acting on behalf of, or purchasing from, FortisBC is scheduling to the Alberta market in that hour (which for purposes of this Section 6.2(a) includes energy, capacity, ancillary services or any allocation of Imbalance Energy Charges under this Agreement):

- (C) the AESO Hourly Pool Price.

(b) Commencing one year after the Effective Date, if in any Contract Year either:

- (i) 15 MWh or more of Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in more than 5 hours (whether consecutive, or individual hours, or a combination thereof); or
- (ii) 2 MWh or more of Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System in more than 25 hours (whether consecutive or individual hours, or a combination thereof);

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then during the remainder of the Contract Year or the immediately following 6 months, whichever is longer, Section 6.2(a) shall not apply to subsequent transfers of Imbalance Energy and, instead for every hour that Imbalance Energy transfers from the BC Hydro System to the Entitlement Parties' System, FortisBC shall pay to BC Hydro an amount equal to the greatest of:

- (iii) \$5,000;
- (iv) for each MWh of Imbalance Energy that transfers, \$100/MWh; and
- (v) for each MWh of Imbalance Energy that transfers, 200% of the higher of the following two (or, if applicable, three) indices for the hour:
 - (A) the Mid-Columbia Powerdex Realtime Hourly Index Price;
 - (B) the COB or NOB HASP LMP;

and, if FortisBC or any person acting on behalf of, or purchasing from, FortisBC is scheduling to the Alberta market in that hour (which for purposes of this Section 6.2(b) includes energy, capacity, ancillary services or any allocation of Imbalance Energy Charges under this Agreement):

- (C) the AESO Hourly Pool Price.
- (c) If the circumstances described in either Section 6.2(b)(i) or 6.2(b)(ii) occur in 2 or more consecutive Contract Years, then, in addition and without prejudice to its other remedies under this Agreement, BC Hydro may apply to the Commission to amend this Agreement to include financial disincentives that are in addition to and/or different from the payments provided for in Section 6.2(b).
 - (d) The dollar amounts in Section 6.2(a) and 6.2(b) are in 2012 dollars and shall be escalated annually by increases or decreases in the energy price component of the Consumer Price Index as published by Statistics Canada or equivalent from time to time.
 - (e) BC Hydro may, in its sole discretion, waive or reduce the charge that would otherwise be payable by FortisBC pursuant to Section 6.2(b) and/or determine that a transfer of Imbalance Energy shall not be considered for purposes of Sections 6.2(b)(i) or 6.2(b)(ii). If FortisBC wishes to request such a waiver, reduction or determination, the request shall be made by a senior executive (vice-president or higher) of FortisBC to a senior executive (vice-president or higher) of BC Hydro.

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6.3 Flow-Through of Regulatory Penalties

If, as a result of a transfer of Imbalance Energy from the BC Hydro System to the Entitlement Parties' System, or vice versa, BC Hydro suffers or incurs any fine, penalty or similar charge imposed by WECC, NERC, the Commission or any other entity with authority to impose such fine, penalty or similar charge, then, except to the extent the transfer of Imbalance Energy in respect of which the fine, penalty or other charge was imposed was caused by a BC Hydro error or omission (including an error or omission by Powerex or any other affiliate of BC Hydro when acting as BC Hydro's scheduling agent), Hydro may, by written notice delivered to FortisBC (to which notice BC Hydro shall attach evidence of the fine, penalty or other charge and evidence that BC Hydro has paid the same), flow through the amount of any such fine, penalty or similar charge to FortisBC and FortisBC shall pay such amount within 14 days of receiving from BC Hydro such notice. BC Hydro shall not object to any application by FortisBC for standing, or to FortisBC's participation if granted standing, in any proceedings before WECC, NERC, the Commission or other entity having jurisdiction in which liability for any such fine, penalty or similar charge is at issue.

6.4 Imbalance Energy Transfers from FortisBC to BC Hydro

If Imbalance Energy transfers from the Entitlement Parties' System to the BC Hydro System in any hour, then

- (a) BC Hydro shall own but shall have no obligation to pay for such Imbalance Energy, and
- (b) if the hour is a Negative Price Hour, FortisBC shall pay to BC Hydro for each MWh of such Imbalance Energy an amount equal to 150% of the greater of (i) the absolute value of the Mid-Columbia Powerdex Realtime Hourly Index Price applicable to that hour, and (ii) the absolute value of the ~~Dow Jones ICE Mid-Columbia Daily Firm-On-C~~ Peak Index or ~~Dow Jones ICE Mid-Columbia Daily Firm-C~~ Off-Peak Index, as applicable to that hour.

7. INFORMATION, ACCOUNTING AND AUDITS

7.1 Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to (i) verify the amount of Imbalance Energy, if any, that transferred from the BC Hydro System to the Entitlement Parties' System, or vice versa, in each hour, (ii) verify the basis for claiming an Unexpected Condition, (iii) confirm compliance with this Agreement in each hour, including Sections 3.1 and 5.1, (iv) confirm invoices for Imbalance Energy Charges and other amounts payable under this Agreement, and (v) otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.

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- (b) Each Party shall provide access to the books and records described in Section 7.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement as may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for billings and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

7.2 Audits/Adjustments

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.7(j) of the Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.
- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 11.1.

8. INVOICES AND PAYMENT

8.1 Billing Invoices

BC Hydro shall render an invoice monthly for:

- (a) charges payable hereunder for Imbalance Energy transferred from the BC Hydro System to the Entitlement Parties' System (including the Imbalance Energy Charge), if any, during the immediately preceding month;
- (b) charges payable hereunder for Imbalance Energy that transfers from the Entitlement Parties' System to the BC Hydro System, if any, during the immediately preceding month; and
- (c) any other charges payable pursuant to this Agreement.

Invoices shall be based on best available billing and accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. Invoices shall be due and payable upon receipt.

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8.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of Imbalance Energy Charges, are exclusive of all applicable taxes, including federal goods and services tax, provincial sales tax, and harmonized sales tax (or any successor or replacement tax therefor).

8.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may dispute the invoice or the billing or accounting information on which it was based in accordance with Section 10. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

8.4 Late Payment Charge

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount shall be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

9. CONTRACT REPRESENTATIVES

9.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

9.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

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9.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

10. DISPUTE RESOLUTION

10.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 10 in the absence of agreement, or (iv) any proposed amendment to or replacement of this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 10. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 10.

10.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute

10.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 10.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

10.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the expedited dispute resolution provisions of Section 10.6(e).

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10.5 Referral to Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to, or replacement of, this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;in respect of the proposed amendment or replacement, as the case may be, and the other Party may intervene in such proceeding; and
- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

10.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;

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- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable; and
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

10.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

10.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 10.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 10.6(a).

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11. REMEDIES FOR BREACH

11.1 Breach of Agreement

If FortisBC breaches this Agreement (a "Breach"), and the Breach is material or there are persistent Breaches (in either case, a "material Breach"), BC Hydro may issue a notice (a "Notice of Material Breach") and FortisBC shall have 7 days after delivery of the Notice of Material Breach to satisfy BC Hydro, acting reasonably, that the cause of the material Breach has been or will be addressed to BC Hydro's reasonable satisfaction within the 7 day period. If FortisBC fails to do so, BC Hydro may apply to the Commission for appropriate remedies. Such remedies may include adding additional and/or other charges intended to create FortisBC disincentives to transfers of Imbalance Energy under this Agreement. BC Hydro agrees that any such remedies shall apply only prospectively.

11.2 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting as required pursuant to this Agreement and/or the Master Accounting Agreement in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

11.3 Good Faith

- (a) If FortisBC in good faith disputes that there has been a material Breach, then FortisBC may, provided it has given a Notice of Dispute within the 7 day period referred to in Section 11.1, submit the question for dispute resolution pursuant to Section 10.5(b) and the arbitrator shall have the authority to determine whether there has been a material Breach. BC Hydro shall only exercise its remedies under Section 11.1 if the arbitrator agrees that there has been a material Breach.
- (b) If FortisBC in good faith disputes that BC Hydro has acted reasonably in determining that it is not satisfied that the cause of a material Breach has been or will be addressed within 7 days then, provided FortisBC has given timely Notice of Dispute, BC Hydro's Chief Executive Officer shall give at least 14 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to apply to the Commission for appropriate remedies. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to apply to the Commission. If they fail to resolve the issues to their mutual satisfaction within such 14 days, BC Hydro may nevertheless apply to the Commission for appropriate remedies.

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12. NOTICES

12.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

- (a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

- (b) to FortisBC
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C. V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

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12.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labor dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

12.3 Electronic Notices

As an alternative to the methods of giving notice described in Section 12.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 12.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

13. MISCELLANEOUS

13.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

13.2 No Assignment Without Consent

- (a) Subject to Section 13.2(b), neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

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- (b) FortisBC may, with the consent of BC Hydro (not to be unreasonably withheld, delayed or conditioned), assign this Agreement and all of its rights and obligations hereunder to any person to whom FortisBC has assigned its current responsibilities as system operator of the Entitlement Parties' System. For the purposes of this Section 13.2(b), it shall not be unreasonable for BC Hydro to withhold its consent if the proposed assignee is not an experienced and creditworthy system operator, with a history of prudent and reliable system operation, or if appropriate contractual arrangements among the Parties (including such assignee) are not agreed to in order to reflect the relationship between this Agreement and the other agreements between the Parties.

13.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

13.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

13.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 13.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

13.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

13.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

ACCEPTED:

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13.8 Reliance on Specified Indices

In the event that any provision of this Agreement relies on a specified index to determine or calculate a price or payment pursuant to such provision, and such index (i) ceases to exist or otherwise is no longer published or available to a Party (provided the Party subscribes to receive such index, where subscription is required), or (ii) ceases to be the index predominantly used to establish the market price for the applicable energy product in the applicable market, then the applicable index shall be such index that most closely applies to the provision and approximates the specified index (considering applicable factors, including delivery point, firmness of electricity, time of day and predominant use of such index by market participants), or such other index as the Parties may agree. If the Parties are unable to so agree within 30 days after the specified index ceases to exist or is no longer published or available to a Party or the foregoing notice is given, either Party may refer the matter to dispute resolution pursuant to Section 10. An arbitrator appointed under Section 10 is expressly authorized and directed to select a substitute index based on the foregoing criteria. Pending agreement on or determination of the substitute index, the Party entitled to be paid based on the index shall specify an interim index or pricing method, acting reasonably, and amounts so paid based on such interim index or pricing method shall be adjusted retroactively to the date the index ceased to exist or be published.

13.9 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

13.10 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

13.11 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

13.12 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

ACCEPTED:

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13.13 Restatement of Agreement Dated for Reference May 21, 2013

The Imbalance Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

2001055.13

ACCEPTED:

ORDER NO. _____

COMMISSION SECRETARY

ATTACHMENT 3

ENERGY EXPORT AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May 21, 2013/26, 2014

ACCEPTED: _____

ORDER NO. _____

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ENERGY EXPORT AGREEMENT

THIS AGREEMENT is made as of the ~~21st~~^{26th} day of May, ~~2013~~²⁰¹⁴ (the "Reference Date"), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir Street,
City of Vancouver, Province of British Columbia

("BC Hydro")

AND:

FORTISBC INC., a body corporate having an office at 10th Floor,
1111 West Georgia Street, City of Vancouver, Province of British
Columbia

("FortisBC")

WHEREAS:

- A. BC Hydro and FortisBC are parties to a Power Purchase Agreement (the "Power Purchase Agreement") entered into concurrently with this Agreement under which BC Hydro will supply Electricity to FortisBC;
- B. Section 2.6(a) of the Power Purchase Agreement provides as follows:

"FortisBC shall not export or permit its customers to export (except as permitted under Section 2.5(a)(iii)) any Electricity (including capacity and/or energy comprised therein) in any hour during which FortisBC is taking Electricity from BC Hydro under this Agreement, except during the term of, and to the extent specifically agreed under, and in accordance with, the terms and conditions of the Energy Export Agreement."
- C. FortisBC has entered into a capacity purchase agreement (the "WAX CAPA") with Waneta Expansion Limited Partnership ("WELP"), which is constructing and will own and operate the Waneta expansion project ("WAX"), a 335 MW powerhouse adjacent to, and that uses the hydraulic head of, the Waneta Dam, under which FortisBC will purchase certain Entitlement Capacity attributable to WAX pursuant to the Canal Plant Agreement;
- D. BC Hydro has entered into an Electricity Purchase Agreement dated October 1, 2010 with WELP under which BC Hydro will purchase all Entitlement Energy, and associated Entitlement Capacity, attributable to WAX pursuant to the Canal Plant Agreement;

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- E. FortisBC intends to use Entitlement Capacity it has purchased from WELP under the WAX CAPA, in part to meet such of its Service Area Load Requirements as are unmet after application by FortisBC of its existing electricity resources, including electricity resources purchased under the Power Purchase Agreement, to meet such load requirements;
- F. FortisBC also intends from time to time while it is taking Electricity under the Power Purchase Agreement, to export from the FBC Service Territory energy acquired from certain eligible sources, using the Entitlement Capacity that it has purchased from WELP under the WAX CAPA; and
- G. The Parties have agreed on certain circumstances in which FortisBC may export Electricity from the FBC Service Territory while taking Electricity under the Power Purchase Agreement, on the terms and conditions of this Agreement.

THIS AGREEMENT WITNESSES in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement:

- (a) "Accounting Procedures" means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) "Agreement" means this Energy Export Agreement, as amended, restated and/or supplemented from time to time and includes any schedules or exhibits referred to in it as being attached to it;
- (c) "Breach" has the meaning ascribed to it in Section 4.1(a);
- (d) "Brilliant Power Purchase Agreement" means the agreement made as of the 4th day of April, 1996, between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as "West Kootenay Power Ltd."), as amended, restated and/or supplemented from time to time;
- (e) "Business Day" means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (f) "Canal Plant Agreement" means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power

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Corporation, Brilliant Expansion Power Corporation and WELP, as amended, restated and/or supplemented from time to time;

- (g) “**Commission**” means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
- (h) “**Contract Year**” means, ~~in the first year of this Agreement, the period commencing on the Effective Date and ending on the following September 30, and in all subsequent years of this Agreement, a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2033, the last Contract Year shall end on the earlier termination date;~~
- (i) “**Day of Flow**” means the calendar day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, energy which is scheduled on a Preschedule Day is scheduled to flow; for greater certainty, a Day of Flow is a single calendar day even in the event that two or more calendar days are scheduled during the same Preschedule Day;
- (j) “**Effective Date**” has the meaning ascribed to it in Section 2.2(a);
- (k) “**Electricity**” means electric energy and its associated capacity;
- (l) “**Eligible Account Balance**” for any hour means the balance of Eligible Energy recorded in the applicable FBC Eligible Exchange Account at the end of the immediately preceding hour;
- (m) “**Eligible Energy**” means energy acquired by FortisBC that meets the requirements of Section 3.4;
- (n) “**Entitlement Parties**” means the parties to the Canal Plant Agreement, except BC Hydro;
- (o) “**Entitlement Parties’ System**” means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties’ transmission facilities through facilities owned by BC Hydro;
- (p) “**export**”, and all forms of the verb “to export”, means any transaction whereby Electricity is determined and calculated in accordance with the Accounting Procedures to transfer out of the FBC Service Territory, and

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without netting such transfers against concurrent imports, but specifically excludes the following:

- (i) wheeling losses scheduled to BC Hydro;
 - (ii) Coordination Transfers to BC Hydro under the Canal Plant Agreement and
 - (iii) such other exceptions as the Parties may agree to from time to time, acting reasonably;
- (q) **"FBC Eligible Exchange Account"** means one of the accounts established pursuant to Section 3.6 and **"FBC Eligible Exchange Accounts"** means both of such accounts;
- (r) **"FBC Entitlement Capacity"** means FortisBC's share of the Entitlement Capacity, as set out and described in Table 9 of the Canal Plant Agreement under "FBC Projects", as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Capacity attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement, but specifically excludes WAX Capacity;
- (s) **"FBC Entitlement Energy"** means FortisBC's share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under "FBC Projects", as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (t) **"FBC Service Territory"** means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (u) **"Imbalance Agreement"** means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (v) **"Master Accounting Agreement"** means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (w) **"material Breach"** has the meaning ascribed to it in Section 4.5;
- (x) **"Mid-Columbia Powerdex Realtime Hourly Index Price"** means for an hour the weighted average price reported in the Powerdex Realtime Mid-Columbia Power index, as published by Powerdex, Inc.;

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- (y) "NERC" means the North American Electric Reliability Corp., or a successor organization;
- (z) "Notice of Material Breach" has the meaning ascribed to it in Section 4.5;
- (aa) "Notice of Suspension" has the meaning ascribed to it in Section 4.5;
- (bb) "Parties" means the parties to this Agreement and "Party" means either of them;
- (cc) "Power Purchase Agreement" has the meaning ascribed to it in Recital A;
- (dd) "Preschedule Day" means a day on which, in accordance with standard scheduling practice in the WECC region and the WECC Preschedule Calendar, Electricity is scheduled for delivery on one or more Day(s) of Flow; Preschedule Days and their corresponding Day(s) of Flow with respect to NERC holidays and any special scheduling days shall be as set forth in the WECC Preschedule Calendar;
- (ee) "Reference Date" has the meaning ascribed to it on the first page of this Agreement;
- (ff) "Service Area Load Requirements" means for any hour the load served by FortisBC, directly or indirectly, in the FBC Service Territory, as determined for each hour in accordance with the Accounting Procedures and, where the context requires, means the load in the FBC Service Territory that FortisBC has an obligation to serve;
- (gg) "WAX" has the meaning ascribed to it in Recital C;
- (hh) "WAX CAPA" has the meaning ascribed to it in Recital C;
- (ii) "WAX Capacity" in any hour means Entitlement Capacity attributable to WAX and purchased by and available to FortisBC under the WAX CAPA in that hour;
- (jj) "WAX Outage" means a partial or total reduction in WAX Capacity due to a cause beyond the reasonable control of the owner or operator of WAX, and, for greater certainty, excludes any planned outage;
- (kk) "WECC" means the Western Electricity Coordinating Council, or a successor organization;
- (ll) "WECC Preschedule Calendar" means the WECC Scheduling Calendar published annually by WECC that identifies certain NERC holidays and any special scheduling days which affect normal preschedule timelines and

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the days upon which prescheduling will take place to accommodate these identified days; and

(mm) "WELP" has the meaning ascribed to it in Recital C.

1.2. Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3. Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement is to the designated Section, subsection or other subdivision of this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency; where indices used in this Agreement are denominated in US dollars, index amounts and US dollar amounts payable hereunder shall be converted from US dollars to Canadian dollars at the Bank of Canada noon spot rate on the applicable day(s); and

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- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND CONDITIONS PRECEDENT

2.1. Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has been satisfied:

- (a) on or before ~~October~~ December 1, 2013 or such later date as may be agreed between the Parties:
 - (i) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties; and
 - (ii) the Power Purchase Agreement has become effective in accordance with its terms; and
- (b) WAX Start-up has occurred.

2.2. Term of Agreement

- (a) This Agreement shall become effective at 2400 hours on the day (the "Effective Date") upon which the last of the conditions precedent described in Section 2.1 is satisfied and shall continue in force until the expiry or earlier termination of the Power Purchase Agreement. Termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.
- (b) Notwithstanding Sections 2.1 and 2.2(a), at any time on or after September 1, 2014 FortisBC may commence operating the FBC Eligible Exchange Accounts in accordance with Sections 3.6 and 3.7(a) as if this Agreement had become effective on September 1, 2014, for the limited purpose of recording Eligible Energy in the FBC Eligible Exchange Accounts. For greater certainty, FortisBC may not export Eligible Energy recorded in an FBC Eligible Exchange Account until the Effective Date.

2.3. Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the

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Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

3. FORTISBC RIGHT TO EXPORT

3.1. Right to Export

- (a) Pursuant to Section 2.6 of the Power Purchase Agreement, BC Hydro and FortisBC hereby agree that FortisBC may export Eligible Energy using WAX Capacity in accordance with this Agreement in any hour during which it is taking Electricity from BC Hydro under the Power Purchase Agreement, provided such exports:
 - (i) do not exceed the amount of WAX Capacity available to FortisBC under the WAX CAPA for that hour;
 - (ii) do not exceed the Eligible Account Balance for that hour, plus (i) Eligible Energy purchases in the hour, minus (iii) Eligible Energy used to meet FortisBC's Service Area Load Requirements in that hour; and
 - (iii) demonstrably do not result in increased purchases of Electricity under the Power Purchase Agreement.
- (b) The parties acknowledge and agree that the requirement in Section 3.1(a)(iii) is met as at the date of this Agreement if FortisBC complies with Sections 3.1(a)(i) and 3.1(a)(ii). Section 3.1(a)(iii) is not intended to restrict FortisBC from increasing purchases of Electricity to the extent provided for in, and subject to, the Power Purchase Agreement.
- (c) FortisBC shall not export FBC Entitlement Energy in any hour during which FortisBC is taking Electricity under the Power Purchase Agreement, except Eligible Energy to the extent expressly permitted under this Agreement and in accordance with its terms.
- (d) FortisBC shall not sell, exchange or otherwise transfer FBC Entitlement Energy or Eligible Energy to another Entitlement Party or any other person if the effect of the sale, exchange or transfer would be that (i) the FBC Entitlement Energy is exported, or (ii) the FBC Entitlement Energy is used and a like amount of Electricity is exported, or (iii) the Eligible Energy is exported using FBC Entitlement Capacity, in any such case during any hour when FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement.
- (e) For greater certainty, FortisBC may sell, assign, provide scheduling rights to, or otherwise permit any person to use WAX Capacity (i) to export

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Entitlement Energy, including Eligible Energy in any hour during which FortisBC is not taking Electricity under the Power Purchase Agreement, and (ii) to export Entitlement Energy, except FBC Entitlement Energy, at any time whether or not FortisBC is taking Electricity under the Power Purchase Agreement, in either case subject to any requirements of the Canal Plant Agreement and any other applicable agreements.

- (f) BC Hydro acknowledges and agrees that nothing in this Agreement affects any right FortisBC has to export Electricity in any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement, provided such exports are in compliance with any applicable agreements to which FortisBC and BC Hydro are both parties.

3.2. Export During WAX Outage

Notwithstanding Section 3.1, BC Hydro and FortisBC hereby agree that during a WAX Outage FortisBC may export Electricity in accordance with this Agreement in any hour during which FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement, as follows:

- (a) for such period as may be specified in the applicable CPA Operating Procedure(s), using capacity in the form of operating reserves, provided the outage is an initiating event and FortisBC has taken all necessary steps to activate such reserves in accordance with such CPA Operating Procedure(s);
- (b) from the end of the period referred to in Section 3.2(a) until the end of the Day(s) of Flow covered by the schedule in effect when the WAX Outage occurred, FortisBC may export Electricity concurrently with an equivalent import that meets the requirements of Section 3.4 (but for greater certainty, may not export Eligible Energy from an FBC Eligible Exchange Account except to the extent there is WAX Capacity then available to FortisBC), in order to avoid having to cut a then existing export schedule; for greater certainty, new trades or schedules submitted after the WAX Outage occurred shall not be eligible for the exception in this Section 3.2(b); and
- (c) from the end of the period referred to in Section 3.2(b) until the units affected by the WAX Outage are fully back in service, FortisBC shall not export Electricity in any hour during which it is taking Electricity from BC Hydro under the Power Purchase Agreement, except to the extent there is WAX Capacity then available to FortisBC in the event the WAX Outage is a partial outage.

3.3. FortisBC to Notify if Exports are not Eligible Energy

In any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement, any export by FortisBC shall be deemed to be an export of

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Eligible Energy from the applicable FBC Eligible Exchange Account until there is no Eligible Energy remaining in the applicable FBC Eligible Exchange Account, unless prior to the hour of such export FortisBC has notified BC Hydro (in accordance with procedures agreed upon by the Parties, failing which agreement, either Party may submit the matter for dispute resolution in accordance with Section 7) that such export is not an export of Eligible Energy.

3.4. Eligible Energy

For purposes of this Agreement, "Eligible Energy" is, subject to Section 3.5, energy that is derived from any or all of the following:

- (a) Electricity acquired by FortisBC from the wholesale energy markets outside of British Columbia which is scheduled and delivered into the FBC Service Territory;
- (b) Electricity acquired from a FortisBC customer that has self-generation, to the extent such purchases demonstrably do not result in increased purchases of Electricity under the Power Purchase Agreement;
- (c) Electricity acquired from generation facilities within British Columbia that are not directly connected to the Entitlement Parties' System, which is scheduled and delivered into the FBC Service Territory;
- (d) Electricity acquired from the wholesale energy market within British Columbia which is scheduled and delivered into the FBC Service Territory, to the extent not more specifically addressed in Section 3.4(c);
- (e) Electricity acquired from generation facilities in the FBC Service Territory constructed or acquired by a third party or by FortisBC, or in which FortisBC acquires or holds an ownership interest, in each case after October 1, 2013;
- (f) Entitlement Energy acquired by FortisBC from another Entitlement Party, other than Entitlement Energy purchased by FortisBC pursuant to the Brilliant Power Purchase Agreement, provided that (i) such energy has never been FBC Entitlement Energy, and (ii) the receipt of such energy is notified to BC Hydro in advance and recorded as a usage of Entitlement Capacity of such other Entitlement Party under the Canal Plant Agreement; and
- (g) other Electricity not described in Section 3.4(a) through (f), by agreement between the Parties, that demonstrably does not result in increased purchases of Electricity under the Power Purchase Agreement;

provided that energy shall not be Eligible Energy unless (i) if generated within the FBC Service Territory, (A) it is telemetered (and the telemetered data is made available to BC Hydro) and (B) if FortisBC's acquisition is less than all of the telemetered generation, or

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metered net flow, from the applicable facility, FortisBC has pre-notified BC Hydro (in the manner agreed between the Parties, failing which agreement, either Party may submit the matter for dispute resolution in accordance with Section 7) of the amount purchased from the facility each hour, and (ii) if delivered into the FBC Service Territory, it is scheduled and delivered in compliance with the CPA-Related Agreements (as defined in the Master Accounting Agreement).

Energy derived from sources other than those identified in Section 3.4(a) through 3.4(g) shall not be Eligible Energy. For greater certainty, Electricity taken under the Power Purchase Agreement and Imbalance Energy (as defined in the Imbalance Agreement) in any hour shall not be Eligible Energy.

3.5. Storage Facilities

In the event that FortisBC acquires the right to own, operate or otherwise utilize any generating facility within the FBC Service Territory that has the ability to store energy, in any amounts and in any form, (e.g. batteries, pumped storage, storage hydro, etc.) the generation from such facility shall only be Eligible Energy to the extent that the originating source of Electricity for such generation is a source described in Section 3.4 and the Accounting Procedures have been amended to include a procedure for demonstrating that the originating source of Electricity for any such generation is a source described in Section 3.4.

3.6. FBC Eligible Exchange Accounts

For purposes of this Agreement, two accounts shall be established (one for the Storage Draft Season and one for the Storage Refill Season) (the "FBC Eligible Exchange Accounts") to enable the Parties to track the amount of Eligible Energy that is available to be exported in any hour. The FBC Eligible Exchange Accounts shall be subsets of the applicable Exchange Accounts under the Canal Plant Agreement. The balance of Eligible Energy in the applicable FBC Eligible Exchange Account at the end of any hour shall be the sum of:

- (a) the Eligible Account Balance;
- (b) plus, the total amount of Eligible Energy received in the FBC Service Territory in such hour and recorded in the applicable FBC Eligible Exchange Account;
- (c) minus, the total amount of Eligible Energy exported in such hour using WAX Capacity or sold, exchanged or otherwise transferred to another Entitlement Party or other person;
- (d) minus, the total amount of Eligible Energy exported in such hour using Entitlement Capacity other than WAX Capacity in any hour during which FortisBC is not taking Electricity from BC Hydro under the Power Purchase Agreement; and

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- (e) minus, Eligible Energy used to meet the Service Area Load Requirements in such hour.

The balance in the applicable FBC Eligible Exchange Account at the end of any hour shall be determined for each hour in accordance with the Accounting Procedures, and the terms and conditions of this Agreement.

The Parties acknowledge and agree that:

- (f) any non-Canal Plant Agreement Electricity acquired by FortisBC and delivered into the FBC Service Territory in any hour shall be applied to meet the Service Area Load Requirements in priority to any Entitlement Energy and/or Entitlement Capacity usage;
- (g) notwithstanding the resource stacking order acknowledged in Section 3.6(f), for the purposes of this Agreement, a subsequent calculation shall be completed that deems Eligible Energy acquired by FortisBC to be the last resource used to meet the Service Area Load Requirements such that Eligible Energy can be stored in the applicable FBC Eligible Exchange Account; and
- (h) while the FBC Eligible Exchange Accounts are subsets of the applicable Exchange Accounts under the Canal Plant Agreement, this does not imply that the storage or draft transactions for these accounts will be directly related. For greater certainty it is acknowledged that the aggregate energy stored in the applicable Exchange Accounts can increase, decrease or stay the same while Eligible Energy is being stored in the applicable FBC Eligible Exchange Account.
- (i) Eligible Energy in an FBC Eligible Exchange Account shall be deemed to be available to FortisBC for export at the Point of Supply as defined in the General Wheeling Agreement, unless the Parties agree to a different location.

3.7. FBC Eligible Exchange Account Balance as at certain dates

- (a) If at the time this Agreement becomes effective FortisBC is already operating the FBC Eligible Exchange Accounts pursuant to Section 2.2(b), then for the first hour after the Effective Date the Eligible Account Balance shall be determined as if this Agreement were already in effect during the immediately preceding hour.
- (b) If at the time this Agreement becomes effective FortisBC is not already operating the FBC Eligible Exchange Accounts pursuant to Section 2.2(b), then for the first hour after the Effective Date the Eligible Account Balance shall be deemed to be zero.

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3.8. Maximum FBC Eligible Exchange Account balance

The balance in the applicable FBC Eligible Exchange Account at the end of any hour after the Effective Date shall not exceed the lesser of:

- (a) 93 GWh; or
- (b) the balance, in the aggregate, in the Entitlement Parties' balance in the applicable Exchange Account, plus 46.5 GWh;

as determined in accordance with the Accounting Procedures. For greater certainty, the balance in the applicable FBC Eligible Exchange Account at the end of any hour shall not be less than zero.

In addition, the sum of the FBC Eligible Exchange Account for the Storage Draft Season and for the Storage Refill Season, calculated in accordance with the Accounting Procedures, shall not exceed 93 GWh. If the balance in the applicable FBC Eligible Exchange Account exceeds any of the foregoing limits at the end of any hour, the excess amount shall be deemed to be removed from the applicable FBC Eligible Exchange Account and shall not be Eligible Energy.

The balance in the FBC Eligible Exchange Accounts shall be calculated hourly, and the account limits shall be applied hourly. For purposes only of tracking and applying the hourly FBC Eligible Exchange Account limits under this Agreement, the aggregate balance in the Entitlement Parties' applicable Exchange Accounts shall be calculated hourly, using the same methodology as the accounting methodology described in the Canal Plant Agreement. For this purpose, hourly Aggregate Entitlement Energy shall be determined by dividing monthly Aggregate Entitlement Energy by the number of hours in the month and subtracting adjustments for Unit Outages and Unit Derates (each as defined in the Canal Plant Agreement) for each hour, or in such other manner as may be agreed to by the Parties from time to time to achieve accounting efficiencies.

If the aggregate balance in the Entitlement Parties' applicable Exchange Account exceeds the Exchange Account limits (as provided in the Canal Plant Agreement, but applied hourly) at the end of the hour, then the maximum increase in the FBC Eligible Exchange Account for that hour shall be equal to 46.5 GWh less the aggregate balance in the Entitlement Parties' applicable Exchange Account at the start of that hour, and any excess shall not be Eligible Energy.

Although the Canal Plant Agreement provides for the Exchange Account balances to be calculated at the end of each day, agrees (on its own behalf and not on behalf of any other Entitlement Party) that it will not plan to exceed the foregoing limits with respect to its use of the Exchange Accounts for any hour of any day.

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4. REMEDIES FOR BREACH OF AGREEMENT

4.1. Payment for Certain Breaches

- (a) If FortisBC exports, or sells, exchanges or otherwise transfers Electricity in any hour during which FortisBC is taking Electricity from BC Hydro under the Power Purchase Agreement in breach of this Agreement, that shall be a "Breach" of this Agreement and for each MWh of Electricity so exported, sold, exchanged or otherwise transferred in Breach of this Agreement FortisBC shall pay BC Hydro an amount equal to the higher of (i) 150% of the Mid-Columbia Powerdex Realtime Hourly Index Price, and (ii) the profits earned by FortisBC in respect of any export, sale, exchange or transfer that was a Breach of this Agreement. The payment provided for in this Section 4.1 shall be in addition to the other rights and remedies under this Agreement.
- (b) If FortisBC Breaches this Agreement as described in Section 4.1(a), FortisBC shall promptly provide to BC Hydro all information that BC Hydro reasonably requests to verify the profits earned by FortisBC in respect of any export, sale, exchange or transfer that is a Breach of this Agreement.
- (c) If FortisBC persistently Breaches this Agreement, then, in addition and without prejudice to the other remedies under this Agreement, BC Hydro may apply to the Commission to amend this Agreement to include financial disincentives for Breaching this Agreement that are in addition to and/or different from the payments provided for in Section 4.1(a).
- (d) For greater certainty, if there is a Breach of this Agreement in any hour and a transfer of Imbalance Energy under the Imbalance Agreement in the same hour, FortisBC would be subject to both the payment under Section 4.1(a) and any applicable charge under the Imbalance Agreement.
- (e) If any amount becomes payable by FortisBC to BC Hydro hereunder as a result of a Breach, then BC Hydro may invoice FortisBC for such amount as soon as it becomes known. Invoices shall be due and payable upon receipt.

4.2. Deemed Material Breach

Without limiting what other matters may constitute a Breach of this Agreement or what other Breaches may be material, if

- (a) there occur more than 4 Breaches (regardless of duration) as described in Section 4.1, that each involves more than 4 MWhs in any hour of the Breach, in any Contract Year; or

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- (b) there occur one or more Breaches (of any volume) as described in Section 4.1 in more than 24 hours, in the aggregate, in any Contract Year; or
- (c) there occur one or more Breaches, where the aggregate amount of Electricity exported under all Breaches exceeds 75 MWh, in any Contract Year;

then in each such case that shall be deemed to be a material Breach.

4.3. Exception

Provided FortisBC is complying with its reporting obligations under the Master Accounting Agreement, including the Accounting Procedures thereunder, if there occurs a Breach (an "Inadvertent Breach") that is only discovered through after-the-fact accounting and demonstrably (i) is not intentional, and (ii) could not have been discovered earlier through reasonable diligence, then only the first hour of such Inadvertent Breach shall count for purposes of Sections 4.2(a), 4.2(b), and 4.2(c).

4.4. Reporting of Breach

FortisBC shall self-report to BC Hydro if it becomes aware it has committed a Breach of this Agreement. If BC Hydro becomes aware of an error, omission or discrepancy which is unknown to FortisBC, the disclosure of which would enable FortisBC to avoid a subsequent Breach, but BC Hydro fails to inform FortisBC of the error, omission or discrepancy, then BC Hydro shall not rely on the error, omission or discrepancy to allege a subsequent Breach that could have been avoided had BC Hydro so informed FortisBC. For purposes of this Section 4.4, BC Hydro shall only be considered to become aware of an error, omission or discrepancy if a BC Hydro or Powerex employee involved in administering this Agreement has actual knowledge of the error, omission or discrepancy and the significance of the error, omission or discrepancy for preventing subsequent Breaches.

4.5. Notice of Material Breach/Notice of Suspension

If FortisBC Breaches this Agreement and the Breach is material, or if there are persistent Breaches (in either case, a "material Breach"), including any deemed material Breach as described in Section 4.2, BC Hydro may issue a notice (a "Notice of Material Breach") and FortisBC shall have 7 days after delivery of the Notice of Material Breach to satisfy BC Hydro, acting reasonably, that the cause of the material Breach has been or will be addressed to BC Hydro's reasonable satisfaction within the 7 day period. If FortisBC fails to do so, BC Hydro may issue a further notice (a "Notice of Suspension") and FortisBC's right to export Eligible Energy during any hour when it is taking Electricity from BC Hydro under the Power Purchase Agreement, and FortisBC's right to record Eligible Energy in an FBC Eligible Exchange Account or to transfer Eligible Energy from an FBC Eligible Exchange Account, shall, effective on the date specified in the Notice of Suspension, be suspended until such time as FortisBC has established to BC Hydro's

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satisfaction, acting reasonably (which may include consideration of previous Breaches and steps taken), that FortisBC has remedied the cause of the material Breach and put procedures in place designed to avoid a recurrence of the material Breach.

4.6. Good Faith Dispute

- (a) If FortisBC in good faith disputes that there has been a material Breach, then FortisBC may, provided it has given notice (a "Notice of Dispute") within the 7 day period referred to in Section 4.5, submit the question for dispute resolution, and BC Hydro shall only issue a Notice of Suspension if the arbitrator agrees that there has been a material Breach. In the case of a deemed material Breach referred to in Section 4.2, the arbitrator shall only have the authority to determine whether one or more of the Breaches referred to in Sections 4.2(a), 4.2(b) or 4.2(c) has occurred (and whether the exception in Section 4.3 applies), and not whether the number, frequency or volume of Breaches referred to in those sections give rise to a material Breach.
- (b) If FortisBC in good faith disputes that BC Hydro has acted reasonably in determining that it is not satisfied that the cause of a material Breach has been or will be addressed within 7 days of the relevant Notice of Material Breach then, provided FortisBC has given timely Notice of Dispute, before issuing a Notice of Suspension, BC Hydro's Chief Executive Officer shall give at least 14 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to issue a Notice of Suspension. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to suspend. If they fail to resolve the issues to their mutual satisfaction within such 14 days, BC Hydro may nevertheless issue a Notice of Suspension.

4.7. Termination Right

If:

- (a) FortisBC exports Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour, during a period when its right to do so is suspended pursuant to Section 4.5;
- (b) FortisBC breaches Section 4.5;
- (c) FortisBC's right to export Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour is suspended for more than 30 days in any 12 month rolling period; or
- (d) FortisBC's right to export Electricity while taking Electricity from BC Hydro under the Power Purchase Agreement in any hour is suspended more than 2 times during any 12 month rolling period.

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then BC Hydro may terminate this Agreement, with the prior approval of the Commission. Before taking steps to terminate this Agreement, BC Hydro's Chief Executive Officer must give at least 30 days' written notice to FortisBC's Chief Executive Officer of BC Hydro's intention to terminate the Agreement. The Chief Executive Officers shall meet to try to resolve the issues giving rise to BC Hydro's intention to terminate. If they fail to resolve the issues to their mutual satisfaction within such 30 days, BC Hydro may apply to the Commission for approval to terminate the Agreement.

4.8. Deemed Breach

If FortisBC does not provide timely and reliable information and accounting, as required by this Agreement or the Master Accounting Agreement, in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

5. INFORMATION, ACCOUNTING AND AUDITS

5.1. Information and Accounting

- (a) Each Party shall keep sufficient books and records in relation to its performance of this Agreement so as to enable the Parties (or an auditor) to determine or verify exports, amounts of Eligible Energy recorded in the applicable FBC Eligible Exchange Account, the Eligible Account Balance, WAX Capacity and FBC Entitlement Energy in any hour, all billing and payment amounts hereunder, and otherwise as may be required to implement and confirm (or for an auditor to confirm) compliance with this Agreement, and any related agreements.
- (b) Each Party shall provide access to the books and records described in Section 5.1(a) to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement.
- (c) Each Party shall provide to the other Party and to an auditor appointed pursuant to and in accordance with the Master Accounting Agreement any and all information and accounting related to this Agreement as may reasonably be required (i) to implement and confirm compliance with this Agreement, (ii) to account for all billings and payments under this Agreement, and (iii) to account for transactions and matters to be accounted for under the Master Accounting Agreement.

5.2. Audits/Adjustments

- (a) If a Party discovers that any amount paid or payable under this Agreement has been incorrectly determined then, subject to Section 3.7(j) of the

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Master Accounting Agreement, the Parties shall make correcting adjustments and adjusting payments, if any.

- (b) If an audit under the Master Accounting Agreement shows that amounts paid or payable under this Agreement have been incorrectly determined, the Parties shall make correcting adjustments and adjusting payments, if any.
- (c) If an audit under the Master Accounting Agreement shows that either Party has failed to comply with this Agreement, such audit findings may be used as evidence of a Breach of this Agreement for purposes of Section 4.

6. CONTRACT REPRESENTATIVES

6.1. Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Principal Engineer, Coordination Agreements; and
- (b) for FortisBC, Senior Manager, Power Supply & Planning.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

6.2. Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

6.3. Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite contract representatives under other agreements between the Parties to attend meetings.

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7. DISPUTE RESOLUTION

7.1. Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 7 in the absence of agreement, or (iii) any proposed amendment to this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 7. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 7.

7.2. Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to its Contract Representative and shall cause its Contract Representative to negotiate in good faith to resolve the Dispute.

7.3. Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representative, or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 7.4. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their respective appointed senior executives within 30 days after notification.

7.4. Referral to Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;

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in respect of the proposed amendment and the other Party may intervene in such proceeding; and

- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia) for resolution.

7.5. Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;
- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal

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law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable; and

- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

7.6. Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

7.7. Equitable Remedies

The arbitrator shall adjudicate the dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 7.5(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 7.5(a).

8. NOTICES

8.1. Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively.

- (a) to BC Hydro:
British Columbia Hydro & Power Authority

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333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

(b) to FortisBC:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

With a copy to:
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C. V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

8.2. Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or

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- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

8.3. Electronic Notices

As an alternative to the methods of giving notice described in Section 8.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 8.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

9. MISCELLANEOUS

9.1. Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice time shall be of the essence with respect to such obligations.

9.2. No Assignment Without Consent

- (a) Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.
- (b) Without limiting Section 9.2(a), a Party shall not sell, assign or transfer this Agreement or any of its rights, obligations and liabilities hereunder to any other person unless the Power Purchase Agreement is concurrently sold, assigned and transferred to the same person.

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9.3. Reduction of FBC Entitlement Energy Upon Sale of Plant(s)

If FortisBC sells, assigns or transfers any of its Plants to a third party then, except to the extent that FortisBC is entitled to purchase Entitlement from the purchaser of such Plant(s), the FBC Entitlement Energy shall be reduced by the amount of Entitlement Energy to which the buyer of the Plant(s) becomes entitled under the Canal Plant Agreement.

9.4. No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any Person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

9.5. Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

9.6. No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 9.6 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

9.7. Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

9.8. Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

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9.9. Reliance on Specified Indices

In the event that any provision of this Agreement relies on a specified index to determine or calculate a price or payment pursuant to such provision, and such index (i) ceases to exist or otherwise is no longer published or available to a Party (provided the Party subscribes to receive such index, where subscription is required), or (ii) ceases to be the index predominantly used to establish the market price for the applicable energy product in the applicable market, then the applicable index shall be such index that most closely applies to the provision and approximates the specified index (considering applicable factors, including delivery point, firmness of electricity, time of day and predominant use of such index by market participants), or such other index as the Parties may agree. If the Parties are unable to so agree within 30 days after the specified index ceases to exist or is no longer published or available to a Party or the foregoing notice is given, either Party may refer the matter to dispute resolution pursuant to Section 7.1. An arbitrator appointed under Section 7.5(a) is expressly authorized and directed to select a substitute index based on the foregoing criteria. Pending agreement on or determination of the substitute index, the Party entitled to be paid based on the index shall specify an interim index or pricing method, acting reasonably, and amounts so paid based on such interim index or pricing method shall be adjusted retroactively to the date the index ceased to exist or be published.

9.10. Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

9.11. Enturement

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

9.12. Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

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9.13. Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

9.14. Restatement of Agreement Dated for Reference May 21, 2013

The Energy Export Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

ACCEPTED:

ORDER NO. _____

COMMISSION SECRETARY

ATTACHMENT 4

MASTER ACCOUNTING AGREEMENT

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

and

FORTISBC INC.

DATED FOR REFERENCE

May 21, 2013~~26~~, 2014

ACCEPTED: _____

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MASTER ACCOUNTING AGREEMENT

THIS AGREEMENT is made as of the ~~21st~~^{26th} day of May, ~~2013~~²⁰¹⁴ (the "Reference Date"), to be effective on the Effective Date.

BETWEEN:

**BRITISH COLUMBIA HYDRO AND POWER
AUTHORITY**, having its Head Office at 333 Dunsmuir Street,
City of Vancouver, Province of British Columbia

("BC Hydro")

AND:

FORTISBC INC., a body corporate having an office at 10th Floor,
1111 West Georgia Street, City of Vancouver, Province of British
Columbia

("FortisBC")

WHEREAS:

- A. BC Hydro, FortisBC, Teck Metals Ltd ("Teck"), Brilliant Power Corporation ("BPC"), Brilliant Expansion Power Corporation ("BEPC") and Waneta Expansion Limited Partnership ("WELP") are parties to the Canal Plant Agreement, and certain of such parties are parties to the CPA-Related Agreements;
- B. BC Hydro and FortisBC are parties to the Non-CPA-Related Agreements;
- C. BC Hydro acts as the operator of the BC Control Area and the balancing authority in British Columbia and FortisBC operates an integrated generation and transmission system within the BC Control Area;
- D. The Parties have agreed to provide certain information and accounting with respect to both the CPA-Related Agreements and the Non-CPA-Related Agreements; and
- E. The Accounting Procedures established pursuant to this Agreement are intended to be adopted as an Operating Procedure under the Canal Plant Agreement, to the extent they are reasonably necessary to implement the Canal Plant Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

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1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

- (a) "Accounting Procedures" means the accounting procedures attached as Schedule A, including the Appendices thereto, as they may be amended from time to time in accordance with this Agreement;
- (b) "Agreement" means this Master Accounting Agreement, as amended, restated and/or supplemented from time to time, and specifically includes the Accounting Procedures;
- (c) "BC Control Area" has the meaning ascribed to it in the Canal Plant Agreement, and under current WECC and NERC rules is generally known as the "BC Hydro Balancing Authority area";
- (d) "BC Hydro System" means the interconnected generation and transmission facilities and related protection, control and communication equipment in British Columbia owned and/or operated by BC Hydro (excluding the Entitlement Parties' System), including all additions and modifications thereto and repairs or replacements thereof;
- (e) "Brilliant Power Purchase Agreement" means the agreement made as of the 4th day of April, 1996, between Brilliant Power Corporation (as assignee of Columbia Power Corporation and CBT Power Corp.) and FortisBC (then known as "West Kootenay Power Ltd."), as amended, restated and/or supplemented from time to time;
- (f) "Business Day" means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (g) "Canal Plant Agreement" means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck, BPC, BEPC and WELP, as amended, restated and/or supplemented from time to time;
- (h) "Commercial Arrangements" means the commercial arrangements that are described in Section 3.5 of the Canal Plant Agreement and are in effect from time to time;
- (i) "Commission" means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;

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- (j) "CPA-Related Agreements" means:
- (i) the Canal Plant Agreement, including the Operating Procedures made pursuant to it;
 - (ii) the BEPC CPA Scheduling Option Agreement made as of the 1st day of July, 2005 and the Teck Cominco CPA Scheduling Agreement made as of the 1st day of July, 2005;
 - (iii) the Commercial Arrangements; and
 - (iv) other agreements that BC Hydro and FortisBC agree to from time to time, each acting in good faith and in a reasonable manner;
- each as they may be amended, restated and/or supplemented from time to time;
- (k) "Effective Date" means ~~October 1, 2013~~ July 1, 2014, provided that the last of the conditions precedent in Section 2.2 ~~have~~ has then been met;
- (l) "Energy Export Agreement" means the Energy Export Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (m) "Entitlement Parties" means the parties to the Canal Plant Agreement, except BC Hydro;
- (n) "Entitlement Parties' System" means the contiguous, interconnected generation and transmission facilities and related protection, control and communication equipment located in British Columbia and owned by one or more of the Entitlement Parties or their affiliates, and includes all additions and modifications thereto and repairs or replacements thereof, and specifically includes the Waneta Expansion, even though it is connected to the Entitlement Parties' transmission facilities through facilities owned by BC Hydro;
- (o) "FBC Entitlement Energy" means FortisBC's share of the Entitlement Energy, as set out and described in Table 9 of the Canal Plant Agreement under "FBC Projects", as redetermined and/or adjusted under that agreement from time to time, plus Entitlement Energy attributable to the Brilliant Plant and sold to FortisBC under the Brilliant Power Purchase Agreement;
- (p) "FBC Service Territory" means the area in British Columbia served, directly or indirectly, by FortisBC from time to time, and connected by the Entitlement Parties' System;
- (q) "General Wheeling Agreement" means the General Wheeling Agreement, dated October 15, 1986, between FortisBC and BC Hydro, as amended, restated and/or supplemented from time to time;

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- (r) "Imbalance Agreement" means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (s) "Non-CPA-Related Agreements" means:
 - (i) the Power Purchase Agreement;
 - (ii) the Energy Export Agreement;
 - (iii) the Imbalance Agreement;
 - (iv) the General Wheeling Agreement; and
 - (v) other agreements that BC Hydro and FortisBC agree to from time to time, each acting in good faith and in a reasonable manner;each as they may be amended, restated and/or supplemented from time to time;
- (t) "NERC" means the North American Electric Reliability Corp., or a successor organization;
- (u) "Parties" means the parties to this Agreement and "Party" means either of them;
- (v) "Power Purchase Agreement" means the Power Purchase Agreement entered into between BC Hydro and FortisBC concurrently with this Agreement, as amended, restated and/or supplemented from time to time;
- (w) "Reference Date" has the meaning ascribed to it on the first page of this Agreement;
- (x) "WECC" means the Western Electricity Coordinating Council, or a successor organization; and
- (y) "WEPAS" means BC Hydro's Wheeling, Entitlement, Purchases Accounting System, or any future replacement accounting system (by whatever name it is known).

1.2 Canal Plant Agreement Definitions

Capitalized words and terms in this Agreement that are not defined herein but are defined in the Canal Plant Agreement shall have the meanings ascribed to them in the Canal Plant Agreement.

1.3 Accounting Procedures Definitions

In this Agreement, named reports, summaries, forms and similar documents, that are not defined in Section 1.1 or in the Canal Plant Agreement but are defined or described in the

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Accounting Procedures shall be as described in, and shall have the meanings ascribed to them in, the Accounting Procedures.

1.4 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or other subdivision of, or Appendix to, this Agreement, unless the context otherwise requires;
- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency, and
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party.

2. TERM AND CONDITIONS PRECEDENT

2.1 Term of Agreement

Subject to Section 2.2, the term of this Agreement shall commence on the Effective Date and shall continue until the expiry or termination of the last of the CPA-Related Agreements and the Non-CPA-Related Agreements to expire or terminate.

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2.2 Conditions Precedent to Agreement Becoming Effective

This Agreement shall not be effective unless each of the following conditions precedent has, on or before ~~October 1, 2013~~ December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* approving this Agreement, without imposing changes unless acceptable to both Parties;
- (b) the Power Purchase Agreement has become, or will concurrently become, effective in accordance with its terms; and
- (c) Operating Procedure 20, in the form approved by the Parties as at ~~the Reference Date~~ May 21, 2013 (or in such other form as the Parties may subsequently agree), has been signed on behalf of all parties to the Canal Plant Agreement.

2.3 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

3. INFORMATION/ACCOUNTING TO BE PROVIDED

3.1 Information/Accounting for Non-CPA-Related Agreements

FortisBC shall obtain and make available to BC Hydro hourly (segregated where reasonably required) energy and capacity information and accounting that BC Hydro reasonably requires to implement the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance by FortisBC with the Non-CPA-Related Agreements in accordance with their respective provisions.

3.2 Information/Accounting for CPA-Related Agreements

- (a) FortisBC shall obtain and make available to BC Hydro (on its own behalf and on behalf of the other Entitlement Parties) hourly (segregated where so provided by the Accounting Procedures or the CPA-Related Agreements) energy and capacity information and accounting that BC Hydro reasonably requires to implement the CPA-Related Agreements and/or to enable BC Hydro to confirm compliance by the other parties to the CPA-Related Agreements (including FortisBC) with those agreements, in accordance with their respective provisions, provided that either (i) the applicable CPA-Related Agreement to which an Entitlement Party whose information and/or accounting is to be provided is a party, contemplates the provision of such information and accounting to BC Hydro, or (ii) the agreement

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and consent of any Entitlement Party whose information and accounting is to be provided by FortisBC has been obtained. FortisBC acknowledges and agrees that agreement and consent by Entitlement Party(ies) to such information and accounting being provided by FortisBC to BC Hydro is evidenced by Operating Procedure 20 in the form agreed between the Parties as at ~~the Reference Date~~ May 21, 2013.

- (b) The Parties acknowledge and agree that the information and accounting required by Operating Procedure 20 is in addition to information and accounting requirements in other current Operating Procedures under the Canal Plant Agreement. If there are direct inconsistencies between the information and accounting required by Operating Procedure 20 and the other current Operating Procedures, the Parties shall use all reasonable efforts to ensure that such current Operating Procedures are amended as may be required to address such inconsistencies.
- (c) The Appendices to the Accounting Procedures set out and describe certain specific data points for information (and whether such information is to be aggregated or segregated) that, as at the Reference Date, the Parties reasonably believe is required for purposes of this Agreement, the CPA-Related Agreements and/or the Non-CPA-Related Agreements. FortisBC shall provide BC Hydro with such information as it relates to FortisBC in accordance with this Agreement. Subject to Section 3.2(a), FortisBC shall provide BC Hydro with such information as it relates to the other Entitlement Parties in accordance with this Agreement.

3.3 BC Hydro Information/Accounting

- (a) BC Hydro shall continue to provide FortisBC with hourly capacity information and accounting using WEPAS, as it may be updated from time to time. Such information and accounting shall be provided monthly, and otherwise as requested or as necessary to resolve accounting and/or billing discrepancies.
- (b) BC Hydro shall make available to FortisBC, from meters that BC Hydro owns or has access to, metering information that FortisBC reasonably requires in order to provide any of the information and accounting contemplated by this Agreement.
- (c) BC Hydro shall provide other information requested by FortisBC that is in BC Hydro's possession or control and that FortisBC reasonably requires to provide any of the information and accounting contemplated by this Agreement.

3.4 FBC Service Territory Load/Resource Accounting/ Metering

- (a) FortisBC shall consolidate and provide to BC Hydro, all information and accounting required to demonstrate the balancing of loads and resources in the FBC Service Territory, including at each "point of interconnection" and "point of supply" under the General Wheeling Agreement. FortisBC shall obtain all necessary information and accounting from the other Entitlement Parties and other third parties (including BC Hydro) to demonstrate the balancing of loads and

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resources. BC Hydro shall use such information and accounting provided by FortisBC, in conjunction with information BC Hydro obtains from other sources, to perform the requisite WEPAS accounting.

- (b) FortisBC shall make available to BC Hydro, from meters that FortisBC owns or has access to, metering information that BC Hydro reasonably requires in order to provide any of the information and accounting contemplated by this Agreement.
- (c) FortisBC shall comply with Operating Procedure 023 under the Canal Plant Agreement, which requires FortisBC to provide BC Hydro (Generation) with a forecast of the load on the Entitlement Parties' System for each hour, and to notify BC Hydro (Generation) of any forecast change in load that exceeds 10 MW, in each case in accordance with the same timelines as provided for in Operating Procedures under the Canal Plant Agreement. The Parties shall from time to time negotiate in good faith to establish a method of timely providing such information that is more efficient than the method provided for in Operating Procedure 023 as at the Reference Date, failing which either Party may submit the matter for dispute resolution in accordance with Section 10.

3.5 Required Information

For greater certainty, FortisBC acknowledges and agrees that hourly energy and capacity information and accounting, including for transactions:

- (a) that use or commit Entitlement Capacity, directly or indirectly; and/or
- (b) that commit capacity, including Entitlement Capacity, for reserves; and/or
- (c) that affect scheduled and/or actual power flows into or out of the Entitlement Parties' System, including imports or exports between the FBC Service Territory and any adjoining control area or balancing authority area, and transfers between the BC Hydro System and the Entitlement Parties' System; and/or
- (d) that involve generation within the FBC Service Territory, that is to be recorded as Eligible Energy under the EEA; and/or
- (e) that involve FortisBC power flows over the BC Hydro System or BC Hydro power flows over the Entitlement Parties' System; and/or
- (f) that involve a transfer of Entitlement Energy and associated Entitlement Capacity that is to be recorded as Eligible Energy under Section 3.4(f) of the Energy Export Agreement;

are reasonably required by BC Hydro to implement the CPA-Related Agreements and the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance with such Agreements in accordance with their respective provisions.

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3.6 Information May be Aggregated, Unless Otherwise Required

- (a) BC Hydro acknowledges and agrees that information and accounting for transactions referred to in Section 3.5 shall be provided (by FortisBC on its own behalf in the case of the Non-CPA Related Agreements, and on behalf of the Entitlement Parties (including FortisBC) in the case of the CPA-Related Agreements) on an aggregated hourly basis unless (i) in the case of the Non-CPA-Related Agreements, BC Hydro reasonably requires such information and/or accounting to be provided on a segregated basis (as between FortisBC, on the one hand, and the Entitlement Parties other than FortisBC, on the other hand) to implement and/or confirm compliance with such agreements and (ii) in the case of the CPA-Related Agreements, BC Hydro reasonably requires such information and/or accounting to be provided on a segregated basis to implement and confirm compliance with such agreement(s) and either (A) the applicable agreement(s), to which an Entitlement Party whose information and/or accounting is to be provided is a party, contemplates the provision of such information and accounting to BC Hydro on a segregated basis, or (B) the consent of any Entitlement Party(ies) (other than FortisBC) whose information and/or accounting is to be provided on a segregated basis by FortisBC has been obtained. FortisBC acknowledges and agrees that consent by the Entitlement Party(ies) to information and accounting being provided on a segregated basis is evidenced by Operating Procedure 20 (in the form agreed between the Parties as at the Reference Date/May 21, 2013).
- (b) FortisBC acknowledges and agrees that information and accounting for determining:
- (i) WAX Capacity usage, and Eligible Energy amounts, (as each of those terms is defined in the Energy Export Agreement) to implement and/or confirm compliance with the Energy Export Agreement;
 - (ii) FBC Entitlement Energy usage and Eligible Energy amounts, if and when FortisBC sells, exchanges, or otherwise transfers FBC Entitlement Energy or Eligible Energy to another Entitlement Party or any other person, to the extent required to confirm compliance with Section 3.1(d) the Energy Export Agreement;
 - (iii) Entitlement usage by or on behalf of an Entitlement Party, to implement and/or confirm compliance with the Commercial Arrangement(s) entered into by that Entitlement Party;
 - (iv) FortisBC imports into and exports from the FBC Service Territory, to the extent required to confirm compliance with any one or more of the Non-CPA Related Agreements; and

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- (v) exports by Entitlement Parties (other than FortisBC) or other persons, to the extent required to confirm compliance with Section 3.1(d) of the Energy Export Agreement; and
- (vi) transfers of electrical energy that are deemed not to be transfers of Imbalance Energy pursuant to Section 5.4(e) of the Imbalance Agreement, unless the Parties have agreed on an alternative Accounting Procedure for determining such transfers;

must be provided on a segregated hourly basis for both capacity and energy amounts provided, in the case of a transaction described in paragraph (v) above, that the consent of the Entitlement Party(ies) (other than FortisBC) or other person whose information and/or accounting is to be provided on a segregated basis by FortisBC has been obtained. For greater certainty, "segregated" means the information is to be provided separately for a specific Entitlement Party, Plant or contract provision, as applicable to the extent reasonably required by BC Hydro to implement the CPA-Related Agreements or the Non-CPA-Related Agreements and/or to enable BC Hydro to confirm compliance with such agreements in accordance with their respective provisions.

3.7 Timing of Information/Accounting

- (a) Information and accounting to be provided under this Agreement shall be provided "after-the-fact", except where required by the CPA-Related Agreements and/or the Non-CPA-Related Agreements to be provided in advance.
- (b) FortisBC shall provide information and accounting on a daily and weekly (which may be a compilation of after-the-fact daily information) basis as follows:
 - (i) FortisBC shall use reasonable efforts to provide the Hourly CPA Capacity Report and, if applicable, a Contingency Reserve Usage Form and Imbalance Exception Report, in respect of each day by 1200 hours on the Business Day immediately following such day and in any event shall provide such report and form by no later than 1600 hours on the second Business Day following such day; and
 - (ii) FortisBC shall provide the Daily and Hourly CPA Energy Accounting Report, in respect of each week (Monday to Sunday) by no later than 1600 hours on the second Business Day following the end of such week;

A report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that if it includes any estimate, FortisBC shall use reasonable efforts to identify the parts of the report that are estimates.

- (c) BC Hydro shall provide the Monthly WEPAS Capacity Report providing the hourly capacity accounting in respect of each calendar month as soon as reasonably possible, and in any event by no later than the last day of the

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immediately following month; a report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that any estimate must be identified in such report;

- (d) FortisBC shall provide the Monthly CPA Energy Accounting Report, the Monthly PPA Summary, the Monthly Imbalance Summary and the Monthly Metering Summary in respect of each calendar month as soon as reasonably possible, and in any event by no later than the last day of the immediately following month; a report may include estimates if there are unreconciled meter errors, scheduling or other discrepancies, unavailable inputs, or disputes on inputs, provided that any estimate must be identified in such report;
- (e) If any report provided under Sections 3.7(c) or 3.7(d) is based on estimates, the Party responsible for providing such report shall finalize such report as soon as possible, and in any event shall finalize it (or initiate dispute resolution pursuant to Section 10 if it involves a dispute that is not resolved) by the end of the calendar month after it was due to be provided;
- (f) BC Hydro shall review and notify FortisBC of any errors, omissions or discrepancies of which it becomes aware in:
 - (i) the Hourly CPA Capacity Report and, if applicable, the Contingency Reserve Usage Form and Imbalance Exception Report, provided by FortisBC in accordance with Section 3.7(b)(i) as soon as reasonably possible and in any event by no later than 5 Business Days after the day on which FortisBC provides such information and accounting to BC Hydro;
 - (ii) the Daily and Hourly CPA Energy Accounting Report provided by FortisBC in accordance with Section 3.7(b)(ii) as soon as reasonably possible and in any event by no later than 8 Business Days after the day on which FortisBC provides such Daily and Hourly CPA Energy Report to BC Hydro; and
 - (iii) the Monthly CPA Energy Accounting Report, the Monthly PPA Summary, the Monthly Imbalance Summary and the Monthly Metering Summary provided by FortisBC in accordance with Section 3.7(d) as soon as reasonably possible and in any event within 20 Business Days of receiving such information and accounting.
- (g) FortisBC shall review and notify BC Hydro of any errors, omissions or discrepancies of which it becomes aware in the Monthly WEPAS Capacity Report provided by BC Hydro in accordance with Section 3.7(c) as soon as reasonably possible and in any event within 10 Business Days of receiving such information and accounting.
- (h) It is acknowledged that the Monthly CPA Energy Reports are based on metered data whereas daily and weekly information is based on telemetered data. Further, after-the-fact information to be included in each Monthly CPA Energy Report

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may not be known until after the relevant month has ended. Accordingly, there may be slight discrepancies between (i) such monthly reports and (ii) such daily and weekly information. Any such discrepancies shall not be reconciled unless the differences are material.

- (i) Subject to Section 3.7(j), a Party may at any time inform the other Party of any material error, omission or discrepancy that it did not discover within the relevant time period described in Section 3.7(f) or 3.7(g), as applicable, and the Parties shall correct any such error, omission or discrepancy and make correcting adjustments and adjusting payments, if any. The Parties shall use good faith efforts to resolve any disputes with respect to such errors or omissions discovered, failing which either Party may submit the matter for dispute resolution in accordance with Section 10 and Section 10.4(e) shall apply.
- (j) If, within 12 months of the date a Party provides any information, accounting or report to the other Party in accordance with Sections 3.7(b), 3.7(c), or 3.7(d), as applicable, neither Party notifies the other of any errors, omissions or discrepancies in such information, accounting or report, then the Parties shall be entitled to assume that such information, accounting or report is accurate, and neither Party shall have any liability to the other Party for any error, omission or discrepancy subsequently discovered in such information or accounting.
- (k) Nothing in this Section 3.7 is intended to affect any obligations under the CPA-Related Agreements or the Non-CPA-Related Agreements that require scheduling notifications, estimated usage or other information to be provided in advance of an operating hour.
- (l) The Parties acknowledge and agree that the times specified in this Section 3.7 for providing reports and for reviewing and notifying a Party of errors, omissions or discrepancies may be adjusted from time to time in the Accounting Procedures by mutual agreement of their Technical Committee representatives, and the adjusted times shall thereupon govern, provided that a Party may, by reasonable notice to the other Party, reinstate the times provided for in this Agreement.

3.8 Coordination of Accounting Systems

The Parties acknowledge that certain of the information and accounting in connection with the CPA-Related Agreements and the Non-CPA-Related Agreements is financially significant to both Parties, is complicated and/or is sequential, with the rights and obligations of the Parties for any time period potentially being impacted by prior information and accounting. Accordingly, the Parties agree to use all reasonable efforts to ensure that information and accounting to be provided by one Party to the other Party under this Agreement is provided in an efficient manner, and to coordinate their respective accounting systems for this purpose, including the utilization of a database software structure where the cost is warranted.

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3.9 Costs

All costs of providing information and accounting under this Agreement shall be borne by the Party required to provide same.

3.10 A Party Remains responsible for Information/Accounting, Notwithstanding Usage by Others

Unless agreed by the other Party, neither Party shall, by engaging a marketing agent, or otherwise providing any or all of its rights under a CPA-Related Agreement or a Non-CPA-Related Agreement (including rights to schedule imports or exports) to a third party, be relieved of responsibility for obtaining and providing the required information and accounting in relation to such agreement in accordance with this Agreement.

3.11 All Reasonable Efforts to Ensure Accuracy

Each Party shall use all reasonable efforts to ensure that information and accounting provided by the Party under this Agreement is complete and accurate and shall, subject to Section 3.7(j), promptly take steps to correct and reconcile any information and accounting that is found to be incomplete or inaccurate.

3.12 Confidentiality and Use of Information

(a) Each Party ("Receiving Party") shall, except with the prior written consent of the other Party ("Providing Party"), keep confidential all information and accounting that is provided by the Providing Party (whether of the Providing Party itself or, where the Providing Party is FortisBC, of an Entitlement Party other than FortisBC, and whether aggregated or segregated) under any of this Agreement, the CPA-Related Agreements and/or the Non-CPA-Related Agreements, and that the Receiving Party reasonably believes the Providing Party intends should be kept confidential, other than information that is or becomes public through no breach of this Agreement by the Receiving Party ("Confidential Information"), and shall limit disclosure of the same to:

- (i) its directors, officers, employees, agents, professional advisors, consultants or affiliates (or any affiliates' respective directors, officers, employees, agents, professional advisors or consultants) who reasonably need such information or accounting for a purpose or purposes contemplated by this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements; or
- (ii) an auditor appointed pursuant to and in accordance with the provisions of this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements.

Each Party will take all reasonable precautions to ensure that any such person to whom such Confidential Information is disclosed abides by the obligation of confidentiality under this Section 3.12(a). Nothing in this Section 3.12(a) shall

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limit disclosure required by law or in connection with regulatory requirements and/or filings.

- (b) Neither Party shall use, or permit any person referred to in Section 3.12(a)(i) to use, Confidential Information provided under this Agreement by the other Party, if (i) such Confidential Information is market sensitive at the time of use, and (ii) such use would be contrary to laws, regulations, market rules or policies and procedures applicable to such Party or person, or would unduly discriminate against, or deliberately and unfairly prejudice, the other Party, provided that nothing in this Section 3.12(b) is intended to prevent a Party from enforcing its rights under this Agreement, the CPA-Related Agreements or the Non-CPA-Related Agreements.
- (c) Nothing in this Section 3.12 is intended to derogate from the obligations of confidentiality under the Canal Plant Agreement with respect to Confidential Information provided pursuant to that agreement

4. ACCOUNTING PROCEDURES

4.1 Parties to Develop and Maintain Accounting Procedures

BC Hydro and FortisBC shall develop and maintain Accounting Procedures from time to time that describe in reasonable detail the capacity and energy information and accounting that is required to be provided by the Parties, whether it is to be hourly, aggregated or segregated and the time and method of providing same, all pursuant to and in accordance with this Agreement.

4.2 Accounting Procedures at Effective Date

The Accounting Procedures as at the ~~Reference Date~~ May 21, 2013 are attached as Schedule A. The Accounting Procedures have been developed to reflect the requirements of this Agreement, which the Parties agree are reasonably required to implement and/or confirm compliance with the CPA-Related Agreements and the Non-CPA-Related Agreements.

4.3 Accounting for GWA Purposes

- (a) There shall be an allocation order of how resources shall be accounted for, and allocated to "points of interconnection" and "points of supply" as defined under the General Wheeling Agreement. The initial allocation order is set out in the Accounting Procedures as at the ~~Reference Date~~ May 21, 2013.
- (b) The allocation order referred to in Section 4.3(a) may be changed by FortisBC only if there is a material change in the CPA-Related Agreements or the Non-CPA-Related Agreements or the Entitlement Parties' System that would adversely affect FortisBC's ability to meet its load at the "points of interconnection" or "point of supply", and provided that FortisBC has given notice to BC Hydro that is adequate in the circumstances.

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4.4 **Certain Requirements for Accounting Procedures**

In addition to the requirements of Section 4.1, the Accounting Procedures in place from time to time shall provide for the following:

- (a) there shall be one or more stacking orders of how resources shall be accounted for, such stacking orders to be consistent with requirements of this Agreement, the CPA-Related Agreements and the Non-CPA-Related Agreements;
- (b) the Party providing information for transactions shall provide the information on the basis of an hourly scheduling period, unless agreed otherwise by the Parties;
- (c) the Party providing information shall ensure that it is consistent across all timeframes, products and components, as appropriate and applicable;
- (d) FortisBC shall provide all its inputs into the required accounting, including FortisBC's hourly load, imports and exports between the FBC Service Territory and any adjoining control area or balancing authority area, and transfers between the BC Hydro System and the Entitlement Parties' System;
- (e) BC Hydro shall provide all its inputs into the required accounting, including the WEPAS Report;
- (f) FortisBC shall report the amount of reserves it held, and was obligated to hold, under the CPA-Related Agreements;
- (g) FortisBC shall provide unit outage and derate information (including the starting and ending times for outages and derates) with respect to the Entitlement Parties' Plants;
- (h) FortisBC shall provide hourly FBC Eligible Exchange Account (as defined in the Energy Export Agreement) balances;
- (i) for the purposes only of tracking and applying the hourly FBC Eligible Exchange Account limits under Section 3.8 of the Energy Export Agreement, FortisBC shall calculate and provide the hourly aggregate balance in the Entitlement Parties' applicable Exchange Accounts under the Canal Plant Agreement;
- (j) there shall be a process for timely acceptance and sign-off by the Parties on the monthly reports;
- (k) FortisBC shall provide telemetered and metered generation information, and document any differences between telemetered and metered records;
- (l) treatment of station service losses (including WAX) and transmission losses, as appropriate and applicable;

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- (m) upon request, each Party shall provide such other information as may be reasonably required to implement the CPA-Related Agreements and the Non-CPA-Related Agreements, and to confirm whether those agreements have been complied with; and
- (n) each Party shall ensure information and accounting meets legal obligations and is consistent with information filed or provided to regulatory authorities.

4.5 Accounting Procedures Binding on the Parties

The Accounting Procedures in effect from time to time shall be binding on each of the Parties from the date agreed to by the Parties (or determined by an arbitrator if the Parties are unable to agree) until they are modified or replaced in accordance with this Agreement, and the Parties shall take all steps necessary to implement the Accounting Procedures. If any information or accounting that is reasonably required to implement the Non-CPA-Related Agreements and/or the CPA-Related Agreements and/or to enable the other Party to confirm compliance with the CPA-Related Agreements or Non-CPA-Related Agreements in accordance with their respective provisions is not provided for under the Accounting Procedures, the Parties shall, subject to Section 3.2, act reasonably and in good faith to timely provide such information and accounting pending amendments to the Accounting Procedures.

4.6 Accounting Procedures to be Reviewed Periodically, and Amended as Required

The Accounting Procedures shall be reviewed from time to time at the request of a Party if it believes that they do not adequately meet the requirements of this Agreement, if there have been changes to the Non-CPA-Related Agreements, CPA-Related Agreements or if a Party reasonably believes that system, market or operational changes require changes to the Accounting Procedures. Agreed amendments shall become effective on the date specified therein. If the Parties are unable to agree on appropriate amendments to the Accounting Procedures within 90 days of a Party's request, then either Party may submit the matter for dispute resolution in accordance with Section 10.

5. CPA-RELATED AGREEMENTS AND OPERATING PROCEDURE 20

5.1 Accounting Procedures and Operating Procedure 20

It is intended that the Accounting Procedures form a single, integrated document providing for certain information and accounting in respect of both the Non-CPA-Related Agreements and the CPA-Related Agreements. The Canal Plant Agreement provides for the parties to that agreement to develop Operating Procedures from time to time that are reasonably required to implement the Canal Plant Agreement. It is the intent of the Parties that those parts of the Accounting Procedures from time to time that are reasonably required to implement the CPA-Related Agreements will be approved by the parties to the Canal Plant Agreement as Operating Procedure 20 under the Canal Plant Agreement. The Parties shall cause their representatives on the Canal Plant Agreement Operating Committee to vote to adopt Operating Procedure 20 (initially in the form agreed between the Parties as at ~~the Reference Date~~ May 21, 2013) and shall use all

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reasonable efforts to have the other Entitlement Parties' representatives on the Canal Plant Agreement Operating Committee vote to adopt Operating Procedure 20, as it may be amended from time to time in accordance with this Agreement and/or the Canal Plant Agreement. Notwithstanding Section 2.2, the obligations of the Parties under this Section 5.1 shall be effective on the Reference Date ~~May 31, 2013~~.

5.2 Information/Accounting for CPA-Related Agreements

FortisBC's obligation to provide information and accounting in respect of any CPA-Related Agreements to which it is not a party shall continue only for so long as it continues to be system operator in respect of the Plants of the other Entitlement Parties and the Entitlement Parties' System. If FortisBC ceases to be system operator, it must use commercially reasonable efforts to ensure that this obligation is assumed by the person who replaces FortisBC as the system operator.

5.3 Amendments to Accounting Procedures re: CPA-Related Agreements

If the Accounting Procedures are proposed to be amended from time to time (whether by agreement of the Parties or by determination of an arbitrator under Section 10), then, to the extent the amendments relate to the CPA-Related Agreements, the Parties shall give notice to the other Entitlement Parties under the Canal Plant Agreement. If the other Entitlement Parties (or those Entitlement Parties affected thereby) agree to the amendments, then the Accounting Procedures and Operating Procedure 20 shall be amended accordingly to incorporate the amendments. If the other Entitlement Parties (or those Entitlement Parties affected thereby) do not agree to the amendments, then either Party (as a party to the Canal Plant Agreement) may dispute the failure to agree in accordance with Section 12 of the Canal Plant Agreement on the basis that the proposed amendments are, or are not, reasonably required to implement the CPA-Related Agreements. Regardless of the outcome of dispute resolution under the Canal Plant Agreement, BC Hydro and FortisBC shall nevertheless honour the amendments as between themselves.

6. THIRD PARTY INFORMATION/ACCOUNTING

6.1 Third Party Information

The Parties agree as follows:

- (a) Certain information and accounting which FortisBC makes available, or is obliged to make available, hereunder to BC Hydro is first made available to FortisBC by Entitlement Parties (other than FortisBC) who are party to one or more of the CPA-Related Agreements (the "Third Party Information");
- (b) FortisBC shall use commercially reasonable efforts consistent with its role as agent for the other Entitlement Parties and system operator of the Entitlement Parties' System to ensure that Third Party Information is accurate and timely provided by the other Entitlement Parties and shall cooperate and assist in having

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errors or issues relating to timely and accurate provision of such information and accounting corrected; and

- (c) FortisBC shall not be responsible or liable for any loss or damages whatsoever suffered or incurred by BC Hydro, arising from or in connection with BC Hydro's use of or reliance upon, any Third Party Information which FortisBC makes available hereunder to BC Hydro, unless and then only to the extent that such loss or damage is caused by the negligence or wilful misconduct of FortisBC in the collection or provision of such Third Party Information to BC Hydro.

6.2 Limitations on Providing Information

The obligation of a Party (the "Disclosing Party"):

- (a) to obtain and provide information and accounting relating to agreements to which the Disclosing Party is not a party; and
- (b) to permit the other Party to conduct an audit of the Disclosing Party's records and transactions pursuant to Section 7.1 in relation to any agreement to which the Disclosing Party is not a party;

is subject to the relevant other Party first having authorized the Disclosing Party to release the applicable information and accounting to the other Party in relation to such agreement, if such authorization is required. In its dealings with any other relevant party, each Party shall use all reasonable efforts to obtain such authorization. The Disclosing Party shall require as a condition of any agreement it enters into after June 5, 2012 that it be permitted to provide, and the other relevant party be required to provide, the information and accounting described in this Agreement (including the Accounting Procedures) and permit the audit described in Section 7.

6.3 Acknowledgement re CPA-Related Agreements

FortisBC acknowledges that Operating Procedure 20 provides the authorization to disclose information of or relating to the other Entitlement Parties in respect of CPA-Related Agreements.

7. INFORMATION AND AUDITS

7.1 Information

- (a) FortisBC shall keep sufficient books and records in relation to its performance of those of the CPA-Related Agreements and the Non-CPA-Related Agreements to which it is a party, so as to enable an auditor to confirm FortisBC's compliance therewith.
- (b) FortisBC shall keep records of its third party purchases and sales and other transactions as may be required to verify the information and accounting required to be provided under this Agreement.

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7.2 Audits

Either Party (the "Auditing Party") shall be entitled to retain an independent third party auditor to audit the books, records, operations and transactions of the other Party (the "Audited Party"), on a confidential basis, to review the accuracy of information input into the Accounting Procedures and the accuracy, timeliness and appropriateness of the accounting outputs to enable the Auditing Party to confirm whether the Audited Party is in compliance with this Agreement and those of the CPA-Related Agreements and/or the Non-CPA-Related Agreements to which it is a party. The auditor shall not provide commercially sensitive information to the Auditing Party or any other person in the course of the audit or in the report of the results of its audit, but shall provide a report of the results of its audit to the Auditing Party, with a copy to the Audited Party. The Audited Party shall make available to any such auditor all applicable records for purposes of the auditor's review. The Auditing Party shall bear the costs of the audit, unless the audit shows that the Audited Party has failed to comply with this Agreement or any of the CPA-Related Agreements and/or the Non-CPA-Related Agreements to which it is a party, in which case the Audited Party shall pay the cost of the audit.

8. TECHNICAL COMMITTEE

8.1 Establishment of Technical Committee/Members

A Technical Committee shall be established and maintained throughout the term of this Agreement, consisting of two representative of each Party, each of whom shall serve until notice has been given to the other Party of the selection of a successor.

8.2 Alternate Members

Each Party may give notice to the other Party of an alternate who shall serve during the inability or absence of the representative of the Party giving notice.

8.3 Role of Technical Committee

The Technical Committee shall determine all matters relating to administration and operation of this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement, and shall consider and decide questions relating to operations under those agreements, the Accounting Procedures and the method of calculating and accounting for electricity taken, Exports, Point of Delivery allocations, and other similar matters. The Technical Committee:

- (a) may, from time to time, modify, terminate or replace the Accounting Procedures and shall modify, terminate or replace same as may be reasonably required to implement this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement;
- (b) shall make such determinations, take such actions and perform such other roles and responsibilities as are contemplated by this Agreement, or as the parties direct; and

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- (c) shall promptly notify the parties of all modifications or replacements of the Accounting Procedures and other actions and decisions taken by the Technical Committee pursuant to this Agreement.

The Technical Committee may recommend amendments to the Parties, but shall not have the authority to amend this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement, either expressly or by course of conduct.

8.4 Coordination with Canal Plant Agreement Operating Committee

Where practical, at least one of a Party's representatives on the Technical Committee shall be one of the Party's representatives on the Operating Committee appointed under the Canal Plant Agreement. In any event, the Technical Committee shall work closely with the Operating Committee under the Canal Plant Agreement and shall work to ensure that operations under this Agreement, the Power Purchase Agreement, the Imbalance Agreement, the General Wheeling Agreement and the Energy Export Agreement are coordinated with the Canal Plant Agreement and that the Accounting Procedures are administered in a coordinated manner with the relevant Operating Procedure(s) under the Canal Plant Agreement.

8.5 Basis for decisions

No decision or action of the Technical Committee shall be effective unless it has been approved by the affirmative votes of all representatives of the Parties or by written instrument signed by all representatives of the Parties. In reaching decisions, the Technical Committee shall attempt to achieve a just and equitable resolution of disagreements consistent with this Agreement, the Power Purchase Agreement, Imbalance Agreement, General Wheeling Agreement and Energy Export Agreement and generally accepted utility practice.

8.6 Meetings

The Technical Committee shall meet (in person at a location convenient to the parties or by telephone or video conference) as often as required to carry out its duties and responsibilities under this Agreement, and at least once each quarter, and shall keep, and promptly forward to each of the parties a copy of, written records of its meetings and determinations. Any Party may require that a meeting of the Technical Committee be held by giving notice of the time and location (or telephone or video conference arrangements) and notice of the topics to be discussed at the meeting, to the other parties at least 10 days prior to the date of the meeting. A quorum for a meeting of the Technical Committee shall be one representative or alternate representative of each Party, except that if a quorum has not been present at two consecutive meetings for which proper notice has been given, the quorum for the next meeting shall be those representatives or alternate representatives in attendance. The Technical Committee shall establish additional rules, procedures and terms of reference governing its own meetings and determinations.

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9. CONTRACT REPRESENTATIVES

9.1 Contract Representative

The following persons are hereby appointed as the initial contract representatives ("Contract Representatives") under this Agreement:

- (a) for BC Hydro, Specialist Engineer, Generation Resource Management; and
- (b) for FortisBC, Power Supply Operations Manager.

Either Party may replace its Contract Representative by notice in writing to the other Party from time to time. The Contract Representatives shall be responsible for the relationship between the Parties under this Agreement.

9.2 Authority of Contract Representatives

Each Contract Representative shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Contract Representatives shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

9.3 Meetings of Contract Representatives

The Contract Representatives shall meet at least each quarter and otherwise upon the request of either Contract Representative. Where appropriate, the Contract Representatives may invite Contract Representatives under other agreements between the Parties, or representatives of the Operating Committee under the Canal Plant Agreement, to attend meetings.

10. DISPUTE RESOLUTION

10.1 Definition of Dispute

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute"), including: (i) the interpretation of any provision of this Agreement (including the Accounting Procedures); or (ii) the failure to agree whether all or any part of the Accounting Procedures are reasonably required to be amended or replaced and the terms thereof; or (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 10 in the absence of agreement, then a party may give to the other party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 10. All Disputes must be resolved in accordance with the provisions of this Section 10.

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10.2 Contract Representatives to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each Party shall forthwith refer the Dispute to its Contract Representative and cause its Contract Representative to negotiate in good faith to resolve the Dispute.

10.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Contract Representatives or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 10.4. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Contract Representatives have not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

10.4 Referral to Arbitration

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if any party fails to appoint a senior executive for that purpose, then either party may submit the Dispute to arbitration under the *Commercial Arbitration Act* (British Columbia). The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties, or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Commercial Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Commercial Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses, filing of arguments, such that a decision may be rendered within 45 days of appointment of the arbitrator;

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- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

10.5 Authority of Arbitrator

If the Dispute involves the Accounting Procedures (including the failure to agree on any proposed amendment, termination or replacement thereof), or relates to a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination, including to amend or replace all or any part of the Accounting Procedures in order to resolve the Dispute, and such Accounting Procedures shall be binding on the Parties, until further amendments are agreed or determined by dispute resolution. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

10.6 Equitable Remedies

The arbitrator shall adjudicate the dispute, and may grant remedies in both law and equity. The parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other party of its obligations under this Agreement. Subject to 10.4(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 10.4(a).

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11. REMEDIES FOR BREACH

11.1 Notice

If a Party (the "Non-Breaching Party") considers that the other Party (the "Breaching Party") has breached this Agreement, including the Accounting Procedures (a "Breach"), and (i) the Breach is material, or (ii) there are persistent Breaches (in each such case, a "material Breach") the Non-Breaching Party may give notice (the "Notice of Breach") to the Breaching Party identifying actions of the Breaching Party that the Non-Breaching Party considers to represent a material Breach. The Breaching Party shall within 15 days respond to the Notice of Breach, advising of the processes, procedures and controls that the Breaching Party shall implement to ensure that such Breaches will not recur in the future, or disputing the Notice of Breach. If the Breaching Party disputes the Notice of Breach, the Notice of Breach and the Breaching Party's response shall be referred for dispute resolution in accordance with Section 10. If the matter is not resolved in accordance with Section 10.2 or Section 10.3, either Party may submit the matter for arbitration pursuant to Section 10.4 and the arbitrator is authorized and directed to determine whether the Breaching Party has committed a material Breach of this Agreement and, if so, the processes, procedures and controls that the Breaching Party must implement to ensure that such Breaches will not recur in the future. In determining what processes, procedures and controls that the Breaching Party must implement, the arbitrator shall consider, among all other relevant factors, the cost to the Breaching Party of implementing such processes, procedures and controls.

11.2 Second Notice

If the Breaching Party acknowledges or an arbitrator determines that the Breaching Party has committed a material Breach of this Agreement and the Non-Breaching Party again considers that the Breaching Party has committed a material Breach of this Agreement, then the Non-Breaching Party may give a further notice ("Second Notice") to the Breaching Party identifying actions of the Breaching Party that the Non-Breaching Party considers to represent a material Breach and the provisions of Section 11.1 shall again apply. If the matter is not resolved in the manner provided for in Section 11.1 and the arbitrator determines that the Breaching Party has committed a material Breach of this Agreement or that any processes, procedures or controls that the Breaching Party was to implement were not satisfactorily implemented, then the Non-Breaching Party may apply to the Commission for remedies that the Non-Breaching Party considers appropriate in the circumstances.

11.3 Remedies under other Agreements Unaffected

The Parties acknowledge and agree that the foregoing remedies are intended to be in addition to any remedies they may have under any of the CPA-Related Agreements or the Non-CPA-Related Agreements.

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11.4 Deemed Breach

If FortisBC does not provide timely and reliable information and accounting as required pursuant to this Agreement in connection with its performance of this Agreement, that itself shall be deemed a Breach of this Agreement.

12. NOTICES

12.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement shall be in writing, and shall be sufficient in all respects if delivered, or if sent by facsimile, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively.

(a) to BC Hydro:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Executive Vice-President, Generation
Facsimile Number: 604-623-4155

With a copy to:
British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Facsimile Number: 604-623-3606

(b) to FortisBC
FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice-President, Energy Supply
Facsimile Number: 604-592-7620

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With a copy to:

FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: General Counsel
Facsimile Number: 604-443-6540

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

12.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by facsimile, on the Business Day next following the date the sender receives confirmation of successful transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within 7 days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by facsimile.

12.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 12.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 12.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

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13. MISCELLANEOUS

13.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

13.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

13.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any Person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

13.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

13.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement, provided nothing in this Section 13.5 shall limit any damages or other remedies for any Breach or material Breach of this Agreement that may be expressly provided for herein.

13.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

13.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable,

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shall be subject to (a) the provisions of the *Utilities Commission Act*, as amended or re-enacted from time to time, and (b) the jurisdiction of the Commission.

13.8 Amendments

- (a) No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act*, either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission. For greater certainty, an amendment to the Accounting Procedures shall not be considered an amendment to this Agreement.
- (b) Neither Party shall apply to the Commission for approval of or to object to any amendment of the Accounting Procedures agreed to or determined by an arbitrator pursuant to the terms of this Agreement.

13.9 Enurement

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

13.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

13.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

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13.12 Restatement of Agreement Dated for Reference May 21, 2013

The Master Accounting Agreement dated for reference May 21, 2013, and filed with the Commission on May 24, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

**BRITISH COLUMBIA HYDRO
AND POWER AUTHORITY**

By: _____
Authorized Signatory

FORTISBC INC.

By: _____
Authorized Signatory

2542692.43

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APPENDIX A

Attached.

ACCEPTED:

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ATTACHMENT 5

PLACEHOLDER

GENERAL WHEELING AGREEMENT

ACCEPTED: _____

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**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment F

**RS 3808
Black-lined**

SCHEDULE 3808 – TRANSMISSION SERVICE – FORTISBC

Availability: This schedule is available to FortisBC in accordance with the terms and conditions of the Agreement between BC Hydro and FortisBC entered into and deemed effective the 1st day of ~~October 2013~~July 2014 (the "Power Purchase Agreement"). The Contract Demand shall not exceed 200 MW in any hour.

Applicable in: For Electricity delivered to FortisBC at each Point of Delivery as defined in the Power Purchase Agreement.

Rate: Demand Charge: ~~\$6.35~~36.925 per kW of Billing Demand per Billing Month plus

Tranche 1 Energy Price: ~~3.72~~44.059¢ per kW.h

Tranche 2 Energy Price: 12.97¢ per kW.h

Billing Demand: The Demand for billing purposes in any Billing Month shall be the greatest of:

1. the maximum amount of Electricity (in kW) scheduled under the Power Purchase Agreement, for any hour of the Billing month;
2. 75% of the maximum amount of electricity (in kW) scheduled under the Power Purchase Agreement in any hour in the 11 months of the Term immediately prior to the Billing Month (or less than 11 months, if the Effective Date is less than 11 months prior to the Month); and
3. 50% of the Contract Demand (in kW) for the Billing Month.

If FortisBC has reduced the Contract Demand in accordance with the Power Purchase Agreement, the amount of Electricity specified in Section 2 above may not exceed an amount equal to 100% of the Contract Demand.

Maximum Tranche1 Amount The Maximum Tranche 1 Amount for each Contract Year is 1,041 GW.h.

Scheduled Energy Less Than or Equal to Annual Energy Nomination In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that is less than or equal to the Annual Energy Nomination, FortisBC shall pay:

(a) The Tranche 1 Energy Price for each kW.h of such Scheduled Energy taken or deemed taken that is less than or equal to the Maximum Tranche 1 Amount; and

(b) The Tranche 2 Energy Price for each kW.h of such Scheduled Energy taken that exceeds the Maximum Tranche 1 Amount.

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Effective:

Scheduled Energy Exceeding the Annual Energy Nomination

In any Contract Year, for the amount of the Scheduled Energy taken or deemed to be taken that exceeds the Annual Energy Nomination, FortisBC shall pay:

- (a) 150% of the Tranche 1 Energy Price, for each kW.h of such Scheduled Energy taken or deemed taken that that exceeds the Annual Energy Nomination, but is less than or equal to the Maximum Tranche 1 Amount; and
- (b) 115% of the Tranche 2 Energy Price, for each kW.h of such Scheduled Energy taken that exceeds the Annual Energy Nomination and also exceeds the Maximum Tranche 1 Amount.

Annual Minimum Take

In any Contract Year, FortisBC shall schedule and take an amount of Electricity equal to at least 75% of the Annual Energy Nomination, and shall be responsible for any Annual Shortfall.

Note:

The terms and conditions under which service is supplied to FortisBC are contained in the Power Purchase Agreement.

Taxes:

The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

Rate Rider:

The Deferral Account Rate Rider as set out in Rate Schedule 1901 applies to all charges payable under this Rate Schedule, before taxes and levies.

Rate Increase:

The Tranche 1 Energy Price and Demand Charge are subject to the same rate adjustments as Schedule 1827. Tranche 2 Energy Price is subject to changes as provided for in the Power Purchase Agreement.

Effective April 1, ~~2013~~2014 the Tranche 1 Energy Price and the Demand Charge under this schedule includes an increase of ~~4.44~~9.0% before rounding, approved by BCUC Order No. G-~~7748-12A~~-14.

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**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment G

**TS No. 2
Black-lined**

AMENDED AND RESTATED WHEELING AGREEMENT

This Amended and Restated Wheeling Agreement is made as of the ~~16~~²⁶~~th~~ day of ~~July~~^{May}, ~~2013~~²⁰¹⁴, to be effective on the Effective Date.

BETWEEN: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY,
having its head office at 333 Dunsmuir Street, Vancouver, British
Columbia

("BC Hydro")

AND: FORTISBC INC., a body corporate having its head office at 10th Floor,
1111 West Georgia Street, Vancouver, British Columbia

("FortisBC")

WHEREAS:

- A. BC Hydro and FortisBC (then known as "West Kootenay Power and Light Company Limited") entered into a general wheeling agreement made as of October 15, 1986 (together with amendments thereto, the "**Original GWA**");
- B. FortisBC and BC Hydro serve adjacent areas in British Columbia and have various points of electrical system interconnection which permit the transfer of electricity to and from their respective systems;
- C. FortisBC desires to wheel electricity on a firm basis over BC Hydro transmission facilities and on a non-firm basis in certain circumstances;
- D. BC Hydro is willing to wheel electricity for FortisBC under the terms and conditions as are provided for by this Agreement; and
- E. The Parties have recently entered into a Power Purchase Agreement respecting power purchases by FortisBC from BC Hydro, and other associated agreements including the Imbalance Agreement and the Master Accounting Agreement, all of which required them to make certain changes to the Original GWA; and in addition the Parties desire to update the Original GWA, as reflected in this Agreement.

THIS AGREEMENT WITNESSES that in consideration of the covenants and agreements set forth in this Agreement and of other good and valuable consideration, the Parties hereby covenant, agree and declare as follows:

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) **“Accounting Procedures”** means the accounting procedures established from time to time under the Master Accounting Agreement;
- (b) **“Agreement”** means this Agreement, as amended, restated and/or supplemented from time to time, and any schedules or exhibits referred to in it as being attached to it;
- (c) **“Allocated Resources”** at a Point of Interconnection means the total amount of resources available to FortisBC pursuant to (i) the Power Purchase Agreement, and (ii) this Agreement, including General Wheeling and Emergency Wheeling but excluding any POI Imbalance Wheeling, as allocated to that Point of Interconnection in accordance with the Accounting Procedures. For clarity, unless there is an Energy Deficit or Energy Surplus, the Allocated Resources at a Point of Interconnection will be equal to the Net Obligations at that Point of Interconnection;
- (d) **“Billing Month”** means a calendar month;
- (e) **“Business Day”** means any calendar day which is not a Saturday, Sunday or other day recognized as a statutory holiday in British Columbia;
- (f) **“Canal Plant Agreement”** means the Second Amended and Restated 2005 Canal Plant Agreement dated for reference November 15, 2011 among BC Hydro, FortisBC, Teck Metals Ltd., Brilliant Power Corporation, Brilliant Expansion Power Corporation and Waneta Expansion Limited Partnership, as amended, restated and/or supplemented from time to time;
- (g) **“Commission”** means the British Columbia Utilities Commission established pursuant to the *Utilities Commission Act* (British Columbia), or a successor thereto;
- (h) **“Contract Year”** means, in the first year of this Agreement, the period commencing on the Effective Date and ending on September 30, 2014, and in all subsequent years of this Agreement, means a period commencing on October 1 and ending on the following September 30, provided that if this Agreement terminates earlier than September 30, 2045, the last Contract Year shall end on the earlier termination date;
- (i) **“Creston Point of Interconnection”** has the meaning given to it in Appendix I;
- (j) **“Effective Date”** means ~~October 1, 2013~~ July 1, 2014, provided that the last of the

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conditions precedent in Section 2.4 ~~have~~has then been met;

- (k) “**electricity**” means inclusively electric capacity and electric energy unless the context requires otherwise;
- (l) “**Emergency Wheeling**” means the transmission by BC Hydro of FortisBC’s electricity from the Point of Supply to a Point of Interconnection in excess of the applicable Nominated Wheeling Demand to serve FortisBC’s Net Obligations at that Point of Interconnection, where such excess is required by FortisBC to meet unforeseen transmission outages or other bona fide emergencies on FortisBC’s transmission system, or is otherwise permitted by Section 4.2(b) or paragraph 2 of Appendix III of this Agreement;
- (m) “**Energy Deficit**” means that FortisBC’s Net Obligations at a Point of Interconnection exceed the amount of its Allocated Resources at that Point of Interconnection, as calculated for that Point of Interconnection pursuant to and in accordance with the Accounting Procedures;
- (n) “**Energy Surplus**” means that FortisBC’s Net Obligations at a Point of Interconnection are negative, as calculated for that Point of Interconnection pursuant to and in accordance with the Accounting Procedures;
- (o) “**Force Majeure**” means any cause which is beyond a Party’s reasonable control, in each case that directly affects the Party’s ability to perform hereunder; a Force Majeure event does not include an act of negligence or intentional wrongdoing or lack of money or credit or economic hardship;
- (p) “**General Wheeling**” means the transmission by BC Hydro of FortisBC’s electricity from the Point of Supply to a Point of Interconnection to serve FortisBC’s Net Obligations at that Point of Interconnection;
- (q) “**Good Utility Practice**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the WECC region;
- (r) “**Imbalance Agreement**” means the Imbalance Agreement entered into between BC Hydro and FortisBC concurrently with the Power Purchase Agreement, as amended, restated and/or supplemented from time to time;
- (s) “**load**” at a Point of Interconnection means the sum of all telemetered generation within the load centre served by that Point of Interconnection less the amount of

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electricity metered as flowing out of the load centre, calculated in accordance with paragraph 3 of Appendix III;

- (t) **“Master Accounting Agreement”** means the Master Accounting Agreement entered into between BC Hydro and FortisBC concurrently with the Power Purchase Agreement, including the Accounting Procedures established pursuant to it, in each case as amended, restated and/or supplemented from time to time;
- (u) **“Net Obligations”** means the total load at a Point of Interconnection, less any generation at that Point of Interconnection, less all imports scheduled to that Point of Interconnection, plus all exports scheduled from that Point of Interconnection. For clarity, Net Obligations at a Point of Interconnection, where positive, will be equal to the Allocated Resources at that Point of Interconnection plus any POI Imbalance Wheeling to that Point of Interconnection;
- (v) **“Nominated Wheeling Demand”** means the maximum rate as nominated by FortisBC and at which BC Hydro agrees to provide continuous firm General Wheeling from the Point of Supply to a particular Point of Interconnection during a stated Contract Year;
- (w) **“OATT”** means BC Hydro’s Open Access Transmission Tariff as approved by the Commission from time to time;
- (x) **“Okanagan Point of Interconnection”** has the meaning given to it in Appendix I;
- (y) **“Parties”** means the parties to this Agreement and **“Party”** means either of them;
- (z) **“POI Imbalance Wheeling”** means the transmission by BC Hydro of FortisBC’s electricity on a non-firm basis:
 - (i) from the Point of Supply to a Point of Interconnection, in the event of an Energy Deficit at that Point of Interconnection; and
 - (ii) from a Point of Interconnection to the Point of Supply, in the event of an Energy Surplus at that Point of Interconnection;
- (aa) **“Point of Interconnection”** means a point exclusive of the Point of Supply as specifically identified in accordance with Section 3;
- (bb) **“Point of Supply”** means the “Kootenay Interconnection” as defined in the Canal Plant Agreement. For purposes of this Agreement, the points of interconnection enumerated in such definition will, except in respect of Sections 4 and 10, be deemed, collectively, to be a single point of supply;
- (cc) **“Power Purchase Agreement”** means the Power Purchase Agreement between BC Hydro and FortisBC, to be effective ~~October~~ July 1, 2013-2014, as amended,

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restated and/or supplemented from time to time;

- (dd) **"Prime Rate"** means the annual rate of interest designated by the Bank of Montreal as its "prime rate" for Canadian dollar commercial loans to customers in Canada;
- (ee) **"Princeton Point of Interconnection"** has the meaning given to it in Appendix I;
- (ff) **"Rate Schedule 3817"** means Rate Schedule 3817 to BC Hydro's Electric Tariff as approved by the Commission from time to time;
- (gg) **"Term"** has the meaning given to it in Section 2.1;
- (hh) **"Total Transmission Nomination"** means the amount nominated by FortisBC for each Point of Interconnection and accepted by BC Hydro pursuant to Section 6.2 for a stated Contract Year;
- (ii) **"WECC"** means the Western Electricity Coordinating Council, or a successor organization;
- (jj) **"Wheeling"** and all forms of the verb to **"Wheel"** means General Wheeling, Emergency Wheeling or POI Imbalance Wheeling, as applicable; and
- (kk) **"WTS-VAS Loop"** means, collectively, FortisBC's transmission lines connecting its Vaseux Lake and Warfield Terminal Stations.

1.2 Interpretation

In this Agreement, except where otherwise expressly provided:

- (a) unless the context otherwise requires, words importing the singular include the plural and vice versa, words importing gender include all genders, "or" is not exclusive, "including" is not limiting, whether or not non-limiting language (such as "without limitation") is used with reference to it, a grammatical variation of a defined term shall have a corresponding meaning, and reference to any person includes such person's successors and assigns but, if applicable, only if the succession or assignment is permitted under this Agreement;
- (b) the inclusion of headings in this Agreement is for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to an hour, day or month is a reference to a calendar hour, day or month, unless specified otherwise;
- (d) any reference to a specified Section, subsection or other subdivision of this Agreement or to an Appendix is to the designated Section, subsection or other subdivision of, or Appendix to, this Agreement, unless the context otherwise

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requires;

- (e) any reference to a statute includes and is a reference to such statute and to the regulations made pursuant to it, with all amendments to them in force from time to time, and to any statute or regulations that may be passed which supplement or supersede such statute and such regulations;
- (f) all monetary amounts referred to in this Agreement are stated and shall be paid in Canadian currency;
- (g) the language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against either Party; and
- (h) in the event of any express conflict or inconsistency between this Agreement and the Master Accounting Agreement or the Accounting Procedures, this Agreement shall have priority and prevail.

2. TERM

2.1 Term

Subject to Section 2.4, the term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall continue until September 30, 2045 and thereafter unless terminated pursuant to Section 2.2. Expiry or early termination of this Agreement shall not relieve either Party from any liability or obligation then accrued but unsatisfied.

2.2 Termination and Notice

At any time after October 1, 2039, either Party may notify the other of its intention that this Agreement be terminated and upon giving of such notice, this Agreement shall terminate without further notice or action by either Party, on the last day of September which next follows the passage of five full years from the date of the notice.

2.3 Regulatory Changes

- (a) If, at any time, there occurs a regulatory change that would result in a material incremental cost:
 - (i) to BC Hydro in providing General Wheeling to either (or both) of the Creston Point of Interconnection or the Princeton Point of Interconnection; or
 - (ii) to FortisBC in taking General Wheeling at either (or both) of the Creston Point of Interconnection or the Princeton Point of Interconnection,

then, notwithstanding Sections 2.1 and 2.2, the Party so affected may notify the

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other of its intention to terminate General Wheeling to such relevant Point(s) of Interconnection.

- (b) Upon giving of such notice by either Party, General Wheeling and Emergency Wheeling to the specified Point of Interconnection shall terminate without further notice or action by either Party on the last day of September which next follows the passage of five full years from the date of the notice, and subject to Section 6.1(f) such Point(s) of Interconnection shall be deemed to be removed from this Agreement for the purposes of General Wheeling and Emergency Wheeling only.

2.4 Conditions Precedent to Agreement Becoming Effective

This Agreement and any amendments to Rate Schedule 3817 required as a result of this Agreement shall not be effective unless each of the following conditions precedent has, on or before ~~October 1, 2013~~ December 1, 2013 or such later date as may be agreed between the Parties, been satisfied:

- (a) the Commission has issued an order under Sections 58 to 61 of the *Utilities Commission Act* (British Columbia) approving this Agreement, including the amended Rate Schedule 3817 attached as Appendix II, without imposing changes unless acceptable to both Parties; and
- (b) each of the Power Purchase Agreement, Imbalance Agreement and the Master Accounting Agreement has become, or will concurrently become, effective in accordance with its respective terms.

2.5 Support and Cooperation in Obtaining Commission Approval

FortisBC shall support BC Hydro's application for approval by the Commission of this Agreement and the amendments to Rate Schedule 3817 contemplated in this Agreement, including intervening in support of the application, provided that FortisBC reserves the right to oppose any changes proposed during proceedings before the Commission with which FortisBC does not agree. FortisBC shall cooperate with BC Hydro and provide such assistance as BC Hydro may reasonably request towards obtaining approval of this Agreement by the Commission.

2.6 Agreement Amends and Restates the Original GWA

The Original GWA, including all technical decisions thereunder, is as of the Effective Date amended and restated in its entirety by this Agreement, provided that such amendment and restatement of the Original GWA shall not relieve either Party from any liability or obligation accrued but unsatisfied thereunder as at the Effective Date, and provided that the Nominated Wheeling Demands delivered by FortisBC to and accepted by BC Hydro pursuant to the Original GWA shall continue to apply for the purposes of this Agreement in accordance with Section 6.3(a).

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3. POINTS OF INTERCONNECTION AND SUPPLY

The Points of Interconnection between BC Hydro and FortisBC to which electricity may be Wheeled from the Point of Supply (or from which electricity may be Wheeled to the Point of Supply, in the event of an Energy Surplus) under this Agreement are as listed in Appendix I, which may be amended from time to time by agreement between the Parties.

4. INTERCONNECTED OPERATION

4.1 Maintenance of Voltage

BC Hydro shall operate its system facilities to maintain, under normal conditions and in accordance with Good Utility Practice, the voltage at the Point of Supply and each Point of Interconnection within plus or minus 10 percent of the nominal voltage (SOD, 230, 138, 63 kV) assuming that the FortisBC power flow taken at each Point of Interconnection is between unity power factor and 0.95 power factor leading.

4.2 Reactive Power (var) Requirement

- (a) FortisBC shall use its best efforts to plan and operate in accordance with Good Utility Practice to operate at reasonable reactive power (var) flow at the Point of Supply and zero var flow at each Point of Interconnection. If, in BC Hydro's opinion, actual operation indicates that excessive var flows occur at any of these Points, BC Hydro shall have the right to give notice to FortisBC to either rectify the situation or pay for the supply, installation and operation of var flow equipment necessary to rectify the situation.
- (b) During periods of time when the 40 Mvar capacitor bank installed at Vernon Terminal (paid for by FortisBC) is available for service, the var flow that is specified in this Section will be adjusted by the vars that are provided by such 40 Mvar capacitor bank. BC Hydro shall use reasonable efforts to plan the operation of such capacitor bank so that any required outages at Vernon have minimum cost impact on FortisBC. For emergency outages of the capacitor bank, BC Hydro will apply its post-contingency operating criteria in determining the var flow requirements at Vernon Terminal, and FortisBC may request relief under the Emergency Wheeling provisions of this Agreement.

4.3 Loop Operations

The Parties shall operate their respective transmission systems on a closed loop basis, except that the Creston Point of Interconnection and the Princeton Point of Interconnection may each be radially-connected to the FortisBC transmission system. If FortisBC desires closed loop operation for the Creston Point of Interconnection and/or the Princeton Point of Interconnection, then:

- (a) FortisBC shall give advance notice to BC Hydro of such desire;

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- (b) BC Hydro shall make reasonable efforts to accommodate FortisBC and shall give notice to FortisBC of the times and extent to which closed loop operation will be acceptable to BC Hydro; and
- (c) BC Hydro, in consultation with FortisBC, shall correct for the effect of loop flows by making appropriate adjustments for billing purposes for periods of closed loop operation.

5. PLANNING AND OPERATING INFORMATION

5.1 General Information Requests

BC Hydro and FortisBC agree to cooperate in the full exchange of, and shall provide, such planning and operating information as may be reasonably necessary for the timely and efficient performance of the Parties' obligations or the exercise of the Parties' rights under this Agreement. Such information shall be provided on a timely basis and no reasonable request shall be refused.

5.2 Load-Resource Forecasts

By June 30 of each Contract Year, FortisBC shall provide BC Hydro with a forecast for the next ten Contract Years of loads and resources in its electrical system. Each such forecast shall include programs for resource acquisition, transmission and firm loads, and shall contain such detail as BC Hydro may reasonably require for purposes of planning to meet its obligations under this Agreement.

6. NOMINATIONS

6.1 General Wheeling Nominations

- (a) For each Contract Year during the Term in respect of which nominations are required pursuant to Section 6.3 or 6.4, as applicable, FortisBC shall provide to BC Hydro a proposed Nominated Wheeling Demand for each Point of Interconnection.
- (b) For the Okanagan Point of Interconnection, the proposed Nominated Wheeling Demand for any Contract Year shall not decrease by more than 15% of the Nominated Wheeling Demand for the immediately preceding Contract Year. Subject to the foregoing, the Nominated Wheeling Demand for the Okanagan Point of Interconnection at any time during the Term after October 1, 2014 may be any amount up to 600 MW; but any amount in excess of 600 MW will be subject to Section 6.1(c) below and will only be accepted by BC Hydro in its sole discretion.
- (c) Following receipt of a proposed Nominated Wheeling Demand from FortisBC, BC Hydro shall respond within 90 days and shall deliver to FortisBC a notice either (i) accepting such proposed Nominated Wheeling Demand as the

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Nominated Wheeling Demand for the applicable Point of Interconnection and the applicable Contract Year or (ii) stating the maximum amount that can be Wheeled on a firm basis to such Point of Interconnection during that Contract Year by existing BC Hydro facilities and new facilities that are planned to be brought into service.

- (d) BC Hydro shall not be obligated to change its development, operation, maintenance or other plans for its transmission or substation facilities to accommodate FortisBC's General Wheeling requirements under this Agreement in respect of the Creston Point of Interconnection or the Princeton Point of Interconnection, or in respect of the Okanagan Point of Interconnection if any proposed Nominated Wheeling Demand for the Okanagan Point of Interconnection exceeds 600 MW. BC Hydro may consider changes to such plans to accommodate FortisBC's General Wheeling requirements if mutual agreement can be reached on the compensation payable to BC Hydro for the additional costs to be incurred.
- (e) If BC Hydro gives notice to FortisBC that it cannot accommodate a proposed Nominated Wheeling Demand for a particular Contract Year for any Point of Interconnection, then within 30 days after receiving such notice FortisBC may modify any or all of the proposed Nominated Wheeling Demands for that Contract Year. Provided that the new proposed Nominated Wheeling Demands do not exceed the maximums that BC Hydro can accommodate, and subject to Section 6.1(b), the new proposed Nominated Wheeling Demands shall be accepted by BC Hydro as the Nominated Wheeling Demands.
- (f) For greater certainty, POI Imbalance Wheeling will continue to be provided at each Point of Interconnection as long as the Imbalance Agreement remains in effect, and FortisBC must still provide Total Transmission Nominations for each Point of Interconnection and otherwise comply with Section 6.2 and any other relevant terms of this Agreement, even where the Nominated Wheeling Demand for the Point of Interconnection is nil or the Point of Interconnection is deemed to be removed from this Agreement for the purposes of General Wheeling and Emergency Wheeling pursuant to Section 2.3(b).

6.2 Total Transmission Nominations

- (a) Total Transmission Nominations for a Contract Year represent the total firm transmission required at a Point of Interconnection to accommodate the Nominated Wheeling Demand and deliveries under the Power Purchase Agreement for that Contract Year at the Point of Interconnection, and the Total Transmission Nomination amount is the aggregate firm import limit for that Point of Interconnection under this Agreement and the Power Purchase Agreement. The firm transmission capacity reserved by BC Hydro for deliveries under the Power Purchase Agreement to a Point of Interconnection will not exceed the "Contract Demand" (as defined in the Power Purchase Agreement).

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- (b) For each Contract Year during the Term in respect of which nominations are required pursuant to Section 6.3 or 6.4, as applicable, FortisBC shall provide to BC Hydro a proposed Total Transmission Nomination for each Point of Interconnection.
- (c) Following receipt of a proposed Total Transmission Nomination from FortisBC, BC Hydro shall respond within 90 days and shall deliver to FortisBC a notice either (i) accepting such proposed Total Transmission Nomination as the Total Transmission Nomination for the applicable Point of Interconnection and the applicable Contract Year or (ii) stating the maximum amount that can be accommodated at such Point of Interconnection during that Contract Year by existing BC Hydro facilities and new facilities that are planned to be brought into service.
- (d) BC Hydro shall not be obligated to change its development, operation, maintenance or other plans for its transmission or substation facilities to accommodate Total Transmission Nominations under this Agreement in respect of the Creston Point of Interconnection or the Princeton Point of Interconnection, or in respect of the Okanagan Point of Interconnection if the proposed Total Transmission Nomination for the Okanagan Point of Interconnection exceeds 600 MW. BC Hydro may consider changes to such plans to accommodate FortisBC's requests if mutual agreement can be reached on the compensation payable to BC Hydro for the additional costs to be incurred.
- (e) For the Okanagan Point of Interconnection, the Total Transmission Nomination may be any amount up to 600 MW at any time during the Term; but any amount in excess of 600 MW will be subject to Section 6.2(d) above and will only be accepted by BC Hydro in its sole discretion.
- (f) If BC Hydro gives notice to FortisBC that it cannot accommodate the proposed Total Transmission Nomination for a particular Contract Year for any Point of Interconnection, then within 30 days after receiving such notice FortisBC may modify any or all of the proposed Total Transmission Nominations for that Contract Year. Provided that the new proposed Total Transmission Nominations do not exceed the maximums that BC Hydro can accommodate, the new proposed Total Transmission Nominations shall be accepted by BC Hydro as the Total Transmission Nominations.
- (g) BC Hydro will only Wheel or deliver, including deliveries under the Power Purchase Agreement, in excess of a Total Transmission Nomination on an available basis.

6.3 Initial Nominations

- (a) Nominated Wheeling Demands delivered by FortisBC to and accepted by BC Hydro pursuant to the Original GWA for the period from the Effective Date up to

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and including September 30, 2018 shall continue to apply for the purposes of this Agreement.

- (b) For the first Contract Year of this Agreement, the Total Transmission Nominations will be deemed to be the following:
 - (i) for the Princeton Point of Interconnection: 30 MW;
 - (ii) for the Creston Point of Interconnection: 35 MW; and
 - (iii) for the Okanagan Point of Interconnection: 400 MW.
- (c) Within thirty (30) days after the Effective Date, FortisBC shall provide proposed Total Transmission Nominations for each Point of Interconnection for each of the four Contract Years immediately following the first Contract Year of the Term. Such nominations shall be subject to acceptance by BC Hydro pursuant to Section 6.2 and to the following. FortisBC's proposed Total Transmission Nominations for each of such four Contract Years will be subject to BC Hydro's acceptance after consideration of any constraints on BC Hydro's transmission system. If FortisBC's request cannot be accommodated, FortisBC and BC Hydro will seek to reach agreement, acting reasonably, on the Total Transmission Nomination for each Point of Interconnection for each of the four Contract Years. If the Parties fail to reach agreement on the Total Transmission Nomination for any Point of Interconnection for any one of the four Contract Years, then the Total Transmission Nomination for such Point of Interconnection for that Contract Year will be the same as the Total Transmission Nomination for that Point of Interconnection for the most recently-preceding Contract Year in respect of which the Parties have agreed or, if none has been agreed to, then as for the first Contract Year as set out in Section 6.3(b).

6.4 Nominations in Subsequent Contract Years

- (a) By June 30 in each Contract Year of the Term, FortisBC shall provide proposed Nominated Wheeling Demands and Total Transmission Nominations for each Point of Interconnection for the ensuing fifth Contract Year. Such nominations shall be subject to acceptance by BC Hydro as described in Sections 6.1 or 6.2, as applicable.
- (b) If FortisBC fails to submit a proposed Nominated Wheeling Demand for a Point of Interconnection by June 30 in any Contract Year, the Nominated Wheeling Demand for that Point of Interconnection for the applicable Contract Year shall be deemed to be:
 - (i) the same as the applicable Nominated Wheeling Demand for the immediately preceding Contract Year, in the case of the Okanagan Point of Interconnection; and

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- (ii) nil, in the case of either the Creston Point of Interconnection or the Princeton Point of Interconnection.
- (c) If FortisBC fails to submit a proposed Total Transmission Nomination for a Point of Interconnection by June 30 in any Contract Year, the Total Transmission Nomination for that Point of Interconnection for the applicable Contract Year shall be deemed to be:
 - (i) the same as the applicable Total Transmission Nomination for the immediately preceding Contract Year, in the case of the Okanagan Point of Interconnection; and
 - (ii) the Total Transmission Nomination for the immediately preceding Contract Year, less the Nominated Wheeling Demand for the immediately preceding Contract Year, in the case of either the Creston Point of Interconnection or Princeton Point of Interconnection.
- (d) If FortisBC fails to submit a proposed Nominated Wheeling Demand or Total Transmission Nomination by June 30 in any Contract Year, resulting in a deemed Nominated Wheeling Demand or Total Transmission Nomination pursuant to Section 6.4(b) or 6.4(c), respectively, then BC Hydro will not unreasonably refuse any subsequent request from FortisBC to change such Nominated Wheeling Demand or Total Transmission Nomination (as the case may be) at any time prior to September 30 of that Contract Year, provided that such subsequently proposed amounts remain subject to acceptance by BC Hydro as described in Sections 6.1 or 6.2, as applicable, and provided further that FortisBC agrees to compensate BC Hydro for any incremental costs or expenses reasonably or necessarily incurred by BC Hydro in reviewing and accepting such subsequent request and changing the applicable Nominated Wheeling Demand or Total Transmission Nomination, as the case may be.

6.5 Studies

BC Hydro will prepare a transmission study in response to the proposed Nominated Wheeling Demands and Total Transmission Nominations submitted by FortisBC for the applicable Contract Year in accordance with this Agreement and will provide the results to FortisBC, which study will provide a forecast of non-firm available transmission capacity for the Points of Interconnection for that Contract Year, and BC Hydro may post such study on BC Hydro's transmission website for information purposes at its discretion. As reasonably requested by FortisBC, BC Hydro may complete additional studies for other time periods, or shorter-term transmission studies on a semi-annual basis.

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7. GENERAL WHEELING

7.1 General Wheeling Obligation

BC Hydro shall use its best efforts to provide General Wheeling up to the limits defined by the Nominated Wheeling Demands determined under Section 6.1.

7.2 Determination of Volumes

(a) In each hour, the amounts of electricity which BC Hydro Wheels to the Creston Point of Interconnection or the Princeton Point of Interconnection under General Wheeling shall be deemed to be the lesser of:

- (i) the Nominated Wheeling Demand for that Point of Interconnection, plus the amount of any Emergency Wheeling to that Point of Interconnection; and
- (ii) the Net Obligations at that Point of Interconnection less the amount, if any, of scheduled deliveries under the Power Purchase Agreement allocated to that Point of Interconnection in priority to the General Wheeling amount in accordance with the Accounting Procedures,

and shall be calculated for and allocated to that Point of Interconnection in accordance with the Accounting Procedures. For greater certainty, the Accounting Procedures as at the Effective Date do not allocate any scheduled deliveries under the Power Purchase Agreement to either the Creston Point of Interconnection or the Princeton Point of Interconnection in priority to the General Wheeling amount.

(b) In each hour, the amounts of electricity which BC Hydro Wheels to the Okanagan Point of Interconnection under General Wheeling shall be deemed to be the lesser of:

- (i) the Nominated Wheeling Demand for that Point of Interconnection, plus the amount of any Emergency Wheeling to that Point of Interconnection plus 120 MW when the WTS-VAS Loop is in operation; and
- (ii) the Net Obligations at that Point of Interconnection less the amount, if any, of scheduled deliveries under the Power Purchase Agreement allocated to that Point of Interconnection in priority to the General Wheeling amount in accordance with the Accounting Procedures,

and shall be calculated for and allocated to the Okanagan Point of Interconnection in accordance with the Accounting Procedures. For greater certainty, the Accounting Procedures as at the Effective Date allocate scheduled deliveries under the Power Purchase Agreement to the Okanagan Point of Interconnection in priority to the General Wheeling amount.

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- (c) The 120 MW referenced in Section 7.2(b)(i) will not be taken into account for any purpose other than to determine the amount of General Wheeling pursuant to this Agreement.

7.3 Limits of Obligation

BC Hydro shall not be required to provide General Wheeling above the applicable Nominated Wheeling Demands under this Agreement unless otherwise agreed to in writing and in advance by BC Hydro. For greater certainty, any Energy Surplus or Energy Deficit at a Point of Interconnection will result in POI Imbalance Wheeling.

7.4 General Wheeling Rate

FortisBC shall pay for General Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

8. POI IMBALANCE WHEELING

8.1 Obligation to Avoid POI Imbalance Wheeling and to Balance on a Planned Basis

- (a) Notwithstanding the availability of POI Imbalance Wheeling under this Agreement, FortisBC must still plan to balance its Net Obligations and Allocated Resources at each Point of Interconnection and the Point of Supply, and must use all reasonable efforts to ensure that its Net Obligations and Allocated Resources are in fact balanced at each Point of Interconnection and the Point of Supply.
- (b) FortisBC will not plan for an Energy Deficit or an Energy Surplus in any hour, and if an Unexpected Condition (as defined in the Imbalance Agreement) occurs that causes or may cause such an Energy Deficit or an Energy Surplus, then FortisBC shall use all reasonable efforts to avoid, minimize the amount and duration of, and end, such Energy Deficit or Energy Surplus, as the case may be.

8.2 POI Imbalance Wheeling

- (a) If there occurs an Energy Deficit or an Energy Surplus at a Point of Interconnection, BC Hydro will provide POI Imbalance Wheeling.
- (b) No POI Imbalance Wheeling will be available at the Point of Supply.
- (c) BC Hydro's OATT Schedule 6 (Energy Imbalance) is not available to FortisBC and there will be no application of unauthorized use of BC Hydro's transmission system pursuant to the OATT.

8.3 Determination of Volumes

The amount of POI Imbalance Wheeling in any hour will be the aggregate sum of the

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absolute values of all Energy Deficits and Energy Surplus at each Point of Interconnection, as calculated in accordance with the Accounting Procedures.

8.4 Reporting

For each event resulting in the use of POI Imbalance Wheeling, FortisBC will:

- (a) use reasonable efforts to provide to BC Hydro a report containing its calculation of the amount of POI Imbalance Wheeling by 1200 hours on the first Business Day following the day on which such event occurs, and in any event FortisBC will provide such report to BC Hydro by no later than 1600 hours on the second Business Day following the day on which such event occurs; and
- (b) provide a report to BC Hydro describing the circumstances resulting in the use of POI Imbalance Wheeling, within five Business Days after the day on which the event occurs.

8.5 Excessive POI Imbalance Wheeling

For any Point of Interconnection, if more than 8 hours or 50 MWh of POI Imbalance Wheeling occurs in a Contract Year, then the Technical Committee will convene to discuss the circumstances regarding the use of POI Imbalance Wheeling, and potential solutions for FortisBC to avoid the use of POI Imbalance Wheeling in future. If the Technical Committee cannot agree on a solution, then either Party may initiate a Dispute pursuant to Section 15, on the basis that repeated or continued use of POI Imbalance Wheeling in excess of the amounts set out in this Section 8.5 is not acceptable and is not contemplated by the POI Imbalance Wheeling provisions of this Agreement.

8.6 POI Imbalance Wheeling Rate

FortisBC shall pay for POI Imbalance Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

9. EMERGENCY WHEELING

9.1 Emergency Wheeling

- (a) BC Hydro shall provide Emergency Wheeling to the extent that the normal operation of BC Hydro's system and service to BC Hydro's customers shall not be impaired. FortisBC must advise BC Hydro that FortisBC wishes the Emergency Wheeling provisions of this Agreement to apply to any otherwise unauthorized use of BC Hydro's transmission system as soon as reasonably practicable in the circumstances, but in any event no later than two (2) hours after the occurrence of the relevant event, and must provide an estimate of the amount and duration of Emergency Wheeling required at that time. BC Hydro reserves the right to deny a

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request for Emergency Wheeling in circumstances which do not satisfy the definition of "Emergency Wheeling" in Section 1.1(k) or where FortisBC has not advised BC Hydro within the two (2)-hour time limit specified in this Section.

- (b) For greater certainty, Emergency Wheeling does not include additional transmission requirements due to planned outages for maintenance and construction.

9.2 Determination of Volumes

In any hour, the amounts of electricity which BC Hydro Wheels to any Point of Interconnection under Emergency Wheeling shall be calculated for and allocated to that Point of Interconnection in accordance with the Accounting Procedures.

9.3 Emergency Wheeling Rate

FortisBC shall pay for Emergency Wheeling in accordance with the provisions of BC Hydro Rate Schedule 3817 and revisions thereto on file with the Commission from time to time.

9.4 Reporting

Without limiting the notification requirements in Section 9.1(a), for each event of Emergency Wheeling, FortisBC will use reasonable efforts to provide to BC Hydro a report containing its calculation of the actual amount of Emergency Wheeling by 1200 hours on the first Business Day immediately following the day on which such event occurs, and in any event FortisBC will provide such report to BC Hydro by no later than 1600 hours on the second Business Day following the day on which such event occurs.

10. METERING FACILITIES

10.1 Metering

- (a) Electricity under this Agreement shall be measured and recorded at each Point of Interconnection and at the Point of Supply by energy and demand meters having one hour integrating intervals (or such other intervals as the Parties may from time to time agree), which meters shall be of types approved for revenue metering by the Canadian Department of Consumer and Corporate Affairs and shall comply with the provisions of the *Electricity and Gas Inspection Act* (Canada), as amended from time to time.
- (b) Each Party shall, if possible, make available to the other Party the second set of secondaries of the metering transformers owned by it for the purpose of installing backup metering, telemetering and control equipment as may be mutually agreed by the Parties and shall provide space for the location of such equipment. In cases where back-up meters are installed, the Parties shall designate one meter to be used for revenue billing.

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10.2 Tests of Metering Installations

- (a) Each Party shall, at its expense, test its metering components associated with this Agreement as provided by the *Electricity and Gas Inspection Act* (Canada) and field test the metering installation at least once every two years. If requested to do so, each Party shall make additional tests or inspections of such installations, the expense of which shall be paid by such other requesting Party unless such additional tests or inspections show the measurements of such installations to be registering outside the prescribed limit of error. Each Party shall give reasonable notice of the time when any such test or inspection is to be made to the other Party, who may have representatives present at such test or inspection. Any component of such installations found to be defective or inaccurate shall be adjusted, repaired, or replaced to provide accurate metering.
- (b) If a meter is found to be not functioning accurately, the amount of electricity Wheeled shall be determined as provided for in the *Electricity and Gas Inspection Act* (Canada).

10.3 Access to Equipment and Facilities

- (a) If any equipment or facilities associated with any Point of Supply or Point of Interconnection and belonging to a Party are, or are to be, located on the property of the other Party, a permit to install, test, maintain, inspect, replace, repair, and operate during the Term and to remove such equipment and facilities at the expiration of the Term, together with the right of entry to said property at all reasonable times in such Term, is hereby granted by the other Party.
- (b) Each Party shall have the right by giving suitable notice to enter the property of the other Party at all reasonable times for the purpose of reading any and all meters mentioned in this Agreement which are installed on such property.
- (c) If either Party is required or permitted to install, test, maintain, inspect, replace, repair, remove, or operate equipment on the property of the other, the owner of such property shall furnish the other Party with accurate drawings and wiring diagrams of associated equipment and facilities, or, if such drawings or diagrams are not available, shall furnish accurate information regarding such equipment or facilities. The owner of such property shall notify the other Party of any subsequent modification which may affect the duties of the other Party in regard to such equipment, and furnish the other Party with accurate revised drawings, if possible.

10.4 Ownership of Facilities

- (a) Except as otherwise expressly provided, ownership of any and all equipment installed or previously installed by either Party on the property of the other Party shall be and remain with the installing Party.
- (b) Each Party shall identify all equipment which is installed by it on the property of the

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other, by permanently affixing thereto suitable markers plainly stating the name of the owner of the equipment so identified within a reasonable time subsequent to initial installation, and subsequent to any modification of such installation, representatives of the Parties shall jointly prepare an itemized list of said equipment so installed.

10.5 Inspection of Facilities

Each Party may, for any reasonable purpose under this Agreement, inspect the other Party's electric installation at any reasonable time after giving suitable notice. Such inspection, or failure to inspect, shall not render such Party, its officers, agents, or employees, liable or responsible for any injury, loss, damage, or accident resulting from defects in such electric installation, or for violation of this Agreement. The inspecting Party shall observe written instructions and rules posted in facilities and such other necessary instructions or standards for inspection as the Parties agree to. Only those electric installations used in complying with the terms of this Agreement shall be subject to inspection.

11. OTHER RELEVANT INSTRUMENTS

11.1 Accounting Procedures

In the event of any change to the Accounting Procedures that renders calculations required under this Agreement impossible or meaningless, then the Parties agree to negotiate in good faith to restore or replace the applicable provisions of the Accounting Procedures as reasonably required to have the same effect in relation to this Agreement as the provisions replaced prior to such change. If the Parties are unable to agree on the replacement provisions, the matter will be subject to dispute resolution in accordance with the applicable provisions of the Master Accounting Agreement.

11.2 Rates and Agreements

In the event of any change to the Power Purchase Agreement, Imbalance Agreement, BC Hydro's OATT or BC Hydro's Electric Tariff that renders calculations required under this Agreement impossible or meaningless, then the Parties agree to negotiate in good faith an amendment to this Agreement containing such replacement provisions as may reasonably be required to have the same effect as the provisions replaced prior to such change. If the Parties are unable to agree on the replacement provisions, the matter will be subject to dispute resolution in accordance with Section 15.

12. INVOICES AND PAYMENT

12.1 Invoices

BC Hydro shall render an invoice monthly in respect of any General Wheeling, Emergency Wheeling or POI Imbalance Wheeling provided by BC Hydro under this Agreement in the immediately preceding month, based on best available billing and

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accounting information at the time of invoicing. Billing adjustments shall be made in subsequent months if the billing and accounting information is updated or revised. Invoices shall be due and payable upon receipt.

12.2 All Charges Exclusive of Applicable Taxes

All amounts payable hereunder, including in respect of General Wheeling, Emergency Wheeling or POI Imbalance Wheeling, are exclusive of all applicable taxes, including federal goods and services tax and provincial sales tax.

12.3 Billing Disputes

If a Party disputes an invoice or the billing or accounting information on which the invoice is based, the Party shall nevertheless pay the invoice in full and may dispute the invoice or the billing or accounting information on which it was based in accordance with Section 15.4. Those parts of the invoice which are paid notwithstanding the dispute or disagreement and which are subsequently determined not to have been properly rendered and due with that invoice shall be repaid with interest at the Prime Rate from the date paid by the disputing Party until repaid.

12.4 Late Payment

If the amount due on any invoice has not been paid in full after 20 days from the billing date shown on the invoice, a late payment charge shall be applied to the unpaid balance, and the resulting amount will be shown and identified on the next invoice to be rendered. The late payment charge shall be as specified in BC Hydro's Electric Tariff, as amended from time to time.

13. TRANSMISSION LOSSES

13.1 Responsibility for Deemed Wheeling Losses

In recognition of the fact that there will be transmission losses associated with General Wheeling, Emergency Wheeling and POI Imbalance Wheeling, the Parties agree that FortisBC shall make up for the amount of the deemed Wheeling losses pursuant to the terms of this Article 13.

13.2 Calculation

Until otherwise agreed, the deemed Wheeling losses in a given hour shall be calculated as 5 percent of the total hourly capacity and energy Wheeled by BC Hydro from the Point of Supply to all Points of Interconnection (or from a Point of Interconnection to the Point of Supply in the event of an Energy Surplus). Unless otherwise agreed, Wheeling losses shall be scheduled to BC Hydro at the Point of Supply.

13.3 Obligation to Schedule

During each hour of the Term, FortisBC shall schedule to BC Hydro amounts of firm

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electricity equivalent to the hourly Wheeling losses calculated to have occurred in the 168th preceding hour. Fractional losses (i.e. less 1 MW/h) shall be truncated and added to losses calculated to have occurred in the hour immediately following such hour, to be scheduled together with such losses.

13.4 Technical Committee Review

From time to time the Technical Committee may review all relevant facts and technical information, and may, if it considers a change justified, revise the percentage to be used thereafter to calculate Wheeling losses.

14. TECHNICAL COMMITTEE

14.1 Establishment of Technical Committee

There shall be established and maintained throughout the Term, a technical committee ("Technical Committee") consisting of one representative of each Party, each of whom shall serve until written notice has been given to the other Party of the selection of his successor.

14.2 Alternates

Each Party may give notice to the other Party of an alternate who shall serve during the inability or absence of the representative of the Party giving notice.

14.3 Authority of Technical Committee

Each Party's representative on the Technical Committee shall have the authority to make decisions with respect to actions to be taken by its Party in the ordinary course of day-to-day management of the obligations of such Party under this Agreement. The Technical Committee shall have no authority, expressly or by course of conduct, to agree to amend this Agreement.

14.4 Function and Meetings

The Technical Committee shall determine all matters relating to administration and operation of this Agreement and shall decide questions that arise in operations under this Agreement. The Technical Committee shall meet upon the request of either Party's representative.

14.5 Resolution

In reaching its decisions, the Technical Committee shall attempt to achieve a just and equitable resolution of any disagreements based on Good Utility Practice and shall not vary or amend the provisions of the Agreement in any way.

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14.6 Written Records

The Technical Committee shall keep a written record of its decisions and shall promptly forward to each of the Parties a copy of the written record. Attached as Appendix III are operational considerations resulting from technical decisions made under the Original GWA which will continue to apply under this Agreement.

15. DISPUTE RESOLUTION

15.1 Disputes

If any dispute, question or difference of opinion between the Parties arises out of or under this Agreement ("Dispute") including (i) the interpretation of any provision of this Agreement, (ii) any billing or invoice dispute, (iii) any matter on which agreement of the Parties is required and this Agreement provides may be submitted for dispute resolution in accordance with this Section 15 in the absence of agreement, or (iv) any proposed amendment to this Agreement, then a Party may give to the other Party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 15. All Disputes shall be exclusively resolved in accordance with the provisions of this Section 15.

15.2 Technical Committee to Seek Resolution

If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party shall forthwith refer the Dispute to the Technical Committee and cause its representative on the Technical Committee to negotiate in good faith to resolve the Dispute. This stage is not necessary where the Dispute has been initiated by the Technical Committee, in which case the Dispute should proceed directly to Section 15.3.

15.3 Referral to Senior Executives

If a Dispute is not resolved within 7 days of the Dispute being referred to the Technical Committee or within 14 days after the Dispute Notice is given, whichever is earlier, the Parties shall seek to resolve the Dispute through their respective senior executives (at the vice president level or higher) before proceeding to resolve the Dispute through dispute resolution in accordance with Section 15.5. Each Party shall appoint a senior executive to undertake such informal process within 10 days of a Party notifying the other Party that the Technical Committee has not timely resolved the Dispute and the Parties shall use commercially reasonable efforts to resolve the Dispute through their appointed senior executives within 30 days after notification.

15.4 Resolution of Billing Disputes

If any Dispute relating to billing or invoice matters is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then such Dispute shall be exclusively resolved by the

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expedited dispute resolution process in Section 15.6(e).

15.5 Referral to a Third Party for Resolution

If the Dispute is not resolved within 30 days of the Dispute being referred to the senior executives, or if either Party fails to appoint a senior executive for that purpose, then either Party may refer the Dispute for resolution in accordance with the following:

- (a) if the Dispute relates to any amendment to this Agreement proposed by either Party, then:
 - (i) BC Hydro may apply to the Commission; and
 - (ii) FortisBC may file a complaint with the Commission;in respect of the proposed amendment, and the other Party may intervene in such proceeding; and
- (b) if the Dispute relates to any other matter, then either Party may refer the Dispute to arbitration under the *Arbitration Act* (British Columbia) for resolution.

15.6 Arbitration Procedure

The following rules shall apply to an arbitration under this Agreement:

- (a) The arbitration shall be conducted before one arbitrator mutually agreed to by the Parties or if the Parties are unable to agree upon a mutually acceptable arbitrator within 15 days after a demand for arbitration has been given, either Party may apply to the court pursuant to the *Arbitration Act* (British Columbia) for the appointment of a single arbitrator, and the provisions of the *Arbitration Act* (British Columbia) shall govern such appointment;
- (b) The venue for the arbitration shall be the venue selected by the arbitrator in Vancouver, British Columbia, unless otherwise agreed between the Parties;
- (c) The arbitrator shall promptly fix the time, date and place of the hearing and notify the Parties;
- (d) The arbitration shall be dealt with on an expeditious basis with both Parties using commercially reasonable efforts to obtain and implement a timely decision of the arbitrator;
- (e) Where provided for in this Agreement, or the Parties agree, the arbitrator shall be instructed to impose time limits of no more than 10 days on the production of documents, filing of evidence, examination of witnesses and filing of arguments, such that a decision may be rendered within 45 days of appointment of the

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arbitrator;

- (f) All costs of the arbitration shall be paid by the Parties in such amount and proportions as the arbitrator may determine, and if the arbitrator does not make an award of costs, the Parties shall bear the costs of the arbitration equally and each Party shall bear its own costs;
- (g) The arbitrator shall promptly transmit an executed copy of its decision to the Parties and the decision of the arbitrator shall be final, binding and conclusive upon the Parties;
- (h) The arbitrator shall determine the Dispute in accordance with the internal laws of the Province of British Columbia and applicable Canadian federal law, without giving effect to any conflict of law rules or other rules that might render such law inapplicable or unavailable;
- (i) Neither Party shall commence or voluntarily participate in any court action or proceeding relating to any Dispute except:
 - (i) for enforcement of arbitral awards or orders as contemplated herein;
 - (ii) to restrict or vacate an arbitral decision based on corruption of the arbitrator; or
 - (iii) to seek injunctive relief if an arbitrator has not then been appointed.

15.7 Authority of Arbitrator

If the Dispute involves a matter on which agreement of the Parties is required and that this Agreement provides may be submitted for dispute resolution in the absence of agreement, each Party hereby expressly authorizes and directs the arbitrator to make the required determination. Any such determination by the arbitrator shall be deemed to have been the agreement of the Parties. No award or determination of an arbitrator may be inconsistent with the terms and conditions of this Agreement.

15.8 Equitable Remedies

The arbitrator shall adjudicate the Dispute, and may grant remedies in both law and equity. The Parties acknowledge that a declaratory judgment or damages may provide an inadequate remedy for breach of the provisions of this Agreement, and accordingly each Party shall be entitled to seek specific performance, injunction or other similar remedy to ensure full and proper performance by the other Party of its obligations under this Agreement. Subject to Section 15.6(i)(iii), such remedy may only be sought from the arbitrator appointed under Section 15.6(a).

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16. FORCE MAJEURE

Neither Party to this Agreement shall be considered to be in default in the performance of any of its obligations under this Agreement to the extent that performance of those obligations is prevented or delayed by Force Majeure. If either Party is delayed or prevented from its performance at any time by Force Majeure, the Party so prevented or delayed shall give notice to the other Party of the cause of the prevention or delay but notwithstanding giving of that notice, the Party shall promptly and diligently use its best efforts to remove the cause of the prevention or delay.

17. INTERRUPTION OF TRANSMISSION

17.1 No Warranty of Continuous Transmission

BC Hydro does not warrant continuous or uninterrupted transmission of electricity or the maintenance of unvaried frequency or voltage.

17.2 Request to Suspend or Reduce

At any time, in the event there is a transmission outage or emergency on BC Hydro's transmission system, whether actual or apprehended by BC Hydro, BC Hydro may request FortisBC to curtail Wheeling. If FortisBC does not curtail Wheeling as requested, BC Hydro may suspend or reduce the Wheeling of electricity under this Agreement to FortisBC. BC Hydro shall use its reasonable efforts to advise FortisBC and to curtail service to FortisBC on a pro-rata basis with other BC Hydro transmission customers.

18. LIABILITY/INDEMNITY

18.1 Liability

- (a) All responsibility of BC Hydro for electricity Wheeled under this Agreement shall cease at the applicable Point of Interconnection.
- (b) Neither Party, its servants or agents, shall be liable to the other Party for any loss, injury, damages or expense of the other Party caused by or resulting from any suspension, discontinuance or defect in the transmission of electricity, or the maintenance of unvaried frequency or voltage alleged or caused by an act or omission of the other Party, its servants or agents.

18.2 Indemnity

FortisBC shall indemnify BC Hydro and save it harmless from any and all claims from FortisBC's customers or other third parties in connection with the transmission of, or any suspension, discontinuance or defect in the transmission of, electricity, or the maintenance of unvaried frequency or voltage, by BC Hydro under this Agreement.

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19. NOTICES

19.1 Notices

All notices, directions and other instruments required or permitted to be given under this Agreement (except for any advice or request given by FortisBC pursuant to Section 9.1(a)) shall be in writing, and shall be sufficient in all respects if delivered, or if sent by fax, or if sent by prepaid registered post mailed in British Columbia to the Parties at the following addresses respectively:

(a) BC Hydro:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Vice President, Grid Operations
Fax Number: (604) 623-3578

With a copy to:

British Columbia Hydro & Power Authority
333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Attention: Director of Legal Services
Fax Number: (604) 623-3606

(b) FortisBC:

FortisBC Inc.
10th Floor
1111 West Georgia Street
Vancouver, B.C.
V6E 4M3

Attention: Vice-President, Energy Supply
Fax Number: (604) 592-7620

Either Party shall have the right at any time to change its address by notice in writing sent to the other Party at the address in effect hereunder.

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19.2 Delivery of Notices

Any notice, direction or other instrument shall be deemed to have been received on the following dates:

- (a) if sent by fax, on the Business Day next following the date of transmission;
- (b) if delivered, on the Business Day next following the date of delivery; or
- (c) if sent by registered mail, on the seventh day following its mailing, provided that if there is at the time of mailing or within seven days thereafter a mail strike, slowdown, lockout or other labour dispute which might affect the delivery, then any notice, direction or other instrument, shall only be effective upon actual delivery or if delivered or sent by fax.

19.3 Electronic Mail Notices

As an alternative to the methods of giving notice described in Section 19.1, a Party may give notices, directions and other instruments required or permitted to be given under this Agreement by electronic mail to the other Party's representative(s) identified in Section 19.1 who continues to be employed by the other Party and is not to the knowledge of the sending Party unavailable; provided (i) the notice, direction or other instrument is stated to be a notice, direction or other instrument required or permitted to be given under this Agreement, and (ii) the notice, direction or other instrument is concurrently also given by electronic mail to the Corporate Secretary of the other Party. Any notice, direction or other instrument given by electronic mail shall be deemed to have been received on the Business Day next following the date of sending, provided that no such notice shall be effective unless such notice is actually received by the representative(s).

20. MISCELLANEOUS

20.1 Time is of the Essence

If a Party persistently fails to perform any of its obligations hereunder by the time(s) provided for herein (and the result or effect of such failure is not provided for in this Agreement), then the other Party may, by notice to the Party, require that from the date specified in the notice, time shall be of the essence with respect to such obligations.

20.2 No Assignment Without Consent

Neither Party may sell, assign or otherwise transfer this Agreement or any of its rights, obligations or liabilities under this Agreement to any other person unless all such rights, obligations and liabilities are assigned, and then only with the prior consent in writing of the other Party.

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20.3 No Third Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or to give any person, other than the Parties and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

20.4 Further Assurances

Each of the Parties agrees that it shall take from time to time such actions and execute such additional instruments as may be reasonably necessary or convenient to implement and carry out the intent and purpose of this Agreement.

20.5 No Consequential Damages

No arbitrator shall award any special, incidental, exemplary, punitive or consequential damages with respect to, arising out of, relating to or in any way connected with a Party's performance or non-performance under this Agreement.

20.6 Waiver

The failure of a Party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit that Party's right thereafter to enforce any provision or exercise any right.

20.7 Governing Law

This Agreement and all the terms and conditions contained in it shall be governed and construed in accordance with the laws of British Columbia and, to the extent applicable, shall be subject to (a) the provisions of the *Utilities Commission Act* (British Columbia), as amended or re-enacted from time to time, and (b) to the jurisdiction of the Commission.

20.8 Amendments

No amendment of this Agreement shall be valid unless made in writing and executed by the appropriate duly authorized signatories of the Parties (and approved by the Commission to the extent required by law) or unless ordered by the Commission in accordance with its authority under the *Utilities Commission Act* (British Columbia), either upon its own motion or upon the application of either Party. A Party seeking amendment of this Agreement by the Commission shall give reasonable prior notice thereof to the other Party and the Parties shall negotiate in good faith to reach agreement on appropriate amendments, if any, before applying to the Commission.

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20.9 Enurement

This Agreement shall be binding upon and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

20.10 Counterpart Execution

This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same.

20.11 Electronic Delivery

Delivery by a Party of an executed copy of this Agreement by electronic means shall be effective delivery.

20.12 Restatement of Agreement Dated for Reference July 16, 2013

The Amended and Restated Wheeling Agreement dated for reference July 16, 2013, and filed with the Commission on July 16, 2013 is, as of the Effective Date, restated in its entirety by this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Per: _____
Authorized Signatory

FORTISBC INC.

Per: _____
Authorized Signatory

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APPENDIX I

POINTS OF INTERCONNECTION

The Points of Interconnection between BC Hydro and FortisBC to or from which electricity may be Wheeled under this Agreement are as follows:

- (a) FortisBC's 230 kV bus at the Lambert Substation (the "**Creston Point of Interconnection**").
- (b) BC Hydro's 230 kV bus at the Vernon Substation (the "**Vernon Delivery Point**"), and the point where BC Hydro's 500 kV bus interconnects with FortisBC's 500 kV transformer disconnects at the Vaseux Lake Terminal Station (the "**VAS Delivery Point**", and collectively with the Vernon Delivery Point, the "**Okanagan Point of Interconnection**"). For the purposes of this Agreement, Wheeling at the Okanagan Point of Interconnection will be summed and treated as a single delivery point.
- (c) FortisBC's tap on BC Hydro's transmission line 1L251 near Princeton (the "**Princeton Point of Interconnection**").

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APPENDIX II
RATE SCHEDULE 3817

See attached.

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BC Hydro
Rate Schedules
Effective: July 1, 2014
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SCHEDULE 3817 – WHEELING SERVICE – FORTISBC INC.

Availability: This schedule is available to FortisBC Inc. for the Wheeling of electricity over BC Hydro's transmission facilities in accordance with the terms and conditions of the Amended and Restated Wheeling Agreement entered into between BC Hydro and FortisBC Inc. and deemed effective the 1st day of ~~October, 2013~~ July 2014 (the "Amended and Restated Wheeling Agreement").

Applicable in: The Point of Supply and the Points of Interconnection specified in the Amended and Restated Wheeling Agreement.

CPI Adjustment: Each Contract Year, the applicable rates for General Wheeling and Emergency Wheeling to each Point of Interconnection identified in this Rate Schedule will be adjusted by increasing the prior Contract Year's applicable rates by the annual rate of inflation as published by Statistics Canada using the British Columbia Consumer Price Index (all items) for the month of July preceding the commencement of the Contract Year in which the adjustment will apply. These adjustments will become effective at the commencement of the next Contract Year on October 1 of that calendar year, and the adjusted rates will be posted on BC Hydro's transmission website.

Annual General Wheeling Rates: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, for the purposes of calculating the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the Contract Year commencing October 1, 2013, the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the prior Contract Year are:

1. Point of Supply to Creston Point of Interconnection
\$13,411.12 per MW of Nominated Wheeling Demand
2. Point of Supply to Okanagan Point of Interconnection
\$20,578.55 per MW of Nominated Wheeling Demand
3. Point of Supply to Princeton Point of Interconnection
\$54,874.45 per MW of Nominated Wheeling Demand

Monthly Charge: The monthly charge shall be one twelfth of the above annual rate per MW of Nominated Wheeling Demand for each Point of Interconnection.

Nominated Wheeling Demand: The maximum amount of electricity, as determined in Section 6.1 of the Amended and Restated Wheeling Agreement, that BC Hydro will Wheel for FortisBC, Inc. under General Wheeling to each Point of Interconnection during a stated Contract Year.

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BC Hydro
Rate Schedules
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POI Imbalance Wheeling: A rate shall be charged for each MW of POI Imbalance Wheeling that is equal to 200% of the then-current maximum rate that would apply to FortisBC Inc. under Schedule 01 of BC Hydro's Open Access Transmission Tariff for Hourly Non-Firm Point-To-Point Transmission Service.

Emergency Wheeling: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, a rate of 0.110¢ per kW.h shall be charged for each kW.h of Emergency Wheeling. This charge would only apply to Wheeled energy which cannot be accommodated within the limits of the Nominated Wheeling Demand applicable to the Point of Interconnection, and which meets the criteria for Emergency Wheeling in accordance with the Amended and Restated Wheeling ~~agreement~~ Agreement.

Note: The terms and conditions under which Wheeling is provided to FortisBC Inc. are contained in the Amended and Restated Wheeling Agreement. All terms capitalized above are defined in the Amended and Restated Wheeling Agreement.

Taxes: The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

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APPENDIX III

OPERATIONAL CONSIDERATIONS FROM PRIOR TECHNICAL DECISIONS
AND ACCOUNTING PROCEDURES

1. At any time during the term of this Agreement, BC Hydro's obligations hereunder at the Vernon Delivery Point and the VAS Delivery Point, respectively, will be limited to the planned capability of the Vernon Delivery Point or the VAS Delivery Point, as the case may be, provided that the aggregate planned capability of the Vernon Delivery Point and the VAS Delivery Point is at least equal to: (i) 400 MW prior to September 30, 2014; and (ii) 600 MW thereafter. If and for so long as the aggregate planned capability of the Vernon Delivery Point and the VAS Delivery Point is less than such amount, this limitation will not apply.
2. For every hour during which the Parties' systems are transitioning from open-loop to closed-loop, or from closed-loop to open-loop, configuration at the Okanagan Point of Interconnection the systems will, for purposes of all immediate operating considerations, be deemed to be operating on an open-loop basis for the entire hour. Detailed calculations of loads and deemed transfers on FortisBC's No. 48 Line at Bentley will be performed manually on an after-the-fact basis. During any such transitioning BC Hydro will provide required Emergency Wheeling in accordance with then current practices under this Agreement.
3. The calculation of the load at the three load centres served by the Points of Interconnection is done as follows:
 - (a) For the Princeton Point of Interconnection, the load is the sum of all telemetered generation in the Princeton area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Princeton Point of Interconnection;
 - (b) For the Creston Point of Interconnection, the load is the sum of all telemetered generation in the Creston area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Creston Point of Interconnection; and
 - (c) For the Okanagan Point of Interconnection, the load is the sum of all telemetered generation in the Okanagan area that is connected to the Entitlement Parties' System, less the amount of electricity metered as flowing from the Entitlement Parties' System to BC Hydro at the Okanagan Point of Interconnection, plus the telemetered amount of electricity flowing from South Slocan to the Okanagan as measured on FortisBC's No. 48 Line at Bentley if the WTS-VAS Loop is in operation, less the Duck Lake load.

For the purposes of these calculations, the "Entitlement Parties' System" shall have the meaning ascribed thereto in Canal Plant Agreement.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
Associated Agreements, and
TS No. 2 to RS 3817
Compliance with BCUC Order No. G-60-14**

Attachment H

**RS 3817
Black-lined**

SCHEDULE 3817 – WHEELING SERVICE – FORTISBC INC.

Availability: This schedule is available to FortisBC Inc. for the Wheeling of electricity over BC Hydro’s transmission facilities in accordance with the terms and conditions of the Amended and Restated Wheeling Agreement entered into between BC Hydro and FortisBC Inc. and deemed effective the 1st day of ~~October,~~ [2013 July 2014](#) (the “Amended and Restated Wheeling Agreement”).

Applicable in: The Point of Supply and the Points of Interconnection specified in the Amended and Restated Wheeling Agreement.

CPI Adjustment: Each Contract Year, the applicable rates for General Wheeling and Emergency Wheeling to each Point of Interconnection identified in this Rate Schedule will be adjusted by increasing the prior Contract Year’s applicable rates by the annual rate of inflation as published by Statistics Canada using the British Columbia Consumer Price Index (all items) for the month of July preceding the commencement of the Contract Year in which the adjustment will apply. These adjustments will become effective at the commencement of the next Contract Year on October 1 of that calendar year, and the adjusted rates will be posted on BC Hydro’s transmission website.

Annual General Wheeling Rates: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, for the purposes of calculating the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the Contract Year commencing October 1, 2013, the applicable rates for General Wheeling to each Point of Interconnection identified in this Rate Schedule for the prior Contract Year are:

1. Point of Supply to Creston Point of Interconnection
\$13,411.12 per MW of Nominated Wheeling Demand
2. Point of Supply to Okanagan Point of Interconnection
\$20,578.55 per MW of Nominated Wheeling Demand
3. Point of Supply to Princeton Point of Interconnection
\$54,874.45 per MW of Nominated Wheeling Demand

Monthly Charge: The monthly charge shall be one twelfth of the above annual rate per MW of Nominated Wheeling Demand for each Point of Interconnection.

Nominated Wheeling Demand: The maximum amount of electricity, as determined in Section 6.1 of the Amended and Restated Wheeling Agreement, that BC Hydro will Wheel for FortisBC, Inc. under General Wheeling to each Point of Interconnection during a stated Contract Year.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

POI Imbalance Wheeling: A rate shall be charged for each MW of POI Imbalance Wheeling that is equal to 200% of the then-current maximum rate that would apply to FortisBC Inc. under Schedule 01 of BC Hydro's Open Access Transmission Tariff for Hourly Non-Firm Point-To-Point Transmission Service.

Emergency Wheeling: Subject to adjustment in accordance with the CPI Adjustment provision of this Rate Schedule, a rate of 0.110¢ per kW.h shall be charged for each kW.h of Emergency Wheeling. This charge would only apply to Wheeled energy which cannot be accommodated within the limits of the Nominated Wheeling Demand applicable to the Point of Interconnection, and which meets the criteria for Emergency Wheeling in accordance with the Amended and Restated Wheeling ~~agreement~~[Agreement](#).

Note: The terms and conditions under which Wheeling is provided to FortisBC Inc. are contained in the Amended and Restated Wheeling Agreement. All terms capitalized above are defined in the Amended and Restated Wheeling Agreement.

Taxes: The rates and charges contained herein are exclusive of the Goods and Services tax and the Social Services tax.

ACCEPTED: _____

ORDER NO. _____

COMMISSION SECRETARY

**Application for Approval of Rates between BC
Hydro and FortisBC with regards to
RS 3808, TS No. 3 – Power Purchase and
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Compliance with BCUC Order No. G-60-14**

Attachment I

**BC Hydro and FortisBC Letter Agreement
October 1, 2013**



Cynthia Des Brisay
Vice President,
Energy Supply and
Resource Development

FortisBC Inc.
10 Floor
1111- West Georgia Street
Vancouver, BC V6E 4M3
Tel: 604-592-7837
cynthia.desbrisay@fortisbc.com

October 1, 2013

British Columbia Hydro and Power Authority
333 Dunsmuir Street
Vancouver, B.C. V6B 5R4

Attention: Doug Little, Vice-President, Energy Planning & Economic Development

Dear Doug:

Re: Power Purchase Agreement

We refer to the Power Purchase Agreement (the "Power Purchase Agreement") dated for reference May 21, 2013 between British Columbia Hydro and Power Authority ("BC Hydro") and FortisBC Inc. ("FortisBC").

By letter of even date, BC Hydro and FortisBC have agreed to amend the Power Purchase Agreement and other related agreements between them (collectively, the "Agreements") which are currently before the British Columbia Utilities Commission (the "Commission") for approval pursuant to Sections 58 to 61 of the *Utilities Commission Act*. Among the purposes of the amendments is to extend the date (currently October 1, 2013) by which Commission approval must be granted in order for the Agreements to become effective (the "Condition Date"), since the parties do not currently expect that the Commission will, or on before October 1, 2013, grant such approval.

We write to confirm certain matters contemplated by the Power Purchase Agreement, in light of the fact that the parties do not currently expect the Power Purchase Agreement to become effective until after October 1, 2013.

Specifically, we confirm that:

1. For the purposes of Section 5.1 of the Power Purchase Agreement, FortisBC delivered to BC Hydro, on or before June 30, 2013, a notice specifying [REDACTED] GWh as the Annual Energy Nomination for the period October 1, 2013 to September 30, 2014. Based on this nomination, the Annual Minimum Take for the same period would be [REDACTED] GWh (determined as the amount equal to 75% of [REDACTED] GWh) less any applicable amounts as described in paragraphs (i) and (ii) of Section 5.4(a).
2. Since the parties anticipate that the first Contract Year will be a period of less than 365 days,

- (a) For the purposes of Sections 5.3(a) and 5.3(b) of the Power Purchase Agreement, the phrase "the Annual Energy Nomination for the immediately preceding Contract Year", when used to refer to the Annual Energy Nomination for the first Contract Year, shall be deemed to mean [REDACTED] GWh.
- (b) For the purposes of Sections 5.4(a) and 5.4(b) of the Power Purchase Agreement, the Annual Minimum Take for the first Contract Year shall be deemed to be an amount equal to the amount derived by the application of the formula set out in Section 5.4(a) (with the Annual Energy Nomination being [REDACTED] GWh, and 75% thereof being [REDACTED] GWh) less the total amount of energy purchases (measured in GWh) by FortisBC under the 1993 Agreement during the period commencing on October 1, 2013 and ending on the Effective Date.
- (c) For the purposes of Sections 7.3 and 7.4 of the Power Purchase Agreement, the Annual Energy Nomination for the first Contract Year shall be deemed to be an amount equal to [REDACTED] GWh less the total amount of energy purchases (measured in GWh) by FortisBC under the 1993 Agreement during the period commencing on October 1, 2013 and ending on the Effective Date.

All initially capitalized terms used in this letter agreement shall have the definitions respectively given to them in the Power Purchase Agreement.

If the forgoing accurately confirms the agreement reached between us, would you kindly sign a counterpart of this letter agreement and return it to the attention of the writer.

Yours truly,

FORTISBC INC.

Per:



Cynthia Des Brisay
Vice President, Energy Supply & Resource Development

Acknowledged and agreed this 1st day of October 2013
on behalf of British Columbia Hydro and Power Authority.

By: 

Doug Little
Vice-President, Energy Planning & Economic Development